

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "A" BENCH, MUMBAI**

**[Coram: Pramod Kumar, Vice President, and,  
Pavan Kumar Gadale, Judicial Member]**

ITA No. 1169 & 1170/Mum/2019  
Assessment year: 2012-13 & 2013-14

**Axis Trading Co. Pvt. Ltd.,**  
139 C, Noman Mansion, Kemps  
Corner, Near Shalimar Hotel,  
Mumbai 400036  
[PAN: AADCA3905A]

.....Appellant

*Vs*

**Income Tax Officer- 4(1)(1)**  
Mumbai 400020

.....Respondent

**Appearances by**

*None for the appellant*

**Brajendra Kumar** for the respondent

Date of concluding the hearing : November 5<sup>th</sup>, 2020  
Date of pronouncement : December 1<sup>st</sup>, 2020

**ORDER**

**Per Pramod Kumar, VP:**

By way of these appeals, the assessee appellant has challenged correctness of Ld. CIT(A) order dated 5<sup>th</sup> February 2019, confirming penalty of Rs. 20,000/- each imposed under section 271(1)(b) of the Income Tax Act for the assessment years 2012-13 and 2013-14.

2. None appeared on behalf of the assessee, but we have heard the Ld. DR and duly considered the facts available on record in light of the applicable position.

3. When these appeals were called off for hearing it was noted that the issue in these appeals are squarely covered by the decision of coordinate bench order dated 10<sup>th</sup> August 2007, in ITA No. 2900 & 2901/Del/2016 for the assessment years 1994-95 and 1995-96. Wherein the coordinate bench has inter alia observed as follows:-

2. In this case, the assessee had not complied with the notices issued by the AO in the course of assessment proceedings under s. 142(1) on 13th Nov., 2000, 17th Nov., 2000 and 7th Feb., 2001. It was held by him that there was a clear default, which was also deliberate. Therefore, penalty of Rs. 30,000 was levied @ Rs. 10,000 per default. It was argued before the learned CIT(A) that the order of penalty was barred by limitation under s. 275(1)(c) of the Act, which provides that no order imposing a penalty under this chapter shall be passed in any other case, after expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, or completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. The learned CIT (A) considered the arguments and pointed out that the order of assessment was subject-matter of appeal and the learned CIT (A) passed order on 21st Jan., 2005. In terms of s. 275(1)(a), the AO could have passed the penalty order upto 31st March, 2006, and the order was passed on 31st March, 2006. Therefore, the order was not barred by limitation. It was pointed out that no cogent, relevant or reliable evidence was produced to show that there was any reasonable cause within the meaning of s. 273B for any of the defaults. Therefore, the levy of the penalty was upheld by him.

2.1 Before us, the learned counsel reiterated that the levy of penalty under s. 271(1)(b), regarding non-compliance to statutory notices, was not in any manner linked with the appeal. Therefore, the last date for passing the order expired on 31st Sept., 2001, while the penalty was levied on 31st March, 2003. Thus, the penalty was barred by limitation. In this connection, he relied on the decision of Hon'ble Rajasthan High Court in the case of CIT v. Hissaria Bros. [2007] 211 CTR (Raj) 156 : [2007] 291 ITR 244 (Raj), dealing with the levy of penalty under s. 271D of the Act. The Hon'ble Court pointed out that where the penalty is not linked with the assessment proceedings, the provisions of s. 275(1)(c) will be applicable. The operative portion of the order at pp. 257 and 258 is reproduced below:

"We are, therefore, of the opinion that since penalty proceedings for default in not having transactions through the bank as required under ss. 269SS and 269T are not related to the assessment proceeding but are independent of it, therefore, the completion of appellate proceedings' arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under ss. 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and, therefore, cl. (a) of sub-s. (1) of s. 275 cannot be attracted to such proceedings. If that were not so cl. (c) of s. 275(1) would be redundant because otherwise as a matter of fact every penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default e.g. penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income; if cl. (a) was to be invoked, no necessity of cl. (c) would arise."

While deciding the case, the Hon'ble Court also referred to Board Circular No. 551 dt. 23rd Jan., 1990 [(1990) 82 CTR (St) 325] : [1990] 183 ITR (ST) 7]. It was also pointed out that no satisfaction was recorded in the assessment order for initiation

*of the penalty and mere direction to issue penalty notice would not amount to recording of the satisfaction.*

*2.2 In reply, the learned Departmental Representative pointed out that the statute does not distinguish between penalties linked with assessment and penalties not linked with assessment. The distinction arises only in respect of the fact whether the assessment order was subject-matter of appeal or not. It was also pointed out that since the AO had issued the notice of penalty, his satisfaction stood impliedly recorded for the reason that without such satisfaction the notice would not have been issued.*

*2.3 We have considered the facts of the case and rival submissions. We find that the Hon'ble Gujarat (sic-Rajasthan) High Court has clearly distinguished between cls. (a) and (c) of sub-s. (1) of s. 275. Under cl. (a), the levy of penalty is dependent upon the findings of the appellate authorities, which is not the case under cl. (c). In this case, the default of non-attendance to notices was not the subject-matter in the quantum appeal and it in no way depended upon the outcome in the appeal. The penalty depends upon whether the default was willful or not. Therefore, we are of the view that the ratio of the case of Hissaria Bros. (supra) will be applicable in this case also. Consequently, it is also held that the order ought to have been passed on or before 31st Sept., 2001, failing which the levy will become barred by limitation.*

*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 v. 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.*

*2.6 In view of the aforesaid discussion, it is held that the learned CIT(A) was not right in upholding the levy of penalty. Thus, the appeal is allowed.*

4. When Ld. DR was confronted with the above position, he did not have much to say except for placing his reliance on the order of the authorities below.

5. We have noticed that in the present case also the assessment was completing under section 143(3) of the Act, and not under section 144 of the Act. In this view of the matter in respectfully following the coordinate bench decision in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust (supra). We, therefore, deem it fit and proper to be need the impugned penalty. The assessee gets the relief accordingly.

6. In the result, both the appeals filed by the assessee are allowed in the terms indicated above. Pronounced in the open court today on the 1<sup>st</sup> day of December, 2020.

Sd/-  
**Pavan Kumar Gadale**  
(Judicial Member)

Sd/-  
**Pramod Kumar**  
(Vice President)

**Mumbai, dated the 1<sup>st</sup> day of December, 2020**

*Nishant Verma, Sr. SP*

*Copies to:*

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*

