

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA**

**BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.132/Kol/2019**

**(निर्धारणवर्ष / Assessment Year: 2014-15)**

<b>Akashganga Suppliers Pvt. Ltd.</b> <b>N-909, Diamond Heritage, 16, Strand Road, Kolkata</b>	<b>Vs.</b>	<b>ITO, Ward-4(3), Kolkata</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAECA 1520 E</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : None

Respondent by : Smt. Ranu Biswas, Addl. CIT

सुनवाईकीतारीख/ Date of Hearing : 31/10/2019

घोषणाकीतारीख/Date of Pronouncement : 31/12/2019

**आदेश / ORDER**

**Per Bench:**

The captioned appeal filed by the assessee , pertaining to assessment year 2014-15, is directed against the order passed by the Commissioner of Income Tax (Appeal)-2, Kolkata in appeal no. 10095/CIT(A)-2/2017-18, which in turn arises out of a penalty order passed by the Assessing Officer u/s 271(1)(c ) of the Income Tax Act, 1961 (in short the "Act") dated 28/04/2017.

2. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasion and Ld. Departmental Representative(DR), was present for the appellant Revenue. In the absence of any appearance by the assessee, the appeal is being disposed of *ex parte qua* the

assessee, after hearing Ld. DR for the Revenue on merits in terms of Rule 24 of the Income Tax Appellate, Tribunal, Rules, 1963.

3. The grounds of appeal raised by the assessee are as follows:

*1. The ex-parte order u/s 250 of the I.Tax Act, 1961 is bad in law as there was no failure on the part of the assessee to make due compliance & disclosures to the ld. CIT(A).*

*2. The penalty order u/s 271(1)(b) of the Act is bad in law.*

*3. Without prejudice to the above, the ld. A.O. erred in imposing penalty of Rs. 10,000/- u/s 271(1)(b) of the I.T. Act, 1961 as the Assessment order was passed u/s 143(3) and not u/s 144 of the Act, 1961.*

*4. The appellant craves leave to add, alter, amend, delete, substitute any of the grounds and/or take additional ground/s before or at any time of hearing of this appeal.*

4. At the outset itself we note that the Assessing Officer erred in imposing penalty of Rs. 10,000/- u/s 271(1)(b) of the Act as the assessment order was passed by the Assessing Officer u/s 143(3) of the Act which indicates that the assessee made the subsequent compliance of notices issued by the Assessing Officer during assessment stage.

5. We have heard the ld. D.R for the revenue and perused the material available on record. We note that the Assessing Officer has passed the assessment order u/s 143(3) of the Act after taking into account the submission of the assessee, therefore, it can be presumed that the assessee has made sufficient compliance of notices and therefore penalty may not be imposed. We note that in absence of recording of satisfaction in the assessment order, merely initiation of penalty will not confer jurisdiction on the Assessing Officer to levy the penalty. In this case, it is evidently clear that the Assessing Officer has passed the order u/s 143(3) of the Act and not u/s 144 of the Act therefore, penalty u/s 271(1)(b) of the Act, should not be levied; particularly when the order is passed by Assessing Officer u/s 143(3) of the Act. However, the ld. D.R. for the revenue submitted that the

assessee was not serious in submitting the details and documents before the Assessing Officer therefore penalty should be imposed. We note that the instant appeal is squarely covered by the decision of Co-ordinate Bench of ITAT Delhi in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust vs. ACIT reported in 5 DTR 429 (Del-Trib) wherein the Co-ordinate Bench in para no. 2.4 and 2.5 has held as under:

*“2.4 Coming to the issue of recording of satisfaction, it may be mentioned that mere initiation of penalty does not amount to satisfaction as held by Hon’ble Delhi High Court in the case of CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321 : (2000) 246 ITR 568 (Del). In absence of recording of the satisfaction in the assessment order, mere initiation of penalty will not confer jurisdiction on the AO to levy the penalty.*

*2.5 We also find that finally the order was passed under s. 143(3) and not under s. 144 of the Act. This means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO. Therefore, in such circumstances, there could have been no reason to come to the conclusion that the default was willful.”*

Considering the above factual position as narrated above, we note that the assessee made sufficient compliance during the assessment proceedings therefore penalty should not be levied, hence we delete the penalty u/s 271(1)(b) of the Act.

6. In the result, the appeal of the assessee is allowed.

**Order pronounced in the Court on 31.12.2019**

**Sd/-**  
**(S.S.GODARA)**  
**न्यायिकसदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(A.L.SAINI)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

दिनांक/ Date: 31/12/2019  
(SB, Sr.PS)

Copy of the order forwarded to:

1. Akashganga Suppliers Pvt. Ltd.
2. ITO, Ward-4(3), Kolkata
3. C.I.T(A)-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.
4. C.I.T.- Kolkata.

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By Order

Assistant Registrar  
ITAT, Kolkata Benches