

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

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

ITA No. 5909/Del/2016
Assessment Year: 2005-06

And

ITA No. 5914/Del/2016
Assessment Year: 2010-11

And

ITA No. 5915/Del/2016
Assessment Year: 2012-13

M/s. Time Bound Contracts Pvt. Ltd., Parsvnath Metro Tower, Near Shahdara Metro Station, New Delhi	Vs.	Income Tax Officer, Ward-25(3), New Delhi
PAN :AACCT1772B		
(Appellant)		(Respondent)

Appellant by	Shri Sanjay Jain, CA & Shri Akshat Jain, CA
Respondent by	Shri Shailesh Kumar, Sr.DR

Date of hearing	14.10.2019
Date of pronouncement	07.01.2020

ORDER

PER O.P. KANT, AM:

These appeals by the assessee have been filed against separate orders, each dated 19.08.2016, passed by learned Commissioner of Income Tax (Appeals)- 13, New Delhi, [in short

learned CIT(A)], for assessment years 2005-06, 2010-11 and 2012-13 respectively, in relation to levy of penalty under Section 271(1)(b) of the Income-tax Act, 1961 (in short 'the Act') for non-compliance of the notices issued by the Assessing Officer. Being identical facts and circumstances in all these appeals, same were heard together and disposed off by way of this consolidated order. The grounds in all the three appeals are identical, therefore, for the sake of brevity, the grounds raised in ITA No. 5909/Del/2016, for assessment year 2005-06 are reproduced as under:

1. *That on the facts and in the circumstances of the appellant's case, the Ld. CIT (A) erred in fact and in law in upholding penalty u/s 271 (1)(b) of the Income tax Act, 1961 by disregarding decision of judicial Hon'ble ITAT that no penalty u/s 271 (1)(b) is to be impose, when assessment order was passed u/s 143(3) instead of 144 of the Act, which implies that subsequent compliances made by the appellant were considered as good compliance.*
2. *That on the facts and in the circumstances of the appellant's case the Ld. CIT(A) has erred both on facts and in law in upholding penalty u/s 271 (1)(b) when non - compliance was not deliberate but due to reasonable cause, beyond the control of the appellant.*
3. *That on the facts and in the circumstances of the appellant's case the Ld. CIT (A) has erred both on facts and in law in upholding penalty u/s 271(1)(b) without appreciating the fact that appellant has not received the show cause notice under section 274 r.w.s. 271, hence penalty imposed without giving the appellant mandatory reasonable opportunity of being heard, is liable to be cancelled.*

2. The facts in brief for AY 2005-06, are that due to materials/documents belonging to the assessee, found and seized in the course of search and seizure action under Section 132 of the Act at the premises of M/s. SDS Group of Companies (other assessee), proceedings under Section 153C of the Act were initiated in the case of the assessee by way of issue of notice under Section 153C of the Act. In response, the assessee filed return of income on 21.03.2006. The Assessing Officer in the

course of assessment proceedings issued notice under Section 142(1) of the Act on 11th December, 2014; 2nd January, 2015; and 16th January, 2015. According to the Assessing Officer, no sufficient compliance of these notices were made by the assessee, however, subsequently the assessee appeared and filed the details and assessment was accordingly completed under Section 153C read with section 143(3) of the Act. The Assessing Officer issued notice under Section 271(1)(b) read with Section 274 of the Act on 16.01.2015 proposing to levy penalty for default of non-compliance by the assessee of notices issued under section 142(1) on 11th December, 2014; 2nd January, 2015; and 16th January, 2015. According to the Assessing Officer, even there was no compliance of the notice of penalty issued by him and, therefore, he levied the penalty of Rs.10,000/- in terms of section 271(1)(b) of the Act. Aggrieved, the assessee filed appeal before the learned CIT(A) and requested to delete the penalty on the grounds that non-compliance of the notices was not deliberate and same was due to the reasonable cause which was beyond the control of the assessee. The assessee also pleaded that the show-cause notice issued for levy of penalty under Section 271(1)(b) of the Act was not served upon the assessee, and therefore, the assessee could not comply with the same. Alternatively, the assessee also prayed that the assessment was completed under Section 153C read with Section 143(3) of the Act and not under Section 144 of the Act, which implies that subsequent compliance by the assessee in the assessment proceedings has been considered as good compliance and hence, no penalty under Section 271(1)(b) of the Act is required to be levied. The assessee

filed detailed submissions before the learned CIT(A), which have been reproduced in paras 4 and 5 of the impugned order. The learned CIT(A), however, rejected the contention of the assessee that there was reasonable cause for failure to comply with the notices. Learned CIT(A) also rejected the contention of the assessee that show-cause notice for levy of penalty of notice was not received by the assessee. Third ground of the assessee is that the assessment was not completed under Section 144 of the Act and, therefore, the delayed compliance should be treated as good compliance, was also rejected by the learned CIT(A). The relevant finding of the learned CIT(A) are reproduced as under :

“6. The above submissions -have been carefully considered. The appellant has firstly, argued that it was prevented by reasonable cause from complying with the notice u/s 142(1). It is submitted that, vide its letters dated 04.04.2014 and 12.08.2014, the appellant requested for copy of the atisfaction recorded by the AO before issue of notice u/s 153C. The same was provided as late as 11.12.2014. Thereafter, on 26.12.2014, the appellant filed its objections to the proceedings u/s 153C, which were disposed of by the AO on 02.01.2015. The appellant then filed its return of income on 28.01.2015. It is claimed that all the details asked for by the AO were furnished on subsequent dates. Hence it is submitted that the delay in complying with the notices u/s 142(1) was attributable to the delay of the AO in providing the copy of the satisfaction note along with copies of seized documents relied upon, which constitutes reasonable cause. The appellant submits that the provisions of Sec.273B are applicable in its case, as the appellant had reasonable cause for its failure to comply with the notices u/s 142(1). Further it is argued that the appellant was not afforded a reasonable opportunity of being heard before imposition of the penalty.

6.1 The sequence of events narrated in the order of penalty, and in the appellant's submissions have been looked at. As can be seen, the AO provided the appellant with a copy of the satisfaction note and copies of the seized material, alongwith the notice u/s 142(1), on 11.12.2014. The appellant's objection to the issue of notice u/s 153C were disposed of by the AO on 02.01.2015. The appellant failed to attend the office on 07.01.2015, and on 12.01.2015. In response to the notice dated 16.01.2015, for hearing on 28.01.2015. the appellant only filed a copy of acknowledgement of filing of original return on 21.03.2006. The case was adjourned for

04.02.2015, and on that date, the appellant filed details of its business, directors, and registered offices and places of business, and copy of audited accounts. The AO issued a showcause notice of penalty u/s 271(l)(b) dated 16.01.2015 to which the appellant did not even bother to file a reply. As per the appellant's own submission, replies to the notices u/s 142(1) calling for various details, were filed only on 23.03.2015 for an assessment time barring on 31.03.2015. Hence the appellant's plea that it had complied with the notices cannot be accepted. The appellant's argument that it was unable to comply with the notices dated 11.12.2014, 12.01.2015 and 16.01.2015 because of the AO's delay in providing it with copy of satisfaction note and seized documents (provided on 11.12.2014) is also far-fetched. The appellant is held to have defaulted in its compliance to the notices u/s 142(1) without reasonable cause. Hence, ground of appeal no.1 is dismissed.

7. Ground of appeal no.2 pertains to the appellant's plea that it was not afforded a reasonable opportunity of being heard. The same is not borne out by the record. The appellant has claimed that it did not receive the show-cause notice of penalty u/s 271(l)(b), dated 16.01.2015. No reason has been given for the alleged non-receipt of the penalty notice, whereas the AO has mentioned the acknowledgment receipt of speed post by which the notice was dispatched, y Hence no relief is being allowed at ground of appeal no.2.”

3. Before us, the learned counsel for the assessee reiterated the submissions made before the learned CIT(A) and submitted that the assessee was prevented by sufficient cause for complying with the notices u/s 142(1) of the Act. He submitted that first notice under Section 142(1) of the Act was issued on 11.12.2014 and on said date, counsel of the assessee attended and matter was adjourned to 07.01.2015. In the meantime, the Assessing Officer issued one more notice under section 142(1) on 2nd January, 2015 which according to the Assessing Officer has not been complied with. The third notice was issued on 16th January, 2015, and in response to the same, the assessee filed copy of acknowledgement of the Income-tax return and thus partial compliance was made. He further submitted that subsequently,

Sh. Pradeep Jain, Chairman of the Parsvnath Group of companies attended the proceeding on 18.03.2015 and his statement was duly recorded and all the informations sought by the Assessing Officer were duly filed. The assessment was completed under Section 143(3) of the Act by the Assessing Officer. In support of the contention that no penalty for delayed compliance of notice under Section 142(1) are imposable where assessment has been completed under Section 143(3) of the Act, learned counsel for the assessee relied on the following decisions of the Tribunal:

1. *Logicladder Tech Pvt. Ltd. Vs. Income Tax Officer, ITA No. 4262/Del/2018 (Del.-ITAT)*
2. *Globus Infocom Ltd. Vs. DCIT, ITA No. 738/Del/2014; (Del.-ITAT)*
3. *Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust Vs. Asstt. DIT, 115 TTJ 419 (Del.-ITAT)*

4. On the contrary, learned DR relied on the orders of the lower authorities.

5. We have heard the rival submissions of the parties and perused the relevant material on record. The fact that the assessment has been competed under Section 143(3) of the Act is not in dispute. The Tribunal in the case of *Logicladder Tech Pvt. Ltd. (supra)* has cancelled the penalty under section 271(1)(b) of the Act on the ground that the assessment was completed under Section 143(3) of the Act. The relevant finding of the order of the Tribunal (*supra*) is reproduced as under:

“8. I have considered the arguments made by both the sides and perused the orders of the authorities below. I find the Assessing Officer levied penalty of Rs10,000/- u/s 271 (l)(b) of the IT Act on the ground that the assessee did not comply with the various statutory notices issued by him. However, a perusal of the assessment order shows that the order has been passed u/s 143(3) on 10.11.2016. Further, the Assessing Officer, in the body of the assessment order

has mentioned that the assessee has complied with the statutory notices issued u/s 142(1) and the information/details asked for have been furnished which were discussed and placed on record. He has further mentioned that the assessment proceedings were attended by Shri Sanjay Jain, Chartered Accountant with whom the case was discussed. Since the assessee has furnished requisite details for completion of assessment by compliance of statutory notices issued by the Assessing Officer and the assessment has been completed u/s 143(3), therefore, under the facts and circumstances of the case, I am of the considered opinion that it is not a fit case for levy of penalty u/s 271(l)(b) of the Act. I, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied. The grounds raised by the assessee are accordingly allowed.”

5.1 Further, in the case of *Globus Infocom Ltd. (supra)* also, the penalty laid u/s 271(1)(b) of the Act has been deleted, where assessment is completed under Section 143(3) of the Act. The relevant finding of the order of the Tribunal (*supra*) is reproduced as under:

“5. We have heard the rival submissions and perused the material on record. We find that the instant appeal is squarely covered by the decision of the Co-ordinate Bench of ITAT Delhi in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan trust vs ACIT 5 DTR 429 (Delhi Tribunal) wherein the Coordinate Bench in paras 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. ”

6. As the facts of this case are identical, we hold that the imposition of penalty u/s 271(l)(b) of the Act was patently wrong, specially in view of the fact that the impugned assessment order has been passed u/s 143(3). While setting aside the impugned order, we direct the Assessing Officer to delete the penalty.”

5.2 In view of identical facts and circumstances in the instant case, respectfully following the finding of the orders of the Tribunal (supra), we cancel the penalty levied of Rs.10,000/- under Section 271(1)(b) of the Act. Accordingly, the appeal in ITA No.5909/Del/2016 for assessment year 2005-06 is allowed.

6. The facts and circumstances as well as the grounds raised in other two appeals for assessment years 2010-11 and 2012-13 are identical with the facts and circumstances as well as the grounds raised in ITA No. 5909/Del/2016 for assessment year 2005-06, therefore, to have consistency in our decision, the penalty levied in ITA Nos.5914 & 5915/Del/2016 for assessment years 2010-11 and 2012-13 respectively are also cancelled.

5. In the result, all the three appeals of the assessee are allowed.

Order is pronounced in the open court on 7th January, 2020.

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

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

Dated: 7th January, 2020.

RK/-(D.T.D.)

Copy forwarded to:

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