



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.125/CTK/2019: Assessment Year:2013-14**

**ITA No.126/CTK/2019: Assessment Year:2013-14**

**ITA No.127/CTK/2019: Assessment Year:2013-14**

Express Wheels, House No.3, Rashmi Garden, Chandrasekharapur, Bhubaneswar.	Vs.	ITO, ward 5(4), Bhubaneswar
PAN/GIR No.AACFE 7896 G		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.K.Sarangi, AR

Revenue by : Shri Subhendu Dutta, DR

**Date of Hearing : 16/05/ 2019**  
**Date of Pronouncement : 16/05/ 2019**

**ORDER**

These appeals are filed by the assessee against the separate orders of the Commissioner of Income Tax(Appeals)-2, Bhubaneswar dated 30.4.2019 confirming the penalty u/s.271(1)(c) of the Act and order dated 29.4.2019 confirming the penalty 271A and 271F of the Act for the assessment year 2013-14.



**ITA No.125/CTK/2019:**

2. The grievance in this appeal is that the CIT(A) is not justified in confirming the penalty of Rs.2,19,415/- imposed u/s.271(1)(c) of the Act.

3. The facts of the case are that on verification of the bank account, the Assessing Officer noted that there are credits of Rs.73,13,808/- in the bank account of the assessee, which includes cash deposits of Rs.19,17,000/- As there was no compliance during the assessment proceedings, the Assessing Officer computed income of the assessee at Rs.14,62,762/- being @ 20% of the gross turnover of Rs.73,13,808/-. On appeal, the CIT(A) reduced the computation of income to 10% being Rs.7,31,880/- as against 20% computed by the Assessing Officer.

4. Therefore, the Assessing Officer levied penalty of Rs.4,38,830/- holding that total income assessed of Rs.14,62,760/- is the concealed income of the assessee.

5. On appeal, the CIT(A) directed the Assessing Officer to reduce the quantum of penalty by taking concealed income of Rs.7,31,880/- determined by the CIT(A) in quantum proceedings. Still further, the assessee is in appeal before the Tribunal.



6. Having heard the rival submissions, I observe that there were deposits of Rs.73,13,808/-m in HDFC bank accounts and the assessee did not file the details before the Assessing Officer despite various opportunities given. It was in this backdrop that the authorities below were of the opinion that the assessee has concealed the particulars of its income. However, the CIT(A) felt that the estimation of income is unreasonable and, accordingly, reduced the same to 10% and confirmed the addition of Rs.7,31,880/-.

7. From the above, it is clear that the assessee has concealed the particulars of income because the assessee did not file return of income and also did not file the details as called for by the Assessing officer. Accordingly, I concur with the findings of the lower authorities and confirm the levy of penalty of Rs.2,19,415/- and dismiss the ground of appeal of the assessee. Consequently, the appeal is dismissed.

#### **ITA No.126/CTZK/2019**

8. The grievance of the assessee is that the CIT(A) is not justified in confirming the penalty of Rs.25,000/- levied u/s.271A of the Act for non-maintenance of books of account.



9. Ld A.R. of the assessee submitted that due to serious dispute between the partners, the assessee could not maintain the books of account.

10. I have heard the rival submissions and perused the materials available on record of the Tribunal. The undisputed facts of the case are that the Assessing Officer observed that the assessee failed to keep and maintain books of account as per provisions of section 44AA of the Income tax Act, 1961 and, therefore, he levied penalty of R.25,000/- u/s.271A of the Act for non-maintenance of books of account in violation of section 44AA of the Act, which was confirmed in first appeal.

11. Section 273B provides as under:

"273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271B, section 271BB, section 271C, section 271D, section 271E, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section of section 272AA or sub-section (1) of section 272BB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure."

12. The above section provides that if the assessee proves that there is a reasonable cause, he is not subject to levy of penalty.

The case of the assessee is that due to serious dispute among the



partners, the assessee could not maintain books of account. However, it is the contention of the Assessing Officer that the assessee derives income from retail trading in tyres, batteries, lubricants and motor accessories alongwith doing four wheeler alignment works and the turnover was more than Rs.73,00,000/-. Had there been any dispute among the partners, it was not possible to achieve a turnover more than Rs.73,00,000/- and the closure of business. I find that the assessee has shown a reasonable cause that due to disturbance among the partners, the books of account were not maintained. Hence, I am of the view that in view of provisions of section 273B of the Act, no penalty shall be imposable and allow the ground of appeal of the assessee. Consequently, the appeal of the assessee is allowed.

#### **ITA No.127/CTK/2019**

**13.** In this appeal, the assessee agitated the confirmation of penalty of Rs.5000/- levied u/s.271F of the Act.

14. I have the rival submissions and perused the record of the case.

15. The Assessing Officer has levied penalty u/s.271F of the Act on the ground that the assessee has failed to furnish return of income on or before 31.3.2014 without a reasonable cause. I find



that Section 271F of the Act provides that "If a person who is required to furnish a return of his income, as required under sub-section (1) of section 139 or by the provisions to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of five thousand rupees."

16. The disturbance caused among the partners steps compelled to closure of the business could not constitute a valid ground for the delay in furnishing the return of income, as income from the said concern, a partnership firm, if any, is exempt under s. 10(2A) of the Act. In other words, the assessee could well have filed his return of income, clearly stating that the income from the partnership firm, if any, is tax exempt, is not being disclosed, being indeterminate, if indeed so at the relevant date. I am of the view that the assessee has not been able to show any reasonable cause(s) for not furnishing the return of income by 31st March, 2004 and, thus, the levy is not saved by s. 273B. As such, the impugned default can only be considered as a conscious disregard of one's statutory obligations, and therefore, the penalty levied by the Assessing Officer is confirmed.



17. In the result, appeal filed by the assessee is dismissed.

Order pronounced on 16/05/2019.

Sd/-

**(Chandra Mohan Garg)**  
**JUDICIALMEMBER**

Cuttack; Dated 16/05/2019  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Express Wheels, House  
No.3, Rashmi Garden, Chandrasekharpur,  
Bhubaneswar
2. The Respondent. ITO, ward 5(4),  
Bhubaneswar
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT- 2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr. Pvt. Secretary,  
ITAT, Cuttack