

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
"B" BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI PRADIPKUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1965/Ahd/2018

निर्धारण वर्ष/ Asstt.Year : 2013-14

Siddhi Vinayak Cement P.Ltd. (Merged with Nirma Ltd) Nirma House, Ashram Road Ahmedabad 380009. PAN : AALCS 7628 G.	Vs.	DCIT, Cir.4(1)(1) Ambawadi Ahmedabad.
---	-----	---

(Applicant)		(Responent)
--------------------	--	--------------------

Assessee by :	Shri Virendra Ojha, Sr.DR
Revenue by :	Shri Himanshu Shah, AR

सुनवाई की तारीख/Date of Hearing : 24/11/2020

घोषणा की तारीख /Date of Pronouncement: 27/11/2020

आदेश/O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT

Assessee is in appeal against order of Id.CIT(A)-8, Ahmedabad dated 14.8.2018 for the Asstt.Year 2013-14.

2. Only grievance involved in this appeal is that the Id.CIT(A) has erred in confirming penalty under section 271(1)(b) of the Income Tax Act, 1961 amounting to Rs.10,000/-.

3. As the facts emerges from the record, in response to the return of income filed by the assessee on 29.11.2013 declaring total loss at Rs. (-) 7,84,02,992/-, the case of the assessee was selected for scrutiny assessment under section 143(2) on 4.9.2014. After considering the details and

explanations of the assessee, the assessment was finalized at Rs.59,72,264/- under section 143(3) of the Act. However, in the meanwhile, penalty under section 271(1)(b) of the Act was initiated and levied an amount of Rs.10,000/- for non-compliance of notice dated 2.2.2016 issued under section 142(1) of the Act. This levy of penalty by the AO under section 271(1)(b) of the Act was challenged before the first appellate authority, but got no relief. Therefore, assessee is before the Tribunal challenging action of the Revenue authorities in imposition of penalty under section 271(1)(b) of the Act.

4. Before us, the ld.counsel for the assessee submitted that non-compliance of notice dated 2.2.2016 issued during the course of assessment proceedings was in fact got misplaced by the clerk of the assessee. However, assessee's representatives attended the hearing before the AO and submitted required details, and complied with various notices issued during the course of hearing. While finalizing assessment under section 143(3) of the Act, the ld.AO has in fact noted this fact in the assessment order, therefore, there is no default on the part of the assessee so as to attract provision of section 271(1)(b) of the Act. He further submitted that when assessment was framed under section 143(3) and not under section 144 of the Act, on the basis of details submitted, then assessee cannot be treated as non-cooperative, which necessitates imposition of penalty under section 271(1)(b). In support of his submissions, the ld.counsel for the assessee relied upon decision of ITAT, Ahmedabad Bench in the case of Raj Enterprise in ITA No.958/Ahd/2011 dated 4.3.2015, and decision in the case of Kanak Castor P.Ltd., ITA No.1810/Ahd/2012 dated 29.6.2016. Accordingly, he submitted that there is no sufficient reason for the Revenue authorities in imposition of impugned penalty which deserves to be deleted. On the other hand, the ld.CIT-DR supported the case of the Revenue and relied on their orders.

5. We have considered rival submissions and gone through the record carefully. The case of the Revenue is that since assessee has not complied with notice dated 2.2.206 issued during the course of assessment proceedings, levy of penalty under section 271(1)(b) of the Act is justified. However, the fact is that in the assessment framed under section 143(3) of the Act, the assessee's representative attended the hearing and submitted required details during the course of hearing, and based on the same, assessment was framed. This fact has been recorded by the AO in the assessment order itself, therefore, it cannot be stated that the assessee was non-cooperative and in default so as to attract penalty under section 271(1)(b) of the Act. In the case laws relied upon by the Id.counsel for the assessee cited (supra), ITAT held that when an assessment was made under section 143(3) and not under section 144 of the Act, subsequent compliance in the assessment proceedings was considered as good compliance so as to mitigate one single instance of default committed earlier, and ignored by the AO while framing assessment under section 143(3), levy of penalty under section 271(1)(b) of the Act is not justifiable. In the instant case, we do not find any compelling reasons to impose penalty under section 271(1)(b) of the Act, and therefore, we delete the same and cancel the orders of the Revenue's authorities passed under section 271(1)(b) of the Act.

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

Order pronounced in the Court on 27th November, 2020 at Ahmedabad.

Sd/-
(PRADIPKUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated 27/11/2020