

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 1942/Del/2016  
Asstt. Year: 2013-14

DCIT Circle- 1 Ghaziabad	Vs.	Kalyani Engineering Works 109-110, Anand Indl. Estate Mohan Nagar, Ghaziabad
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by:	Shri B.S. Rajpurohit, Sr. DR
Assessee by :	None
Date of Hearing	04/12/2018
Date of pronouncement	06/12/2018

**ORDER**

**PER O.P. KANT, A.M.**

This appeal by the Revenue is directed against order dated 01/01/2016 passed by the Ld. Commissioner of Income-Tax (Appeals)- Aligarh for assessment year 2013-14 in relation to penalty order under section 221(1) of the Income Tax Act , 1961 (in short the Act) amounting to Rs. 25,67,428/-levied by the Assessing Officer. The grounds of appeal raised by the Revenue are reproduced as under:

- “1. *The Ld. CIT(A) has erred in law as well as on facts in deleting the penalty U/s 221(1) of the LT. Act, 1961 when the assessee filed return of income without making payment of Self-assessment tax.*
2. *The Ld. CIT(A) has erred in law as well as on the facts of the case in deleting the penalty u/s 221(1) of the LT. Act, 1961 when the assessee failed to comply with the provisions of section 140A(1) of the Income Tax Act, 1961 as return was e-filed on 02.04.2014 declaring total income of Rs.4,31,67,876/- without accompanied by proof of payment of self-assessment tax amounting to Rs.1,28,37,140/-.*
3. *The Ld. CIT(A) has erred in law as well as on the facts of the case in deleting the penalty U/s 221(1) of the I.T. Act, 1961 when the assessee failed to make payment of self-assessment tax amounting to Rs.1,28,37,140/- even after show cause notice u/s 221 r.w.s. 140A(1) of the Income Tax Act, 1961.*
4. *The Ld. CIT(A) has erred in law as well as on the facts of the case in deleting the penalty u/s 221 (1) of the I.T. Act, 1961 when the assessee made wilful attempt to evade the payment of tax, dues upon it and even the prosecution proceedings were pending in its case.*
5. *Therefore, the order of Ld. CIT(A) may be set aside and that of the AO be restored.”*

2. At the outset, we may like to mention that despite notifying neither anyone attended on behalf of the assessee, nor any application for adjournment was filed on behalf of the assessee and ,therefore, the appeal was heard ex parte, qua the assessee.

3. The facts in brief of the case are that the assessee filed return of income on 02/04/2014 declaring total income of Rs. 4,31,67,876/- and self-assessment tax payable to the tune of Rs. 1,28,37,140/- was computed. However, the said self-assessment tax was not paid by the assessee. According to the provisions of section 140A(3) of the Act, if any assessee fails to pay the whole or any part of the self-assessment tax or interest or both, the assessee may be deemed to be an assessee in default in respect of the unpaid amount and accordingly, penalty under section 221(1) of the Act may be attracted. In view of the provisions, show cause notice was issued to the assessee on 08/01/2015 by the Assessing Officer fixing the case on 30/01/2015. In view of the no compliance, the Assessing Officer held the assessee as deemed to be in default and levied penalty of Rs. 25,67,428/-, which is 20% of the demand payable. Aggrieved, the assessee filed appeal before the Ld. CIT(A) who allowed the appeal of the assessee. Aggrieved, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

4. In the grounds reproduced above the sole issue is in respect of deleting the penalty under section 221(1) amounting to Rs.25,67,428/- by the Ld. CIT(A).

5. Before us, Ld. DR relied on the order of the Assessing Officer and submitted that penalty levied might be sustained.

6. We have heard the submission of the Ld. DR and perused the material placed on record including the impugned order of Ld. CIT(A). We note that the Ld. CIT(A) has mainly deleted the penalty in view of the reasonable cause of failure on the part of the assessee for making self-assessment tax. The Ld. CIT(A) has noted that all the bank accounts of the assessee were attached and whatever amount lying on those accounts was already withdrawn by the department and

,therefore, the assessee was not in financial position to pay the amount of tax. The Ld. CIT(A) has analysed the submission of the assessee in view of the documentary evidences. We agree with the finding of the Ld. CIT(A) on the issue in dispute. When assessee is not having sufficient funds in its bank accounts, there is a sufficient and reasonable cause in not making the payment of the tax on time. The assessee has already paid the tax as well as the interest payment on the said tax substantially. This fact has also been noted by the Ld. CIT(A).

7. In view of the aforesaid facts and circumstances, the action of the Ld. CIT(A) in deleting the penalty for treating the assessee in default under section 221(1) of the Act is justified. Accordingly we, uphold the same.

8. In the result, the appeal of the Revenue is dismissed.

This decision was pronounced in the Open Court on 6<sup>th</sup> December, 2018.

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

sd/-  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 06/12/2018

***Veena***

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi