

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No. 2744/Mum/2017  
(Assessment Year: 2011-12)**

Shri Deepak Kumar Kanjibhai Patel, B-503, 5 <sup>th</sup> Floor, Shivalaya Heights, Veera Desai Raod Andheri (E), Mumbai-400058 PAN – AYRPP4225F	Vs.	ITO-24(1)(5), 523, Floor, Parimal Chambers, Lalbaug, Parel Mumbai-400012
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**Appellant**

**Respondent**

Appellant by: Ms. Ruchi M. Rathod, A.R  
Respondent by: Shri Chaitanya Anjaria, D.R  
Date of Hearing: 25.10.2018  
Date of Pronouncement: 31.10.2018

**ORDER**

**Per Ravish Sood, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-36, Mumbai, dated 17.01.2017, which in turn arises from the penalty order passed by the A.O under Sec. 271(1)(b) of the Income Tax Act, 1961 (for short 'Act'), dated 11.01.2016. The assessee assailing the order of the CIT(A) upholding the penalty imposed by the A.O under Sec.271(1)(b) of the Act, has raised before us the following grounds of appeal:

1. *Learned CIT(Appeal) erred in confirming the penalty mechanically levied by the A.O u/s 271(1)(b) amounting to Rs.10,000/-.*
2. *The appellant craves to leave, to amend, alter to vary or modify any of the above grounds of appeal."*

2. Briefly stated, the assessee had filed his return of income for A.Y 2010-11 on 29.09.2010, declaring total income of Rs.4,94,671/-. The case of the assessee was reopened and a notice under Sec. 148 of the Act was

issued on 02.03.2015. In the course of the assessment proceedings, notice under Sec 142(1) of the Act, was issued by the A.O on 21.05.2016, 25.06.2015, 13.08.2015 and 14.10.2015, calling upon the assessee to furnish certain details. However, as the assessee failed to attend/comply to the notices issued under Sec.142(1), thus for such non-attendance/non-compliance the A.O after affording an opportunity of being heard to the assessee imposed a penalty of Rs.10,000/- under Sec. 271(1)(b) of the Act.

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee, was however not persuaded to subscribe to the same and dismissed the appeal.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R.') for the assessee, at the very outset submitted that penalty under Sec.271(1)(b) was also imposed by the A.O on identical facts in the immediately preceding year i.e A.Y. 2010-11. It was the contention of the Id. A.R, that the CIT(A) by way of a consolidate order had upheld the imposition of penalty under Sec.271(1)(b) in the case of the assessee for both of the aforementioned years i.e A.Y 2010-11 and A.Y 2011-12, and dismissed the said respective appeals. In the backdrop of the aforesaid facts, it was the contention of the Id. A.R that the order of the CIT(A) upholding the imposition of penalty under Sec.271(1)(b) for the aforementioned preceding year viz. A.Y. 2010-11, had been set aside by the Tribunal in Shri Deepak Kumar Kanjibhai Patel Vs. ITO-24(1)(5), Mumbai [ITA No. 2743/Mum/2017; dated 24.09.2018] (copy placed on record). On the basis of the aforesaid contentions, it was submitted by the Id. A.R that the penalty imposed in the case of the assessee for the year under consideration involving identical facts was also liable to be vacated. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

5. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on

record. On a perusal of the orders of the lower authorities, it emerges that the A.O had imposed penalty under Sec. 271(1)(b) for the reason that the assessee had neither put up an appearance before the A.O on the respective dates on which the case was fixed for hearing, nor placed on record the requisite details as were called for by him under Sec.142(1) of the Act. The claim of the assessee that the necessary compliance could not be effected, for the reason that at the relevant point of time he was not available in town, did not find favour with the A.O. However, subsequently the requisite details were furnished by the assessee, and the assessment was framed by the A.O under Sec.143(3) of the Act.

6. We have deliberated on the issue under consideration and find that as is borne from the order of the CIT(A), on identical facts penalty under Sec. 271(1)(b) was imposed by the A.O in the hands of the assessee for A.Y. 2010-11. The levy of penalty under Sec. 271(1)(b), was thereafter upheld by the CIT(A) by a consolidate order for AY: 2010-11 and A.Y 2011-12. Further, on appeal, the penalty imposed by the A.O under Sec. 271(1)(b) for A.Y 2010-11 was deleted by the Tribunal, vide its order dated 24.09.2018 in ITA No. 2743/Mum/2017, for A.Y 2010-11, observing as under:

- “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 A.O 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 I.T Act.”*

We have perused the aforesaid order of the Tribunal for A.Y. 2010-11, wherein on identical facts penalty imposed by the A.O under Sec.271(1)(b), was thereafter on appeal deleted by the Tribunal. Being in agreement with the view taken by the Tribunal in its aforesaid order, we thus respectfully following the same delete the penalty of Rs.10,000/-imposed by the A.O under Sec.271(1)(b) in the case of the assessee for the year under consideration. Order of the CIT(A) is set aside in terms of our aforesaid observations.

7. The appeal of the assessee is allowed.

Order pronounced in the open court on 31.10.2018

Sd/-

Sd/-

(Shamim Yahya)  
ACCOUNTANT MEMBER

(Ravish Sood)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 31.10.2018  
Ps. Rohit

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,  
Mumbai**

