

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

**[THROUGH PHYSICAL COURT]**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.95/ALLD/2020  
Assessment Years: 2011-12**

Gyan Mata Radha Satyam Kriyayog Ashram Research Institute, Jhusi, Allahabad	vs.	Income Tax Officer, Ward 1(2), Allahabad
TAN/PAN: AIRPR 1165L		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Godbole, CA
Respondent by:	Shri A.K. Singh, CIT (DR)
Date of hearing:	24.02.2021
Date of pronouncement:	25.02.2021

**ORDER**

This appeal of the assessee is directed against the order dated 13.08.2020 of Id. CIT(A), Allahabad arising from penalty order passed u/s. 271(1)(b) of the Income Tax Act, 1961 (In short the "Act") for the AY 2011-12. The assessee has raised the following grounds:

- "1. That in any view of the matter penalty imposed u/s 271(l)(b) of the IT Act by order dated 29/03/19 imposing a penalty of Rs. 10,000/- the is bad both on the facts and in law.*
- 2. That in any view of the matter the Ld CIT(A) was wrong in passing the order ex-parte without providing opportunity to the assessee hence the order as framed is not correct.*

3. *That in any view of the matter in quantum assessment order was passed u/s.143(3) of the IT Act after making due compliance hence penalty as imposed is not correct and liable to be deleted.”*

2. The Id. AR of the assessee has submitted that the assessee has complied with all the notices issued by the Assessing Officer during the assessment proceedings though there was some delay in furnishing the requisite details as sought by the Assessing Officer in the notice u/s. 142(1) of the Act dated 04.08.2018. The Id. AR has referred to the assessment order and submitted that the Assessing Officer has accepted that the assessee has filed the reply and furnished the requisite details in respect of the cash deposit. He has further contended that the Id. CIT(A) in the quantum of appeal has deleted the addition made by the Assessing Officer and accepted the reply furnished by the assessee. He has referred the order of Id. CIT(A) dated 22.09.2020 in the quantum appeal and submitted that the Id. CIT(A) has deleted the addition and accepted the explanation regarding the source of deposit made in the bank account. Thus, the Id. AR has pleaded that the penalty imposed by the Assessing Officer u/s. 271(1)(b) of the Act and confirmed by the Id. CIT(A) be deleted.

3. On the other hand, Id. DR has submitted that there is a default and non-compliance on the part of the assessee to the notice issued u/s. 142(1) dated 04.08.2018. The assessee has filed the reply belatedly and that after show cause notice issued by the Assessing Officer u/s. 144 of the Act. Thus, belated reply filed by the assessee cannot be considered as a compliance. He has relied upon the orders of the authorities below.

4. I have considered the rival submissions as well as relevant material available on record. In the assessment order, the Assessing Officer has given

the reference of notices issued u/s. 142(1) dated 10.05.2018 and thereafter 04.08.2018. The assessee filed the reply explaining the source of deposit made in the bank account but the said reply was filed belatedly after the show cause notice issued by the Assessing Officer u/s. 144 of the Act. The Assessing Officer has recorded this fact in Para 5.1 and 5.2 of the assessment order as under:

*“5.1. However, after the date of expiry of date of compliance being last opportunity offered to the assessee vide show cause notice u/s 144 of the Act, the assessee filed submissions in respect of cash deposits and claimed that such deposits were made after receiving cash from Shri Swami Yogi Satyam. The assessee also filed confirmation letter of Shri Swami Yogi Satyam who vide his confirmation has stated that the deposits relates to assessee.*

*05.2. The above submission of assessee has been considered and is not acceptable on merits. Since, the assessee failed to substantiate, with supporting evidences, the source of cash deposited amounting to Rs.11,50,000/- in a saving bank a/c maintained with HDFC Bank Ltd, the same has been treated as undisclosed income of assessee and added in the total income of assessee u/s 68 of the I.T. Act.*

*(Addition: Rs.11,50,000/-)”*

5. Thus, the factum of filing the reply and confirmation by the assessee is an evident from the assessment order and the Assessing Officer has considered the reply of the assessee as well as the confirmation and thereafter framed the assessment u/s. 147 r.w.s. 143(3) of the Act. After filing the reply, the Assessing Officer drop the proceedings u/s. 144 and framed the assessment u/s. 143(3) of the Act. Therefore finally the assessee complied with the notice issued u/s. 142(1) of the Act. Even otherwise in the penalty order, the Assessing Officer itself has given the details of the notice issued during the

assessment proceedings and compliances made on behalf of the assessee as under:

*“In this case, proceedings u/s 147 of the I.T. Act, 1961 was initiated after getting due approval of the Id. Pr. Commissioner of income Tax, Allahabad Notice u/s 148 dated 27.03.2018 was issued through ITBA and registered post. No compliance was made by assessee in response to this notice. Thereafter, following notices were issued to assessee through IT8A which were duly served upon the assessee.*

S.No.	Notice under section	Date of the notice	Date of compliance
1.	148 of the I.T. Act 1961	23.03.2018	23.04.2018
2.	142(1) of the I.T. Act, 1961	10.05.2018	24.05.2018
3.	142(1) of the I.T. Act, 1961	04.8.2018	10.08.2018
4.	271(1)(b) of the I.T. Act, 1961	07.09.2018	18.09.2018

*The above notices were also not complied by the assessee. Looking to the non-cooperative attitude of assessee and to compel him to comply with the notices issued to him from time to time during the course of assessment proceedings, a show cause penalty notice u/s 271(1)(b) of the I.T. Act, 1961 dated 07.09.2018 was issued to assessee fixing the date for compliance on 18.09.2018. This notice was also not complied by assessee.”*

6. On the one hand, the Assessing Officer has given the date of compliances in the above table whereas the penalty was imposed on the ground that the above notices were not complied by the assessee. Further, the Assessing Officer has also stated that the assessee has not made compliance to the show cause notice issued u/s. 271(1)(b). However, that cannot be a ground for imposition of penalty u/s. 271(1)(b) of the Act. In the quantum appeal, the Id. CIT(A) vide its order dated 22.09.2020 has deleted the addition made by the Assessing Officer and therefore, it amounts to acceptance of the explanation of the assessee filed during the assessment proceedings. Hence, in the facts and circumstances of the case and in view of Section 273B of the Act when the assessee has finally complied with the notice issued by the Assessing Officer the penalty is not imposable as the explanation filed by the

assessee was finally found to be correct and accepted in the quantum appeal. Consequently the penalty levied u/s. 271(1)(b) of the Act is deleted.

7. In the result, appeal filed by the assessee is allowed.

(Order pronounced on 25/02/2021 at Allahabad in the open Court through Video Conferencing)

Sd/-  
[VIJAY PAL RAO]  
JUDICIAL MEMBER

Dated: 25/02/2021

Aks/-

Copy forwarded to:

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