

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 4387/DEL/2019 (A.Y 2011-12)

ITA No. 4388/DEL/2019 (A.Y 2012-13)

(THROUGH VIDEO CONFERENCING)

Mastana Foods Pvt. Ltd. 2646, FF, Gali Raghunandan, Naya Bazar, New Delhi AACCM9944N (APPELLANT)	Vs	DCIT Central Circle Karnal (RESPONDENT)
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Appellant by	Ms. Sweety Kothari, Adv, Ms. Rinky Sharma, ITP
Respondent by	Sh. Vipul Kashyap, Sr. DR

Date of Hearing	18.11.2020
Date of Pronouncement	25.11.2020

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 31/3/2019 passed by CIT(A)-3, Gurgaon, for Assessment Year 2011-12 & 2012-13 respectively.

2. The grounds of appeal are as under:- **ITA No. 4387/DEL/2019**

“1. *The CIT(A) erred in law and on facts in confirming the imposition the penalty of Rs. 10,000/- u/s 271(l)(b) of the Act by disposing off the appeal*

a) *without affording a reasonable opportunity to the assessee to explain its case and*

b) *by alleging that none attended on the date of hearing ignoring that an adjournment application was sent through email.*

Thus, the levy of penalty should be deleted..

2. The CIT(A) erred in law and on facts in confirming the imposition the penalty of Rs. 10,000/- u/s 271(l)(b) of the Act ignoring that the specific default was not mentioned in the notice issued u/s 274 r.w.s 271(l)(b) of the Act and thus conditions for levy of penalty were not fulfilled. Thus, the levy of penalty should be deleted.

3. The CIT(A) erred in law and on facts in confirming the imposition the penalty of Rs. 10,000/- u/s 271(l)(b) of the Act ignoring that the said penalty is levied for non-compliance on a particular date and also ignoring that the notice dated 22/06/2018 fixing the date of hearing on 20/7/2018 was duly attended by the assessee by filing a request for adjournment of the hearing on the said date as mentioned in the assessment order itself. Thus, the levy of penalty should be deleted.

ITA No. 4388/DEL/2019

1. The CIT(A) erred in law and on facts in confirming the imposition the penalty of Rs. 10,000/- u/s 271(l)(b) of the Act by disposing off the appeal

a) without affording a reasonable opportunity to the assessee to explain its case and

b) by alleging that none attended on the date of hearing ignoring that an adjournment application was sent through email.

Thus, the levy of penalty should be deleted.

2. The CIT(A) erred in law and on facts in confirming the imposition the penalty of Rs. 10,000/- u/s 271(l)(b) of the Act ignoring that the specific default was not mentioned in the notice issued u/s 274 r.w.s 271(l)(b) of the Act and thus conditions for levy of penalty were not fulfilled. Thus, the levy of penalty should be deleted.

3. The CIT(A) erred in law and on facts in confirming the imposition the penalty of Rs. 10,000/- u/s 271(l)(b) of the Act ignoring that the said penalty is levied for non-compliance on a particular date and also ignoring that the notice dated 22/06/2018 fixing the date of hearing on 2/7/2018 was duly attended by the assessee by filing a request for adjournment of the hearing on the said date as mentioned in the assessment order itself. Thus, the levy of penalty should be deleted.

3. The penalty order under Section 271(1)(b) was passed on 14.11.2018 for non – compliance of the notice under Section 142 (1) on 17 occasions. The assessment order was passed under Section 153A r.w.s. 144 of the Income Tax Act, 1961 on 21.12.2018.

4. Being aggrieved by the penalty order under Section 271(1)(b) of the Act, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) has not given the appropriate opportunity of hearing to the assessee to represent his case.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the Assessing Officer observed in the assessment proceedings, the assessee was not complying with the notice under Section 142(1) of the Act, hence the penalty order under Section 271(1)(b) has been levied. Before the CIT(A) none appeared and the Ld. AR submitted during the hearing that notice of hearing before CIT(A) was not received by the assessee. From the perusal of the order of the CIT(A), it can be seen that the CIT(A) has not given any categorical finding on merit of the case. Therefore, it

will be appropriate to give the opportunity of hearing to the assessee before the CIT(A). Hence, we are remanding back the entire issue to the file of the CIT(A) to be decided on merit. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. We further direct the assessee to co-operate the revenue authorities for just and proper disposal by remaining present on the hearing dates and submit the relevant documents, otherwise, the revenue is at liberty to dismiss the appeals of the assessee ex-parte on merit. Both the appeals of the assessee are partly allowed for statistical purpose.

8. In result, both these appeal filed by the assessee are partly allowed for statistical purpose.

Order pronounced in the Open Court on this 25th Day of November, 2020.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 25/11/2020
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

