



IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI RAM LAL NEGI, JM

ITA No.2743/Mum/2017

(Assessment Year :2010-11)

Shri Deepak Kumar Kanjibhai Patel B-503, 5 th Floor Shivalaya Heights Veera Desai Road Andheri(W), Mumbai – 400 058	Vs.	ITO – 24(1)(5)-523, Parimal Chambers Lalbaug, Mumbai – 400 012
PAN/GIR No.AYRPP4225F		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri E. Sridhar
Date of Hearing	19/09/2018
Date of Pronouncement	24/09/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-36, Mumbai dated 17/01/2017 for A.Y.2010-11 in the matter of imposition of penalty u/s.271(1)(b) of the Income Tax Act/

2. Nobody appeared on behalf of the assessee inspite of giving the opportunity.

3. We have heard learned DR and found that penalty of Rs.10,000/- was imposed by AO for non-compliance with the notices.

4. By the impugned order, CIT(A) confirmed the penalty imposed u/s.271(1)(b). Hon'ble Supreme Court in the case of Hindustan Steels (25 STC 211) observed that an order imposing penalty for failure to carry out a statutory obligation is the result of a-quasi-criminal proceeding, and penalty in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. 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 or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

5. From the record we found that during the period, cases were fixed by the AO. Assessee was not in the town, hence he could not provide details and compilation of submission before the AO at the point of time. However, subsequently assessee has filed all the details and assessment order was also passed u/s.143(3) of the Act. Keeping in view the reasonable cause for non-appearing before the AO on the date of notice, we direct the AO to delete the penalty so imposed u/s.271(1)(b) if the IT Act.

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

Order pronounced in the open court on this 24/09/2018

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 24/09/2018

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai