

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA**  
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)  
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

**I.T.A. No. 1272/Kol/2016**  
**Assessment Year: 2011-12**

|   |     |                                       |
|---|-----|---------------------------------------|
| Shri Jagteswar Singh<br>(PAN: AJVPS1925N) | Vs. | Income-tax Officer, Wd-33(2), Kolkata |
| Appellant                                 |     | Respondent                            |

|                       |  |
|-----------------------|--|
| Date of Hearing       | 18.01.2018                               |
| Date of Pronouncement | 28.03.2018                               |
| For the Appellant     | Mrs. Saswati Mitra (Dutta), Advocate     |
| For the Respondent    | Shri Arindam Bhattaharjee, Addl. CIT, DR |

**ORDER**

**Per Shri A.T.Varkey, JM**

This appeal filed by the assessee is against the order of Ld. CIT(A)-9, Kolkata dated 30.03.2016 for AY 2011-12 in respect of upholding the penalty of Rs.10,000/- imposed by the AO u/s. 271(1)(b) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. In this appeal, the assessee has challenged the order of CIT(A) in confirming the penalty u/s. 271(1)(b) of the Act. The facts and circumstances under which penalty u/s 271(1)(b) of the Act was imposed on the assessee by the AO are that the assessee filed his return of income on 30.09.2011 declaring a ‘Nil’ income. The case was selected for scrutiny through CASS for the reason that there was a cash deposit of Rs.31,70,000/- in a S.B. A/c. maintained by the assessee in Andhra Bank, Ballygunge Park Branch. When asked by the AO to explain the source of the deposit, the assessee replied that the source of such cash deposit was from agricultural activity. The assessee was asked to produce documents like hard copy of return, computation of income, copy of bank statements, audited accounts, land deed along with details of land, location, area quantity, tax receipts etc. on various dates, (*which facts have been shown by way of a chart by the AO in the*

*order passed u/s. 271(1)(b) of the Act*), but according to AO, no compliance or partial compliance was only made by assessee pursuant to notice u/s. 142(1) of the Act issued on various dates by the AO and, therefore, the AO observed that it is quite evident from that chart he has tabulated in his penalty order that the assessee was attempting to delay the proceeding to ensure that proper investigation is not possible in the instant case. Accordingly, the AO concluded that the assessee did not comply with notice u/s. 142(1) of the Act despite being given several opportunities to do so with an intention to obstruct the process of investigation carried out by him. Therefore, he thought that it a fit case for imposition of penalty u/s. 271(1)(b) of the Act and imposed a penalty of Rs.10,000/-. On appeal, the Ld. CIT(A) confirmed the same by an ex parte order without hearing the assessee. Aggrieved, assessee is in appeal before us.

3. At the outset, ld. Counsel for the assessee submitted before us that the assessee is a senior citizen and was quite unwell when the documents were requisitioned by the AO and since the documents called for related to agricultural land situated at his ancestral hometown in State of Uttar-Pradesh it caused delay in getting the documents, so that was the reason for the delay in filing the requisite documents sought for by the AO. She also drew our attention to the fact that the assessment was completed u/s. 143(3) of the Act on 11.03.2014, wherein it was acknowledged by the AO in his own words “*in compliance to the notices Shri A. Banerjee and Smt. Saswati Mitra Dutta, A/Rs of the assessee appeared from time to time to explain the return. According to Ld. AR, the assessee’s sources of income were profit from a firm named M/s. Universal Construction and bank interest. The assessee produced the original documents as called for, for verification. The case is heard and discussed with him.*” Therefore, according to her, the assessment was finally completed by the AO under section 143(3) of the Act was sufficient to show that there was substantial compliance made by the assessee. She also submitted that the default committed by the assessee thus could not be said to be willful and the penalty imposed u/s. 271(1)(b) of the Act is liable to be cancelled.

4. On the other hand, Ld. DR relied on the order of the lower authorities and urged before the bench to confirm the same.

5. We have heard rival submission and gone through the facts and circumstances of the case. We find that the assessee is a senior citizen and not keeping well and the documents sought for by the AO related to agricultural income of the assessee and the land is situated at his hometown in the State of Uttar-Pradesh. Hence, when AO asked the assessee to produce the documents pertaining to his ancestral land situated at his village in the State of UP, delay happened which was not deliberate. Being a senior citizen and suffering from old-age illness, the prompt submission of documents could not happen and the delay caused to produce the same was beyond his control and thus the delay is not at all willful. And since the assessment was framed u/s. 143(3) of the Act after the assessee had produced all documents the penalty was not warranted. We also find that the language used in section 271(1)(b) of the Act is that “..... he *may* direct that such person shall pay by way of penalty ..... ” Meaning thereby that the authorities are given discretion to impose penalty or not. Further, sec. 273B of the Act provides that no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the provisions of section 271(1)(b) of the Act if he proves that there was reasonable cause for the said failure. In this regard it would be prudent to refer to the decision of the Hon’ble Supreme Court in the case of Hindustan Steel Vs. State of Orissa 83 ITR 26, wherein it was held that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act. We also note that the assessment proceeding has been framed u/s. 143(3) of the Act and the AO himself in the assessment order has acknowledged that Ld. AR of the assessee participated and produced documents before the AO which means compliance was made by the assessee and, therefore, the delay in not furnishing documents related to his agricultural land situate in the State of UP, cannot be viewed as deliberate attempt on the part of assessee to delay the assessment. We note that assessee had produced the documents related to agricultural land and the AO thereafter issued commission to verify the facts and thereafter framed the assessment order u/s. 143(3) of the Act. Therefore, the default on the part of the assessee in not complying the notices issued by the AO u/s. 142(1) of the Act was merely a technical or venial nature for which the imposition of penalty u/s. 271(1)(b) of the Act was not justified. Therefore, considering all the facts of the case, we hold that the penalty imposed by the AO u/s. 271(1)(b) of the Act

and confirmed by the Ld. CIT(A) under consideration is not sustainable for that we rely on a coordinate Bench decision in the case of Anil Charan Paul Vs. DCIT in ITA Nos. 887-893/Kol/2016, AYs. 2006-07 to 2012-13 dated 13.12.2017, and we cancel the same. The appeal of the assessee is allowed.

6. In the result, appeal of assessee is allowed.

Order is pronounced in the open court on 28th March, 2018

Sd/-

Sd/-

(Dr. A. L. Saini)  
Accountant Member

(Aby. T. Varkey)  
Judicial Member

Dated : 28th March, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Jagteswar Singh, Greenwood Park, HIG-3, Flat-1, DB-1, New town, Rajarhat, Kolkata-700 156
2. Respondent – ITO, Ward-33(2), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.