

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA No.87/CTK/2016

(निर्धारण वर्ष / Assessment Year :2011-2012)

Nabaghana Sahoo, Shanti Marg, Susuda, Angul	Vs.	ITO, Ward-1, Dhenkanal
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ATDPS 1686 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri P.C.Sethi, AR
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, CITDR
सुनवाई की तारीख / **Date of Hearing** : **02/08/2017**
घोषणा की तारीख/**Date of Pronouncement** **03/08/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The assessee has filed an appeal against the order of CIT(A)-2, Bhubaneswar, passed in ITAppeal No.0226/2015-16, dated 18.12.2015, u/s.271(1)(b) & 250 of the Income Tax Act.

2. The assessee has challenged the action of the CIT(A) in confirming the penalty levied u/s.271(1)(b) of the Act of Rs.50,000/-.

3. Brief facts of the case are that the assessee is engaged in the business of retail trading in petroleum and allied products and filed the return of income electronically on 31.01.2012 with total income of Rs.6,09,570/-. Subsequently case was selected for scrutiny under CASS and notices u/s.143(2) & 142(1) of the Act were issued. In compliance, Id. AR of the assessee appeared and case was discussed and produced information on the disputed issue. Ld. AO after verifying the financial statements made aggregate addition of expenses and assessed the total income to Rs.8,21,720/- and passed the order u/s.143(3) of the Act.

Subsequently, the AO issued notice for levy of penalty u/s.271(1)(b) of the Act. The assessee filed explanations and requested to keep the proceedings in abeyance as the assessee has appeared and filed explanations, but the AO was not satisfied with the explanations and levied the penalty u/s.271(1)(b) of the Act of Rs.50,000/- and passed the order u/s.271(1)(b) of the Act, dated 23.09.2014

4. Aggrieved by the order of the AO, the assessee has filed an appeal before the CIT(A), whereas the Id. CIT(A) concord with the findings of AO and dismissed the appeal of the assessee.

5. Aggrieved with the order of CIT(A), the assessee is in further appeal before the Tribunal.

6. Before us, Id. AR of the assessee submitted that the CIT(A) has erred in confirming the penalty levied u/s.271(1)(b) of the Act and the assessee has filed details and complied the directions in the assessment proceedings, therefore, penalty cannot be levied and the assessment was completed by the AO and passed order u/s.143(3) of the Act and the Id. AR prayed for allowing the appeal. Contra, Id. DR relied on the orders of the CIT(A).

7. We heard the submissions and perused the material on record. The Id. AR's contention that the penalty levied u/s.271(1)(b) of the Act is not in accordance with law as the assessee has complied the notices and filed the written submissions in the assessment proceedings and furnished explanations and complied the directions the AO. We perused the assessment order found that the assessment was completed u/s.143(3) of

the Act on 24.3.2014, therefore, we are of the view that the assessment u/s.143(3) of the Act is subsequent to the submissions and explanations furnished by the assessee, and the AO has accepted that the assessee has filed written submissions. We support our view relying on the decision of Ahmedabad Bench of this Tribunal in the case of M/s Raj Enterprise vs. ITO, Ward-9(1), in ITA No.958/Ahd/2011 (Asstt. Year : 2007-08), order dated 4.5.2011, wherein it is held that when an assessment has been made u/s.143(3) of the Act and not u/s.144 of the Act, it means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO, and, therefore, there is no case for levy of penalty u/s.271(1)(b) of the Act. Accordingly, we are of the substantive view that the assessment is completed u/s.143(3) of the Act after considering the explanations and submissions of the assessee. Hence, levy of penalty u/s.271(1)(b) of the Act cannot be sustained and direct the Assessing Officer to delete the penalty.

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

Order pronounced in the open court on this 03/08/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 03/08/2017

प्र. कु. मि / PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Nabaghana Sahoo, Shanti Marg, Susuda, Angul
2. प्रत्यर्थी / The Respondent-
ITO, Ward-1, Dhenkanal
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack