



IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA Nos.158 to 160 /CTK/2020
Assessment Year : 2014-15

Pravat Kumar Routray, At: Odishagarh, Ashrampatana, Jagatsinghpur	Vs.	ITO, Paradeep Ward, Paradeep.
PAN/GIR No.BDWPR 7731 M		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Jena,Adv
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 12 /10/ 2020
Date of Pronouncement : 12 /10/2020

ORDER

ITA No.158/CTK/2020 is filed by the assessee against the order of the CIT(A), Cuttack dated 26.11.2019 for the assessment year 2014-15, in the matter of imposition of penalty of Rs.25,000/- u/s. 271A of the Act.

2. ITA No.159/CTK/2020 is filed by the assessee against the order of the CIT(A), Cuttack dated 26.11.2019 for the assessment year 2014-15, in the matter of imposition of penalty of Rs.56,490/- u/s. 271B of the Act.

3. ITA No.159/CTK/2020 is filed by the assessee against the order of the CIT(A), Cuttack dated 26.11.2019 for the assessment year 2014-15, in the matter of imposition of penalty of Rs.10,000/- u/s. 271(1)(b) of the Act.

4. I have heard the rival submissions and perused the relevant materials placed on record of the Tribunal.

5. First, I adjudicate the appeal in ITA No.158/CTK/2020. The assessee is engaged in the wholesale business of eggs. In the present case, the penalty proceedings were initiated under s. 271A for non-maintenance of bank account. Ld A.R. submitted that the assessee was under an obligation to maintain such books of accounts as would enable the Assessing Officer to compute the profits under the provisions of IT Act, 1961. The income has been estimated by the Assessing Officer and, therefore, penalty u/s.271A would not attract. The AO noted that as the gross receipts of the assessee from business were Rs.1,02,98,500/-, therefore, the assessee was required to maintain books of account and other documents which may enable the AO to compute his total income. In this case the AO noted that the assessee has not maintained any books of accounts and as such he has committed a default within the meaning of provisions of sec 44AA(2)(i) of the Act, which made the assessee liable for penalty u/s 271A of the Act. The AO thus imposed the penalty of Rs. 25,000/- u/s 271A of the Act which was confirmed by the Id. CIT(A). On perusal of orders of lower authorities, I noted that the assessee did not maintain the books of account as provided u/s 44AA of the Act as the gross receipts of the assessee from business was more than Rs. 10 lacs. The Id.AR of the assessee did not advance any controverting arguments against the findings of the lower

authorities. Hence, I find no reason to interfere with the order of the Id. CIT(A). Thus, the solitary ground of the assessee as to confirming of penalty of Rs. 25,000/- u/s 271A of the Act by the Id. CIT(A) is sustained and this appeal is dismissed.

6. In ITA No.,159/CTK/2020, the penalty has been levied for failure to get the books of account audited. In the absence of audit report, the Assessing Officer levied penalty of Rs.56,490/- u/s. 271B of the Act. According to the Assessing Officer, since the assessee's total bank credit figure for the year stood at Rs.1,02,98,500/-, the assessee is required under the Income tax Act to get his accounts audited. In the absence of any explanation from the assessee, the Assessing Officer levied penalty u/s. 271B of the Act. In my opinion, non-production of audit report in the prescribed format can be a reason for levying penalty u/s. 271B of the Act. Thus, this is a fit case for levying penalty u/s. 271B of the Act as the assessee has not given explanation regarding reasonable cause for not filing the audit report within the prescribed time limit. Accordingly, I confirm the penalty levied u/s. 271B of the Act. This appeal is accordingly, dismissed.

7. In ITA No.160/CTK/2020, the assessee is aggrieved by the imposition of penalty of Rs.10,000/- u/s.271(1)(b) of the Act. The AO imposed the penalty u/s.271(1)(b) for non-compliance to the notices to the assessee.

8. Ld A.R. of the assessee submitted that the reason given by the Assessing Officer in the penalty order is that no compliance was made by the assessee in reply to notices is not correct. During assessment proceedings, Shri Balram Mohanty, A.R. of the assessee appeared and filed the bank pass book in support of the assessee's stand. Therefore, it cannot be outrightly held that no one appeared before the AO, which enable the AO to impose penalty u/s.271(1)(b) of the Act.

9. Replying to above, Id D.R. supported the orders of lower authorities.

10. On careful consideration of the rival submissions, I peruse the assessment order and observe that the contention of Id A.R. is correct that in compliance to statutory notices, Shri Balram Mohanty, Id A.R. of the assessee and filed bank pass book. Hence, it cannot be said that there is complete failure of the assessee to comply with such notices, which may justify the levy of penalty u/s 271(1)(b) of the Act. Therefore, I set aside the order of the Id CIT(A) and delete the said penalty of Rs.10,000/- and allow this appeal of the assessee.

11. In the result, appeals in ITA No.158 & 159/CTK/2020 are dismissed and appeal in ITA No.160/CTK/2020 is allowed.

Order pronounced on 12 /10/2020.

Sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 12 /10/2020

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The appellant: Pravat Kumar Routray, At:
Odishagarh, Ashrampatana, Jagatsinghpur
2. The Respondent. ITO, Paradeep Ward,
paradeep.
3. The CIT(A)-, Cuttack
4. Pr.CIT- , Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack