

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G', NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI K.N. CHARY, JUDICIAL MEMBER**

ITA Nos.1482 to 1488/Del/2017
Assessment Years: 2007-08 to 2013-14

Sad Bhawna Trust, A-22, Main Gali, Kundun Nagar, Laxmi Nagar, Delhi	Vs.	Asstt. Commissioner of Income Tax, Cent. Circle-6, New Delhi
PAN :AADTS4076K		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri N.K. Bansal, Sr.DR

Date of hearing	18.07.2019
Date of pronouncement	30.07.2019

ORDER

PER BENCH

The captioned appeals by the assessee are directed against separate orders dated 09/01/2017 for assessment years 2007-08; 2008-09; 2009-10; 2010-11; 2011-12; 2012-13 and 2013-14 passed by the Ld. Commissioner of Income-tax (Appeals)-24, New Delhi in relation to penalty levied by the Assessing Officer for not complying notices issued. A common issue of dispute is involved in all the appeals in identical set of facts, and thus all these appeals have been heard together and dispose off by way of this consolidated order.

2. The grounds of appeal raised in all the appeals are identical and thus, for brevity, grounds of appeal in ITA No.

1482/del/2017 for assessment year 2007-08 are reproduced as under:

1. *That in view of facts and in the circumstances of the case the Ld. CIT(A)-24 committed an error in confirming the penalty imposed by the Assessing Officer without looking into the facts and circumstances of the case and without providing reasonable opportunity which is must in law as settled by various courts from time to time.*
2. *That in view of facts and in the circumstances of the case it is apparent that the order passed u/s 271 (l)(b) of the I.T. Act, 1961 is bad-in law, as there was no failure on the part of the appellant to comply with the notices issued u/s 142(1) of the Income Tax Act, 1961.*
3. *That in view of facts and in the circumstances of the case it is apparent that the order passed u/s 271 (1)(b) of the I.T. Act,1961 is bad-in law, as the Assessing Officer has neither discussed, nor negated the reply filed by the appellant in response to the Penalty Notice and without appreciating and acknowledging the facts of the case.*
4. *That in view of facts and in the circumstances of the case it is apparent that the penalty order passed u/s 271 (1)(b) of the I.T. Act, 1961 is in contravention of the relevant provisions of the Income Tax Act and of the relevant judicial pronouncement on the issue.*
5. *That the appellant crave to add, delete or modify any ground of appeal at the time of hearing.*

3. At the outset, we may like to submit that despite notifying through registered post for hearing dated 15/07/2019, neither anyone attended on behalf of the assessee nor any adjournment was sought. Again assessee was notified and case was fixed for hearing on 18/07/2019. On this date also, none attended on behalf of the assessee. In the circumstances, we are of the opinion that the assessee is not interested in prosecuting the appeal and thus we proceeded *ex party* qua the assessee.

4. Briefly stated facts of the case in assessment year 2007-08 are that during the course of search and seizure action under

section 132 of the Income-tax Act, 1961 (in short 'the Act') at the premises of "M/s FIIT JEE" group, which was carried on 17/12/2012, certain documents belonging to the assessee were found and seized. Consequently, proceedings under section 153C of the Act were initiated in the case of the assessee on 11/03/2014. During the assessment proceedings under section 153C of the Act, the Assessing Officer issued notice under section 142(1) of the Act on 22/08/2014 calling for certain details. The assessee sought extension for submitting the information on one or another ground, but no information was submitted. The Assessing Officer again issued another notice under section 142(1) on 07/10/2014 calling for the details; however, no compliance of the same was also made. The assessee continued to evade furnishing the details called for in the questionnaires. The Assessing Officer has also noted that the assessee instead of responding to the queries has stonewalled the enquiries by raising various objections and insisting response of the Assessing Officer on the same. In view of the non-compliance by the assessee, the Assessing Officer initiated proceedings under section 271(1)(b) of the Act for levy penalty of Rs.10,000/-for non-compliance of the notices issued. The assessee did not make compliance of this notice for levy of the penalty also. In view of the circumstances, the Assessing Officer levied penalty of Rs. 10,000 in terms of section 271(1)(b) of the Act. Before the Ld. CIT(A), the assessee challenged levy of penalty and submitted that the assessee has filed letter of adjournment from time to time before the Assessing Officer and assessee had made due compliance of all notices issued. In view of the controversy, the Ld. CIT(A) has reproduced detailed date-wise chart of notices

issued and response of the same by the assessee. In view of the detailed chart of response, the Ld. CIT(A) upheld the penalty observing as under:

“4.1.5 A reading of the facts as recounted in the table above, makes it abundantly clear that the appellant has been stonewalling the proceedings of assessment and has consistently evaded to give questions to the detail questionnaire dated 22.08.2014, which contained 16 questions asking for specific details, including queries about the so-called scholarship funds which have been given from the appellant’s bank accounts to M/s FIIT JEE Ltd., its source and mode of payment, and other details. This particular set of transactions forms the only transactions between appellant and M/s FIITJEE, and was the subject matter of enquiry by the A.O.. Apart from stating that these transactions were done behind its back and that its own bank account has been misused by FIITJEE, the appellant has deliberately avoided to throw any further light on the suspicious transactions. By doing so, it has avoided scrutiny of the transactions by way of a series of adjournment petitions and a series of letters consistently objecting to assumption of jurisdiction, even after the Assessing Officer has provided a copy of satisfaction note to it. It is not the duty of the Assessing Officer, nor the right of the appellant that the A.O. must fully satisfy the appellant that initiation of proceedings u/s 153C has been validly made, before the appellant deigns to furnish replies to specific questions regarding its accounts. It is abundantly clear that the appellant has been deliberately avoiding to respond to the specific questions and thus hampering investigations by the A.O.. Even the letter dated 18.02.2015, which it claims has been submitted before the Assessing Officer (purporting to contain replies to the questions raised in the first questionnaire) bears no proof of the submission before the A.O. This letter appears to be afterthought and crafted specially to wriggle out of the penalty levied on it for non-compliance to notice u/s 142(1). Even otherwise, the appellant has not responded to queries of the A.O. raised vide dated 23.12.2014 and 05.02.2015. Under these circumstances, I am of the firm view that the A.O. has rightly levied penalty u/s 271(1)(b) for non-furnishing of the information called for u/s 142(1). I therefore confirm the levy of penalty.”

5. Before us, the DR supported the order of the Ld. CIT(A) and submitted that the assessee intentionally avoided furnishing of the information without any reasonable cause and therefore Ld. CIT(A) was justified in upholding the penalty.

6. We have heard the submission of the Ld. DR and perused the order of the lower authorities. In terms of the section 142(1), the Assessing Officer called for certain information for completion of the assessment proceeding in the case of the assessee, but the assessee had not provided those information and continued to object the initiation of the proceeding in the case of the assessee. This conduct of the assessee led to completion of the assessment proceeding *ex parte*. In assessment proceedings, the role of the Assessing Officer is both of the investigator and adjudicator. If the assessee obstruct and create hurdles in the investigation process of the Assessing Officer, true and complete facts may not be available for adjudication and the adjudication would be on incomplete facts. Not only the assessee stopped the Assessing Officer for examining the issue in dispute judiciously in assessment proceeding but also filed wrong information before the Ld. CIT(A) claiming that it had complied notices issued by the Assessing Officer. The Ld. CIT(A) has pointed out one such instance of letter dated 18/02/2015 and observed that said letter bears no proof of submission before the Assessing Officer and appears to be an afterthought and crafted especially to wriggle out the penalty levied on it for non-compliance of notice under section 142(1) of the Act. Before us, the assessee has not represented and not rebutted this misconduct on the part of the assessee. The assessee has not made out a case of any reasonable cause for failure in furnishing the information before the Assessing Officer. In view of the facts and circumstances, we uphold the order of the Ld. CIT(A) on the issue in dispute and dismiss the grounds of the appeal of the assessee in ITA No. 1482/Del/2017 for assessment year 2007-08.

7. The facts and circumstances and issue in dispute in remaining appeals are identical accordingly, to have consistency in our decision, all the remaining appeals, i.e., ITA Nos. 1483 to 1488/Del/2017 for assessment year 2008-09 to 2013-14 respectively are also dismissed.

8. In the result, all the appeals of the assessee are dismissed.

Order is pronounced in the open court on 30th July, 2019.

Sd/-
[K.N. CHARY]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 30th July, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi