

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

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

(Through Video Conferencing)

ITA No. 4216/Del/2019 : Asstt. Year : 2011-12

ITA No. 4217/Del/2019 : Asstt. Year : 2012-13

ITA No. 4218/Del/2019 : Asstt. Year : 2013-14

ITA No. 4219/Del/2019 : Asstt. Year : 2014-15

ITA No. 4220/Del/2019 : Asstt. Year : 2015-16

ITA No. 4221/Del/2019 : Asstt. Year : 2016-17

ITA No. 4222/Del/2019 : Asstt. Year : 2017-18

Anil Kumar Seth, H.No. 141/8, Sethan Mohalla, Near Gurudwara, Kaithal, Haryana-136027	Vs	Deputy Commissioner of Income Tax, Central Circle, Karnal
(APPELLANT)		(RESPONDENT)
PAN No. APQPS4647J		

Assessee by : Sh. V. K. Bindal, CA

Revenue by : Sh. Mahesh Thakur, Sr. DR

Date of Hearing: 05.08.2021

Date of Pronouncement: 10.08.2021

ORDER

Per Bench:

The present appeals have been filed by the assessee against the orders of the Id. CIT(A)-3, Gurgaon dated 28.02.2019 confirming the penalty levied u/s 271(1)(b).

2. Since, the issues involved in all these appeals are identical which were heard together.

3. The brief facts of the case are that a search & seizure operation u/s 132 of the Act was conducted in the case of M/s Vishnu Group of cases, Kaithal on 12.01.2017. At the same time, the search was also conducted at the residential premises of the assessee at Sethan Mohalla, Kaithal. Subsequently, notice u/s 153A of the Act was issued on 09.02.2018 to file return of income within 30 days from the service of the notice. After several reminders, the assessee filed return of income on 17.05.2018. Further, u/s 142(1) of the Act were issued by the AO on 05.07.2018 and the adjournment was granted on various dates. The AO concluded the assessment u/s 153A r.w.s. 144 of the Act to the best of his judgment.

4. During the course of assessment proceedings, the AO issued notices on 21.05.2018, 05.07.2018 and the case was fixed for 30.07.2018, 08.08.2018, 13.08.2018. There was no response from the assessee and therefore, the AO initiated penalty proceedings u/s 271(1)(b). The AO issued a penalty notice u/s 271(1)(b) on 28.08.2018 for failure to comply with the notice issued u/s 142(1) fixing the hearing on 05.09.2018. At the request of the assessee, the hearing was adjourned to 10.09.2018 which was defaulted by the assessee and hence the case was further fixed on 20.09.2018. Owing to the absence of the assessee on this date, another opportunity was given on 09.10.2018. Even on that date, since nobody attended on behalf of the assessee, penalty u/s 271(1)(b) of Rs.10,000/- has been imposed on the assessee for non-compliance to the notice issued u/s 142(1) of the Income Tax Act, 1961.

5. The Id. CIT (A) confirmed the order of the Assessing Officer.

6. Before us during the hearing, the Id. AR argued that the assessee has filed adjournment letters before the AO on various dates on 12.11.2018, 28.11.2018 and hence it cannot be treated that the assessee has not complied to the notices. He also produced copies of the order sheet of the Assessing Officer to substantiate his arguments.

7. On the other hand, the Id. DR supported the orders of the authorities below.

8. Heard the arguments of both the parties and perused the material available on record. From the record, we find that the order sheet entries on page 79 of the paper book for AY 2011-12, page 81 of the paper book for the AY 2012-13 and page 83 for the AY 2014-15 show that the assessee attended the assessment proceedings on 12.11.2018, filed reply to the questionnaire dated 05.07.2018 and finally on 28.11.2018 submitted written submissions and the case was discussed.

9. The relevant provisions of Section 271(1)(b) are as under:

"271(1): If the Assessing Officer in course of any proceedings under this Act is satisfied that any person,

(b) failed to comply with the notice under Sub-Section (1) of Section 142 or Sub-Section (2) of Section 143, he may direct that such person shall pay by way of penalty a sum of Rs.10,000 for each such failure."

10. Having gone through the record, the facts of the case and provisions of the Act, since there has been compliance to the notices issued, we hereby direct that the penalty levied be obliterated.

11. In the result, all the appeals of the assessee are allowed.
Order Pronounced in the Open Court on 10/08/2021.

Sd/-

(Amit Shukla)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 10/08/2021

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR