

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA
(Virtual Court)**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

**I.T.A. Nos. 349-351/Kol/2020
Assessment Year: 2011-12**

Paresh Nath Mai.....Appellant
[PAN: AKQPM 7476 G]

Vs.

ITO, Ward-2(2), Asansol.....Respondent

**I.T.A. No. 352/Kol/2020
Assessment Year: 2011-12**

Chandana Mai.....Appellant
[PAN: ALFPM 5470 J]

Vs.

ITO, Ward-2(2), Asansol.....Respondent

Appearances by:

None appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : November 25th, 2020

Date of pronouncing the order : December 4th, 2020

ORDER

Per J. Sudhakar Reddy, AM:

These appeals are filed by the assesseees directed against separate orders of the Learned Commissioner of Income Tax (Appeals), Asansol, [hereinafter the "CIT(A)"], wherein he has confirmed the penalty levied u/s 271B, 271(1)(b), 272B and 271(1)(b) of the Income Tax Act, 1961 (the 'Act'), dated 05.11.2019 for the Assessment Year 2011-12.

2. None appeared on behalf of the assessee despite issue of notice. Hence we dispose off this case *ex-parte* qua the assessee after hearing ld. D/R.

3. Heard ld. D/R. On a careful consideration of the papers on record and the argument the ld. D/R defined that, the assessee has presented himself before the AO on

two occasions i.e. on 16.07.2014 and 03.11.2014. Later he did not present himself before the AO. The ld. CIT(A) has passed an *ex-parte* order for non-appearance of the assessee.

4. The ld. CIT(A) has not disposed off the case on merits. As this is a small matter, we dispose off this appeal on merits.

5. The order of the AO passed u/s 144 r.w.s. 147 of the Act is contradictory. In the assessment order passed in the case of Sri Paresh Nath Mai the AO records that savings bank account no. 30366020483 in State Bank of India at Neamatpur Branch is a joint account in the names of Sri Paresh Nath Mai and his wife Smt. Chandana Mai. It is stated that the deposits made in this account by declaring the PAN of Smt. Chandana Mai i.e. ALFPM 5470 J. Similar recording has been made in the assessment order in the case of Smt. Chandana Mai. Both husband and wife are partners of Bholanath Muri Factory. The deposits are made in the joint account and when the PAN of Smt. Chandana Mai is quoted, in our considered opinion, we do not approve the action of this amount being added as turnover of the assessee only. In all such cases peak balances has to be taken. It cannot be said that the deposits in question are the turnover of the assessee. Consequently it is not clear as to whether the assessee was required to maintain books of account under the Act or not.

6. Coming to the penalty levied u/s 271B of the Act. We find that the AO states that the assessee does not maintain books of account. Where the conclusion of the AO is that the assessee does not maintain books of account, no penalty u/s 271B of the Act can be levied for not getting one's books audited u/s 44A of the Act. Hence the same is cancelled. We allow ITA No. 349/Kol/2020.

6.1. Coming to the penalty levied u/s 272B of the Act, we find that in the assessment order it is stated that the PAN of Smt. Chandana Mai has been quoted while depositing cash in the bank account. While so to levy penalty for not quoting PAN while making cash deposits is bad in law. Hence we cancel this penalty and allow ITA No. 351/Kol/202.

6.2. Coming to the penalty levied u/s 271(1)(b) of the Act, the assessee has given a certificate from the Medical Officer, Government of West Bengal on his health. We are convinced that the assessee was prevented by sufficient cause from appearing before the AO on a particular date. Otherwise he did appear before the AO on two dates and hence the penalty is cancelled as the assessee was prevented from sufficient cause from appearing before the AO. Hence we allow ITA No. 350/Kol/2020.

6.3. Similarly the penalty levied u/s 271(1)(b) of the Act in the case of Smt. Chandana Mai in ITA No. 352/Kol/2020 is also cancelled as she was prevented by sufficient cause from appearing before the AO on a particular date. She did appear before the AO on 15.07.2014, as recorded in the assessment order. Hence, we allow this appeal.

7. In the result, the appeals filed by the assesseees are allowed.

Kolkata, the 4th December, 2020.

Sd/-
[Aby T. Varkey]
Judicial Member

Dated: 04.12.2020
Bidhan (P.S.)

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Copy of the order forwarded to:

1. ***Paresh Nath Mai, Sodepur Sundar Chak, Asansol, Burdwan-713 360.***
2. ***Chandana Mai, Sodepur Sundar Chak, Asansol, Burdwan-713 360.***
3. ***ITO, Ward-2(2), Asansol.***
4. CIT(A), Asansol. (sent through mail)
5. CIT-
6. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches