

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

**I.T.A. No. 276/HYD/2017**

Assessment Year: 2002-03

P.C. Pantulu, HYDERABAD <b>[PAN: AGEPP3005G]</b>	DCIT, Circle-1(2), Vs HYDERABAD
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**(Appellant)**

**(Respondent)**

For Assessee	:	Shri P. Murali Mohan Rao, AR
For Revenue	:	Smt. U. Minichandran, DR

Date of Hearing	:	04-04-2018
Date of Pronouncement	:	11-04-2018

**ORDER**

**PER B. RAMAKOTAIAH, A.M. :**

This is an appeal by assessee against the order of the Commissioner of Income Tax (Appeals)-1, Hyderabad, dated 17-05-2016, confirming the penalty of Rs. 20,000/- u/s. 271(1)(b) of the Income Tax Act [Act].

2. Brief facts leading to the levy of penalty are that in the course of scrutiny proceedings, the Assessing Officer (AO) has issued notices u/s. 143(2) of the Act on 04-07-2006 and also on 21-08-2006, to which assessee has not complied. Thereafter, AO has issued further notices and after due

compliance, the assessment has been completed u/s. 143(3) of the Act by the AO. However, for the non-compliance on 24-07-2006 and 21-08-2006, AO initiated penalty proceedings u/s. 271(1)(b) of the Act. After issuing further show cause notice, as there was no response from the assessee, AO levied a penalty of Rs. 20,000/- @ Rs. 10,000/- for each failure to comply with the notices issued.

3. Assessee contended before the Ld.CIT(A) that he is physically challenged and has requested his authorised representative to attend, who could not attend due to various reasons and further submitted that having complied with the later notices, the penalty need not have been levied. However, Ld.CIT(A) did not agree with the above contentions and confirmed the penalty.

4. It was the submission of the Ld. Counsel that assessee could not appear before the AO but, however, he complied with the subsequent notices and assessment has been completed u/s. 143(3) only. Therefore, subsequent compliance and assessment u/s. 143(3) can be considered as 'good compliance' and the defaults committed earlier were ignored by the AO. He relied on the Co-ordinate Bench decisions in the case of Gloubs Infocom Limited Vs. DCIT in ITA No. 738/Del/2014, dt. 29-06-2016 and Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust Vs. ACIT [115 TTJ 419] (Delhi).

5. Ld.DR, however, supported the orders of AO and CIT(A) and submitted that assessee has not complied with the notices and even to the show cause notice.

6. We have considered the rival contentions and perused the documents placed on record along with case law relied upon. It is true that assessee has physical disability, restricting his movements. He has authorised the AR to appear before the AO, who complied with the notices subsequently. Even though there was failure to comply with the initial two notices given, considering that AO has completed assessment u/s. 143(3) and not u/s. 144, the subsequent compliance can be considered as 'good compliance' for the earlier notices given. The Co-ordinate Bench in the case of Gloubs Infocom Limited Vs. DCIT (supra) has on similar circumstances held as under:

*"5. We have heard the rival submissions and perused the material on record. We find that the instant appeal is squarely covered by the decision of the Co-ordinate Bench of IT AT Delhi in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan trust vs ACIT 5 DTR 429 (Delhi Tribunal) wherein the Coordinate Bench in paras 2.4 and 2.5 has held as under:-*

*"2.4 Coming to the issue of recording of satisfaction, it may be mentioned that mere initiation of penalty does not amount to satisfaction as held by Hon'ble Delhi High Court in the case of CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321 : (2000) 246 ITR 568 (Del). In absence of recording of the satisfaction in the assessment order, mere initiation of penalty will not confer jurisdiction on the AD to levy the penalty.*

*2.5 We also find that finally the order was passed under s. 143(3) and not under s. 144 of the Act. This means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO. Therefore, in*

*such circumstances, there could have been no reason to come to the conclusion that the default was willful”.*

6.1. Respectfully following the same, we are of the opinion that the initial non-compliance may not result in levy of penalty, as assessee has bonafide reasons for non-compliance. Accordingly, penalty levied is hereby cancelled.

7. It is to be observed that AO issued only one notice and levied two penalties for non-compliance on two dates. Technically speaking, each non-compliance requires separate show-cause notice/proceeding and AO cannot levy two penalties in one single proceeding. However, this is for advice of the AO to follow in future so that there cannot be any technical defects while completing penalty proceedings.

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

*Order pronounced in the open court on 11<sup>th</sup> April, 2018*

Sd/-  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(B. RAMAKOTAIAH)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated 11<sup>th</sup> April, 2018

TNMM

*Copy to :*

*1. P.C. Pantulu, Hyderabad. C/o. P. Murali & Co., Chartered Accountants 6-3-655/2/3, 1<sup>st</sup> Floor, Somajiguda, Hyderabad.*

*2. The DCIT, Circle-1(2), Hyderabad.*

*3. CIT(Appeals)-1, Hyderabad.*

*4. Pr.CIT-1, Hyderabad.*

*5. D.R. ITAT, Hyderabad.*

*6. Guard File.*