

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-2', NEW DELHI**

Before Sh. BHAVNESH SAINI, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 6410/Del/2019 : Asstt. Year : 2012-13

ITA No. 6411/Del/2019 : Asstt. Year : 2013-14

ITA No. 6412/Del/2019 : Asstt. Year : 2014-15

ITA No. 6413/Del/2019 : Asstt. Year : 2015-16

ITA No. 6414/Del/2019 : Asstt. Year : 2016-17

Sh. Kartikay Nayyar C/o Anil Jain D.D. & Co., 611, Surya Kiran Building, K.G. Marg, New Delhi-110001	Vs	ACIT, Central Circle-20 New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ALXPN4900G		

ITA No. 6205/Del/2019 : Asstt. Year : 2013-14

ITA No. 6206/Del/2019 : Asstt. Year : 2014-15

ITA No. 6207/Del/2019 : Asstt. Year : 2015-16

ITA No. 6208/Del/2019 : Asstt. Year : 2016-17

Sh. Shiv Kumar Nayyar C/o Anil Jain D.D. & Co., 611, Surya Kiran Building, K.G. Marg, New Delhi-110001	Vs	ACIT, Central Circle-20 New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAFPN7499D		

Assessee by : Sh. Anil Jain, CA

Revenue by : Sh. Farat Khan, Addl. CIT DR

Date of Hearing: 11.02.2021

Date of Pronouncement: 08.03.2021

ORDER

Per Bench:

These 9 appeals have been filed by the assesseees against the orders of the Id. CIT(A)-27, New Delhi, dated 27.05.2019 and 28.05.2019 wherein the Id. CIT (A) has confirmed the penalty levied u/s 271(1)(b) of the Income Tax Act, 1961 by the AO.

2. Since, the identical issues are involved and the grounds of appeal being common for all the above six years i.e. from assessment years 2012-13 to 2016-17, for the sake of convenience, they are herewith addressed in a common order.

3. A notice u/s 153A of the Act was issued on 22.09.2017. A show cause notice was issued on 22.03.2018 fixing the case for 28.03.2018. Another notice u/s 153A was issued on 02.08.2018. Further, on 07.09.2018, a show cause notice was issued to the assessee and the case was fixed for hearing on 14.09.2018. On 05.10.2018, notice u/s 142(1) along with questionnaire were issued to the assessee and fixing the case for 25.10.2018. In compliance to the said notice, the assessee has not filed any reply except copy of ITR which has been already on record.

4. Since, there was no compliance to the notices issued, a penalty notice u/s 274 was issued on 09.11.2018 fixing the case for 19.11.2018. Since there was no compliance on 19.11.2018 the AO levied penalty u/s 271(1)(b) of Rs.10,000/-.

5. During the hearing before us, the assessee has referred the letter dated 19.11.2018 filed before the Assessing Officer wherein the assessee explained that the notice fixing the hearing on 25.10.2018 has not been received. There has been a noting of the Assessing Officer on this letter as to why the notice was not received. Thus, the Id. AR explained that there has been compliance to the notice issued.

6. The Id. DR argued that there has been a spate on non-compliances before the AO and hence the penalty has been rightly levied.

7. Heard the arguments of both the parties and perused the material available on record.

8. The rationale of the AO to levy the penalty vide order dated 06.12.2018 was that nobody attended on 19.11.2018 in response to the show cause issued u/s 274, the facts on record prove that the assessee has indeed replied on 19.11.2018 and explained that the notice dated 05.10.2018 has not been received by them and there was a noting of the Assessing Officer on the letter. Thus, the observation of the Assessing Officer that there was no compliance to the show cause was contrary to the findings on the record. Hence, the penalty levied is liable to be obliterated.

9. In the result, all the appeals of the assesseees are allowed.

Order Pronounced in the Open Court on 08/03/2021.

Sd/-

(Bhavnesb Saini)
JUDICIAL MEMBER

Dated: 08/03/2021

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR