

**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 No.3138 & 3139/Del/2017  
Assessment Year: 2008-09

M/s. Telesonic Systems (I) Pvt. Ltd., C/o. V.K. Sehgal & Associates, CAs, 201, Harsh Bhavan, 64-65, Nehru Place, New Delhi	<b>Vs.</b>	Income Tax Officer, Ward-25(2), C.R. Building, New Delhi
<b>PAN :AABCT4775F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

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

Date of hearing	17.07.2019
Date of pronouncement	31.07.2019

**ORDER**

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

These two appeals by the assessee are directed against two separate orders dated 07/03/2017 and 06/03/2017 passed by the Ld. Commissioner of Income-tax (Appeals)-9, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2008-09 in relation to penalty under section 271(1)(c) of the Income-Tax Act, 1961 (in short 'the Act') and penalty under section 271(1)(B) of the Act levied by the Assessing Officer respectively. As both the appeals are connected with the same assessee, both were heard together

and disposed off by way of this consolidated order for convenience.

**2.** At the outset, we may like to mention that despite notifying for the date of hearing, neither anyone attended on behalf of the assessee on the date of hearing nor filed any application for adjourning the hearings of the case. In view of the facts, we are of the opinion that assessee is not interested in prosecuting the appeal and accordingly, we proceeded to hear the appeal *ex parte*, qua the assessee.

### **ITA No.3138/Del/2017**

**3.** First we take up the appeal having ITA No.3138/Del/2017 in relation to penalty under section 271(1)(c) of the Act. The grounds raised in the appeal are reproduced as under:

1. *The learned CIT(Appeals)-9, New Delhi(CIT(A)) has erred in holding that penalty for concealment is leviable in the absence of valid service of notice and based only on ad hoc additions which action of CIT(A) and A.O. is arbitrary, illegal and unjustified.*
2. *The learned CIT(A) has erred in giving partial relief of penalty imposed for alleged concealment and sustaining the balance penalty on the premise that the addition sustained attracts penalty for alleged concealment which action of CIT (A) is illegal and against judicial precepts.*
3. *The learned CIT(A) has not adjudicated on the appellant's objection raised in Ground no. 2 relating to applicability, contravention or otherwise of the provisions of section 274(2) of the Income tax Act for passing the order imposing the penalty.*

**4.** Briefly stated facts of the case are that in the case of the assessee the assessment of income for the year under consideration was made on 06/12/2010 under section 144 of the Act at total income of Rs.69,60,830/-against the returned loss of Rs.44,344/-, thereby making total addition of Rs.70,05,170/- under various heads comprising of Rs.3,47,000/-on account of

share capital; Rs.65,20,020/-as security premium and Rs.1,15,000/as unexplained creditor under section 68 of the Act and Rs.20,150/- as 10% of the expenditure claimed. The assessment was completed under section 144 of the Act due to the reason that the assessee failed to file any documents or evidence before the Assessing Officer. The various notices issued were also not complied. In the assessment order, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act. The Assessing Officer again issued a fresh show-cause notice on 07/06/2011 requesting the assessee to appear in person or through Authorised Representative and file submission in respect of the penalty proposed to be levied on the assessee. However, in view of no compliance made by the assessee of the said show cause notice, the Ld. Assessing Officer levied the penalty at 100 percentile of the tax sought to be evaded, which amounted to Rs.21,64,598/-. On further appeal, the Ld. CIT(A) restricted the penalty to the extent of addition sustained by the 1<sup>st</sup> appellate authority. The first appellate authority against the quantum proceedings upheld the addition to the extent of Rs.34,70,000/-, and accordingly, the Ld. CIT(A) directed the Assessing Officer to restrict the penalty on the addition of Rs.34,70,000/- and deleted the balance penalty.

**5.** Before us, the Ld. DR relied on the order of the lower authorities and submitted that no documentary evidences were submitted by the assessee either before the Assessing Officer or before the Ld. 1<sup>st</sup> appellate authority to challenge the quantum proceedings. The Ld. CIT(A) in first appellate proceedings granted relief for the opening balance of the share premium only.

**6.** We have heard the submission of the Ld. DR on the issue in dispute. We find that neither the assessee filed any submission in respect of the additions made during the assessment proceeding, nor filed any explanation in respect of those additions in penalty proceedings. Even during penalty proceedings, the assessee failed to explain any justified reasons for not levy of the penalty under section 271(1)(c) of the Act. In quantum proceedings before the first appellate authority also, the assessee objected only on issue of service of the notices. In view of no substantial explanation by the assessee in respect of the levy penalty under section 271(1)(c) of the Act, we do not find any reason for interfering with the order of the Ld. CIT(A) on the issue in dispute and accordingly we uphold the same. The grounds of the appeal of the assessee are accordingly dismissed.

**ITA No. 3139/Del/2017**

**7.** The ground of the appeal in ITA No. 3139/Del/2017 are reproduced as under:

1. *The learned CIT(Appeals)-9, New Delhi (CIT(A) has erred in confirming the action of A.O. in holding that there was a valid service of notices u/s 143(2) and 142(1) which remained uncomplied which action of CIT(A) & A.O. illegal, unjustified and uncalled for.*
2. *The learned CIT(A) has erred in confirming the imposition of penalty amounting to Rs. 40,000.00 which action is arbitrary and unjustified.*
3. *The learned CIT (A) has not adjudicated on the appellant's objection raised in Ground no. 2 relating to applicability, contravention or otherwise of the provisions of section 274(2) of the Income tax Act for passing the order imposing the penalty.*

**8.** The penalty of Rs.40,000/- was levied by the Assessing Officer for non-compliance of notices under section 143(2) of the

Act dated 29/09/2009; 11/08/2010 and 26/09/2010 and notice under section 142(1) dated 15/11/2010. In view of no compliance of the show cause notice issued for levy of the penalty, the Assessing Officer levied penalty under section 271(1)(b) of the Act at the rate of Rs.10,000/- for each default. On further appeal, the Ld. CIT(A) upheld the penalty observing as under:

*“2. All grounds of appeal are relates to levy of penalty u/s 271 (1 )(b) of amounting to Rs.40000/-. The facts mentioned by the A.O are as under:-*

*Assessment in the case was completed u/s 144 of the I.T Act, 1961 on 06-12-2010 at an income of Rs. 69,60,830/- against the returned loss of Rs. 44,344/-. This may be seen the case was assessed u/s 144 of the I.T Act, 1961. It was also observed form the recorded that several notices u/s 143(2) and 142(1) were served upon the assessee but none of them was complied. In the assessment order the A.O has initiated penalty proceeding u/s 271 (1 )(b) for non compliance of notices u/s 143(2) & 142(1) of the It Act, 1961.*

*Notices u/s 271 (1 )(b) read with section 274 specifying the default of notices u/s 143(2) dated 29.09.2009, 11.08.2010 & 26.09.2010. Further show-cause notice was issued for penalty proceedings u/s 271 (1)(b) on 07.06.2011 requesting the assessee to appear in person or through authorized representative on 14.06.2011. However, none attended nor any letter/documents seeking adjournment or submission of explanation for non compliance of notices u/s 143(2) & 142(1) were received on the said date or even till to date. It is clear from the above facts that the assessee has nothing to say it its defense regarding the non- compliance of the said notices. No response to the penalty notices u/s 271(1)(c) clearly established the guilt of the assessee for willful and deliberate attempt of the assessee of non compliance.*

*It may be mentioned that notices u/s 143(2) and 142(1) are important tools provided in the Act for completion of scrutiny assessment. Notice u/s 143(2) provides opportunity to the assessee to produce documents, accounts or other evidence in support of its claim made in the return filed by it, whereas notice u/s 142(1) empowers the assessing officers to require the assessee to produce documents/details. None-compliance of these notices hinders the assessment proceedings and creators difficulty in assessing true and correct income. Thus, the assessee has created obstacles by none compliance in the course of lawful procedure of assessment.*

*As reasonable opportunity of being heard is provided to the assessee for non compliance of notice u/s 143(2) & 142(1) and*

*assessee choose to remain silent, the fault of the assessee for non-compliance of the notice is clearly established.*

*The A.O has satisfied that the assessee has failed to comply with the notices u/s 143(1) dated 29.09.2009, 11.08.2010 & 26.09.2010 (three counts) and notices u/s 142(1) dated 15.11.2010 (one counts) thereby bringing the assessee within the ambit of provisions of section 271 (1 )(b) of the IT Act, 1961 and therefore impose a penalty of Rs. 40,000/- [Rs. 10,000/- for each default of three notices u/s 142(2) & one notice u/s 142(1).*

*2.1 I have considered the submission of the appellant and order of the AO. The case was selected for scrutiny. The notice u/s 143(2) was issued on 21.04.2010 on the address F-3/8, Okhla Industrial Area, Phase-1, New Delhi. The notice was returned back by postal authorities with the remarks "left". Subsequently, the AO enquired about the address from the MCA site and notice was sent on the address A-53, Okhla Industrial Area, Phase-II, New Delhi. The AO issued several notice u/s 143(2)/142(1) but no compliance was made. The AO has mentioned the date of non compliance in the penalty order which are 29.09.09, 11.08.2010, 26.09.2010 and 15.11.2010 and levied a penalty of Rs.40000/- . As against the appellant has submitted that the AO has sent the notice on wrong address. He has not found out the correct address from the records available with him. In its submission the appellant has taken the plea only that notice was not sent on correct address. But the appellant has not update the address in PAN database and also not intimated the AO of its correct address. The burden is lies on the assessee to update the latest address in PAN database or intimate the AO latest address. But the appellant has failed to do so. The appellant has also relied the decision of Hon'ble ITAT Bench in the case of Balram Kumar Mahindra vs ITO but the facts of the relied case are distinguishable. In the case of assessee there is not only technical error but it has not furnished the latest address to the AO. As regards the issue of notice completion of assessment under section 144 has discussed in detail in quantum Appeal no. 282/14-15*

*The appellant has given the reason for non compliance non service of notice. But the AO has sent the notice on the basis of PAN database. Subsequently, the notice was sent on new address find out from the MCA site. The appellant has not update the latest address in PAN database. So, this is fault of the appellant. No other reasonable cause has been submitted. In the above circumstances, the penalty levied 271(1 )(b) of Rs.40000/- is hereby sustained."*

**9.** Before us, the Ld. DR relied on the order of the Ld. CIT(A).

**10.** We have heard the submission of the ld. DR and perused the relevant order of the lower authorities. The only reasonable cause for non-compliance stated by the assessee was due to non-service

of the notice, whereas the lower authorities has pointed out that notices were sent at the address provided by the assessee in the permanent account number (PAN) database and the onus was on the assessee to update its latest address on the database of the Department. We do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly we uphold the same. The grounds of the appeal of the assessee are accordingly rejected.

**11.** The appeal of the assessee having ITA No. 3139/Del/2017 is dismissed.

**12.** In the result, both the appeals of the assessee are dismissed.

***Order is pronounced in the open court on 31<sup>st</sup> July, 2019.***

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

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

Dated: 31<sup>st</sup> 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