

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

**ITA No. 4389 to 4393/DEL/2019
(A.Ys 2013-14 to 2017-18)**

Mastana Foods Pvt. Ltd.
2646, FF, Gali Raghunandan,
Naya Bazar,
New Delhi
AACCM9944N
(APPELLANT)

Vs DCIT
Central Circle
Karnal

(RESPONDENT)

Appellant by

**Ms. Sweety Kothari, Adv, Ms.
Rinky Sharma, ITP**

Respondent by

Sh. Gaysuddin Ansari, Sr. DR

Date of Hearing

19.11.2020

Date of Pronouncement

25.11.2020

ORDER

PER R.K. PANDA, AM

The above five appeals filed by the assessee are directed against the common order dated 30th March, 2019 of the CIT(A), Gurgaon, for Assessment Year 2013-14 to 2017-18, respectively.

2. Since identical grounds have been taken by the assessee in all these appeals, therefore, these were heard together and are being disposed of by this common order.

3. In all these appeals, the assessee has challenged the ex parte order of the CIT(A) in confirming the penalty of Rs.10,000/- for each assessment year levied by the AO u/s 271(1)(b) of the IT Act.

4. Facts of the case, in brief, are that a search and seizure operation u/s 132 of the IT Act was carried on on 12th January, 2017 at the business premises of M/s Mastana Foods Pvt. Ltd. as well as residential premises of its directors. In response to the notice issued u/s 153A of the IT Act dated 27th February, 2018, the assessee filed return of income for the above five years. During the course of assessment proceedings, the AO issued notice u/s 142(1) dated 26th October, 2018 along with the questionnaire for the respective assessment year. However, there was no response from the side of the assessee to the notice issued u/s 142(1) for which the AO initiated penalty proceedings u/s 271(1)(b) and, thereafter, levied penalty of Rs.10,000/- for each of the above assessment year u/s 271(1)(b) of the IT Act. Since there was non-appearance from the side of the assessee, the ld.CIT(A) in his ex parte order confirmed the penalty so levied by the AO u/s 271(1)(b) of the Act.

5. Aggrieved with such ex parte order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The ld. Counsel for the assessee, at the outset, submitted that there was only one notice of hearing issued by the CIT(A) for the hearing of the appeals and no sufficient opportunity was granted to the assessee. He accordingly submitted that in the interest of justice the assessee should be given one more opportunity to substantiate its case.

7. The ld. DR, on the other hand, submitted that due to utter disregard of the assessee to the statutory notices issued by the AO as well as the CIT(A), penalty levied by the AO has rightly been sustained by the CIT(A). Therefore,

the order of the CIT(A) should be upheld and the grounds raised by the assessee should be dismissed.

8. We have heard the rival arguments made by both the sides and perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We find, the AO, in the instant case, levied penalty of Rs.10,000/- for each of the above assessment year for non-compliance to the statutory notice issued u/s 142(1) along with the questionnaire. We find, the ld.CIT(A) confirmed the penalty so levied by the AO on the ground that despite issue of notice the assessee did not appear before him. It is the submission of the ld. Counsel that given an opportunity the assessee is in a position to substantiate its case before the CIT(A) regarding the non-compliance. Considering the fact that the ld.CIT(A) has issued only one notice of hearing to the assessee and, thereafter, passed the ex parte order, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the CIT(A) with a direction to grant one final opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT(A) and present its case failing which the ld.CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In result, all the appeals filed by the assessee are allowed for statistical purpose.

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

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Sd/-

**(R. K. PANDA)
ACCOUNTANT MEMBER**

Dated: 25 /11/2020

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI