

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH 'SMC' ALLAHABAD**

[THROUGH VIRTUAL COURT]

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No.128/ALLD/2019
Assessment Year: 2014-15**

Kasim Hussain, Robertsganj, Sonebhadra 231801	v.	DCIT, Range 1, Mirzapur
TAN/PAN:ABPPH 1042M		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Godbole, CA
Respondent by:	Shri A.K. Singh, CIT (DR)
Date of hearing:	20.01.2021
Date of pronouncement:	21.01.2021

ORDER

PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order dated 17.09.2019 of Id. CIT(A), Allahabad arising from penalty levied u/s. 271(1)(b) of the Income Tax Act, 1961 for the A.Y. 2014-15. The assessee has raised the following grounds:

- "1. That in any view of the matter order passed u/s 271(l)(b) by order dated 17.09.2019 imposing penalty of Rs.30,000.00 is bad on both on fact and in law.*
- 2. That in any view of the matter the assessee has made necessary compliance on each and every date and there was no bonafide intention of not co-operating with the department and even*

assessment made u/s 143(3) of the Act but under unavoidable circumstances on some date the assessee was not aware of the notices hence penalty imposed is highly unjustified.

3. *That in any view of the matter in past no penalty was ever imposed nor there was any non compliance hence penalty imposed is highly unjustified.*
4. *That in any view of the matter the assessee reserves his rights to take any fresh ground of appeal before hearing of appeal.”*

2. The Id. A.R. of the assessee has submitted that the assessee is an individual and filed his return of income on 28.11.2014 declaring total income of Rs.10,34,580/- . The Assessing Officer after completion of assessment u/s. 143(3) has also levied penalty u/s. 271(1)(b) of the Act of Rs.30,000/- against non compliance of notices issued u/s. 142(1) of the Act. The Id. A.R. has submitted that though initially the assessee could not file the requisite details in response to notice u/s. 142(1) of the Act however, in response to the notice dated 25.02.2016 the assessee filed the requisite details vide his reply. He has referred to the reply of the assessee and submitted that finally the Assessing Officer has framed the assessment u/s. 143(3) and not the u/s. 144 of the Act then there is no default on the part of the assessee as far as the filing of the requisite details as sought by the Assessing Officer in the notice u/s. 142(1) of the Act. In support of his contention, he has relied upon the decision of the coordinate Bench of this Tribunal dated 14.12.2017 in the case of Jai Prakash vs. ITO in ITA No. 144/Alld/2017 as well as the decision dated 11.04.2018 in the case of Shri Nand Kishore vs. ITO in ITA No. 206/Alld/2017. Thus, the Id. AR has contended that the assessee has finally produced the requisite details in respect to the notice u/s. 142(1) then no default remains on the part of the assessee and penalty levied u/s. 271(1)(b) of the Act is not justified and the same may be deleted.

3. On the other hand, Id. DR has submitted that the Assessing Officer has issued various notices u/s. 142(1) of the Act calling the assessee to furnish the requisite details however the assessee failed to comply with as many as three notices issued by the Assessing Officer. Therefore, even if the assessee has filed some details the same would not absolve the assessee from the default of non compliance of subsequent notices. He has relied upon the orders of the authorities below.

4. I have considered the rival submissions as well as relevant material on record. In the assessment order, the Assessing Officer has made reference to various notices issued u/s. 142(1) and stated that the assessee has failed to make the compliance of those notices. The assessee claimed that the assessee has furnished the requisite details in response to the notice dated 25.02.2016. Even if the compliance to notice u/s. 142(1) dated 25.02.2016 was made by the assessee, the Assessing Officer has issued further notices u/s. 142(1) for seeking other specific details in the questionnaire. It appears that in all the subsequent notices issued by the Assessing Officer u/s. 142(1) the Assessing Officer sought same information and details from the assessee, which is reproduced in the assessment order as questionnaire attached to the notice issued u/s. 142(1) dated 16.11.2016. Thus, when the Assessing Officer has sought the same information by issuing repeated notices u/s. 142(1) and the non compliance of the same would constitute only one default on the part of the assessee and not the multiple defaults as the requisite information was the same. Hence, the default in the case of the assessee is only one as the assessee has not complied with the last notice issued by the Assessing Officer dated 16.11.2016. The Id. A.R. of the assessee has relied upon the decision of coordinate Bench of this Tribunal however in those cases, finally the assessee

complied with the notice u/s. 142(1) by furnishing the requisite details but in the case in hand after filing a reply to the notice u/s. 142(1) dated 25.02.2016, the Assessing Officer further issued notice u/s. 142(1) on 19.08.2016, 13.08.2016, 14.09.2016 and so on and finally the notice was issued on 16.11.2016. Therefore, all these notices remained uncomplished with. Accordingly, in the absence of any reasonable cause explained by the assessee for non compliance of these various notices there is a clear default on the part of the assessee, which attract the penalty u/s. 271(1)(b) of the Act. As I have already discussed the issue that the non compliance of these notices whereby the Assessing Officer sought the same information will constitute only one default and accordingly the penalty levied u/s. 271(1)(b) of the Act is restricted to Rs.10,000/-.

5. In the result, the appeal of the assessee is partly allowed.

(Order pronounced on 21/01/2021 at Allahabad in the open Court through Video Conferencing)

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Dated: 21/01/2021

Aks/-

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) -
4. CIT
5. DR -