

(AS) (ANM)
JM AM**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)
(THROUGH VIDEO CONFERENCING)****BEFORE SH. AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER****ITA No:- 2530/Del/2018
(Assessment Year: 2014-15)**

DLF Commercial Enterprises 4 th Floor, Gopal Dass Bhawan, 28 Barakhamba Road, New Delhi-110001	Vs.	Assistant Comm. Of Income Tax, Circle-52(1), New Delhi
APPELLANT		RESPONDENT
PAN No: AADFD0811B		

Revenue By : Sh. Avikal Manu, Sr. DR
Assessee By : Sh. Satyajeet Goel, CA**PER ANADEE NATH MISSHRA, A.M.:**

This appeal by assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-18, New Delhi, ["Ld. CIT(A)", for short], dated 01.03.2018 for Assessment Year 2014-15. Grounds taken in this appeal of assessee are as under:

- "1. That the impugned order dated 01.03.2018 passed u/s 271(1)(b) by the learned Commissioner of Income-tax(Appeals) 18, New Delhi is bad in law and wrong on facts.*
- 2. That on the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals)-18 erred in law in upholding the penalty of 10,000 levied by the Ld. Assessing*

Officer under section 271(1)(b) of the Act, for the reasons stated in the impugned order.

3. That the appellant, craves, leave to add, alter, amend, substitute, forgo, any or all the grounds of appeal before or at the time of hearing."

(B) Return of income was filed by the assessee on 26.07.2014 which was selected for scrutiny and notice u/s 143(2) of IT Act was issued to the assessee. Thereafter statutory notice u/s 142(1) of Income Tax Act along with questionnaire was issued by the Assessing Officer on 06.04.2016 calling for relevant details and documents. Assessment order u/s 143(3) of Income Tax Act was passed on 05.12.2016 wherein return of income of Rs.22,99,79,160/- was accepted without any addition before the aforesaid regular assessment order u/s 143(3) of ITR dated 05.12.2016. Prior to that, an order dated 26.10.2016 was passed by the Assessing Officer u/s 271(1)(b) of Income Tax Act, directing the assessee to pay penalty amounting to Rs. 10,000/- on the ground that the assessee had failed to provide full submissions which were called for on hearing fixed on 01.09.2016 in the course of the assessment proceedings; and that on the said date (01.09.2016) none appeared or made any submissions. The assessee filed appeal against the aforesaid order dated 26.10.2016 before the Ld. CIT(A) by impugned appellate order dated 01.03.2018 of the Ld. CIT(A). The aforesaid penalty amounting to Rs. 10,000/- levied u/s 271(1)(b) of Income Tax Act was confirmed. For ease of reference the relevant portions of aforesaid orders dated 05.12.2016, and 01.03.2018 are reproduced below :-

Relevant portion of order dated 05.12.2016 of Assessing Officer

"2. In compliance to the notices, Sh. Gaurav Jindal, CA & authorized representative of the assessee attended for an on behalf

of the assessee from time to time and furnished written submissions and required details called for. These were examined and case was discussed with the authorized representative.

3. The assessee is a Partnership Firm engaged in the business of Real Estate Development, setting up commercial complexes for sale or letting out and earning rental income there from or for running business/convention centers or dealing in shares and securities and other movable or immovable assets. During the relevant year, assessee has returned income under the head house property, capital gain and other sources.

4. After examination of details submitted by the assessee and discussions held with the AR of the assessee, the income of the assessee for the year under consideration is assessed at Rs. 22,99,79,160/-."

Relevant portion of order 01.03.2018 of Ld. CIT(A)

"4. The brief facts of the case are that during the course of assessment proceedings, the AO issued notice u/s 142(1) of the Act on 06.04.2016 and the appellant was required to file the details asked by the AO at the time of hearing fixed for 19.04.2016. The appellant sought various adjournments which was granted by the AO and finally the hearing was adjourned to 01.09.2016. However, there was no response from the appellant. The AO issued a reminder letter on 12.09.2016 and finally a show cause notice u/s 271(1)(b) was issued by the AO on 20.09.2016 for non-compliance of the notice issued. In response to the show cause notice also, the appellant sought adjournment and finally did not file any reply with respect to the non-compliance to the notice issued by the AO. In view of this, the AO has levied penalty of Rs. 10,000/- u/s 271 (1)(b) of the Act.

4.1 During the course of appellate proceedings, the AR has contended that the appellant had filed various details to the AO and the final assessment order was passed u/s 143(3) of the Act, However, the AR has failed to explain the reason for non-compliance of the notice issued by the AO and also why no response was given to the show cause notice issued by the AO u/s 271(1)(b) of the Act. In my view, it is a clear case of non-compliance of the notice issued by the AO and the appellant has failed to provide any reasonable cause for such non-compliance. It is also to be kept in mind that assessment proceedings and penalty proceedings are separate and it is irrelevant that the final assessment order was passed u/s 143(3) of the Act. In view of these facts, I am of the opinion that the appellant has failed to comply with the notice issued by the AO without any reasonable cause and therefore, the penalty levied by the AO u/s 271(1)(b) of the Act is confirmed and the grounds of

appeal are dismissed.”

(C) The present appeal before us has been filed by the assessee against the aforesaid impugned appellate order dated 01.03.2018 of the Ld. CIT(A). At the time of hearing, the Ld. Authorised Representative of the assessee submitted that the assessment order dated 03.12.2016 which was passed by the Assessing Officer was a regular assessment order u/s 143(3) of Income Tax Act, and not a best judgment assessment u/s 144 of Income Tax Act. He contended that this (the fact that best judgment assessment u/s 144 of IT Act was not passed) implies that the subsequent compliance made by the assessee in the assessment proceedings [after levy of penalty u/s 271(1)(b) of Income Tax Act] was considered as good compliance by the Assessing Officer and that the defaults earlier committed should be treated as having been ignored by the Assessing Officer. For this contention he relied on orders of Co-ordinate Bench of ITAT Delhi in the cases of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust vs. ACIT 5 DTR 429 (Delhi Tribunal), Globus Infocom Limited vs. DCIT (order dated 29.06.2016 in ITA No. 738/Del./2014 for AY 2010-11), Carreen Builders & Developers vs. DCIT (order dated 20.09.2017 in ITA No. 5737/Del/2015 for for AY 2012-13). In these orders, it was held by Co-ordinate Benches of ITAT, Delhi that when the order is finally passed u/s 143(3) of IT Act and not u/s 144 of IT Act; it would mean that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the Assessing Officer. For the ease of reference, relevant portion from order in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust vs. ACIT (supra) is reproduced as under :-

"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 vs. 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."

(C.1) Similar view was taken by Co-ordinate Benches of ITAT Delhi in the aforesaid cases of Globus Infocom Limited (supra) and Carreen Builders & Developers Pvt. Ltd.(supra).

(C.2) The Learned Departmental Representative relied on the orders of the Assessing Officer and the Id. CIT(A).

(D) We find on perusal of the assessment order that in paragraph 2 of the assessment order, that the Assessing Officer has expressed satisfaction with the compliances made by the assessee. To quote from the assessment order, the observation of the Assessing Officer is: "In compliance to the notices, Sh. Gaurav Jindal, CA & authorized representative of the assessee attended for and on behalf of the assessee from time to time and furnished written submissions and details called for. These were examined and the case was discussed with the authorized representative." It can be readily inferred from this observation of the Assessing Officer that the Assessing Officer was, on the whole, satisfied with the overall compliances made by the assessee during the assessment proceedings. The satisfaction of the Assessing Officer with the compliances made by the

assessee is also evidenced by the fact that no addition was made by the Assessing Officer, and the returned income was accepted in the order passed u/s 143(3) IT Act. **We are of the view that penalty levied by the Assessing Officer u/s 271(1)(b) of the IT Act deserves to be cancelled if there are materials to suggest on conclusion of the proceedings before the Assessing Officer; that the Assessing Officer was, on the whole, satisfied with the overall compliances made by the assessee during proceedings before the Assessing Officer.**

(E) In view of foregoing, and in the facts and circumstances of the present appeal before us, we hereby cancel the penalty amounting to Rs. 10,000/- levied by the Assessing Officer u/s 271(1)(b) of Income Tax Act.

(G) In the result, appeal filed by the assessee is allowed.

This order was already pronounced on 16th February, 2021 in Open Court, in the presence of Representatives of both sides; after conclusion of the hearing.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Dated: 18/02/2021

Binita

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI