

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.826/Lkw/2017
Assessment Year:2011-2012

M/s Alliance Promoters Ltd., 24/4, The Mall, Kanpur. PAN:AAFCA7641H (Appellant)	Vs.	A.C.I.T., Range-VI, Kanpur. (Respondent)
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Appellant by	Shri Ashish Jaiswal, Advocate
Respondent by	Shri Ajay Kumar, D.R.
Date of hearing	12/08/2021
Date of pronouncement	17/08/2021

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of learned CIT(A)-II, Kanpur dated 08/03/2017 pertaining to assessment year 2011-12.

2. Learned counsel for the assessee, at the outset, submitted that there is a delay of 236 days in filing the appeal and which has happened due to the fact that after preparing Form No. 36, such filled up form got mixed up with other office folder and consequently escaped the attention of assessee and, therefore, the inadvertent delay has happened. Learned counsel for the assessee in this respect invited our attention to the copy of petition for condonation of delay along with affidavit of the assessee and affidavit of the staff who was responsible for filing the appeal. Therefore, in view of these

facts, it was prayed that the delay may be condoned and appeal may be heard on merits.

3. Learned D. R. had no objection to the condonation of delay. Finding the reason for delay in filing the appeal plausible, the delay was condoned and Learned counsel for the assessee was directed to proceed with his arguments.

4. Learned counsel for the assessee submitted that the Assessing Officer has imposed a penalty of Rs.10,000/- u/s 271(1)(b) of the Act which learned CIT(A) has confirmed. It was submitted that the assessment in this case was completed u/s 143(3) and later on assessee has been appearing before the Assessing Officer and therefore, the penalty imposed be deleted and reliance in this respect was placed on the judgment of Lucknow Bench of the Tribunal in the case of Divya Agarwal in I.T.A. No.268/Lkw/2018 order dated 31/01/2019 and in the case of Vishwa Nath Gupta in I.T.A. No.526 to 532/Lkw/2018 order dated 15/03/2019.

5. Learned D. R., on the other hand, submitted that learned CIT(A) has passed ex-parte order as the assessee did not appear before him therefore, the appeal may be set aside to learned CIT(A) for his adjudication.

6. We have heard the rival parties and have gone through the material placed on record. As regards the argument of Learned D. R. that the case may be set aside to learned CIT(A) for his adjudication, we find that all the material facts are available with us and for a small amount of Rs.10,000/- it is not feasible to send it back again to CIT(A) for his adjudication and moreover, the issue is covered by order of Lucknow Bench of Tribunal and, therefore, we are deciding at our level. We find that it is undisputed fact that the assessment in this case was completed u/s 143(3) of the Act vide

order dated 04/03/2014. The Assessing Officer has imposed penalty of Rs.10,000/- u/s 271(1)(b) of the Act for non compliance of notice dated 24/09/2012. However, from the assessment order we find that assessee had filed complete reply to notice u/s 142(1) of the Act and Assessing Officer himself has noted that detailed explanations were filed by the assessee from time to time and he has completed the assessment u/s 143(3) of the Act. Therefore, the penalty u/s 271(1)(b) is not imposable in view of the judgment of Lucknow Bench of the Tribunal, as relied on by Learned counsel for the assessee. For the sake of completeness, the findings of the Tribunal in I.T.A. No.268/Lkw/2018 are reproduced below:

"5. We have heard the rival parties and have gone through the material placed on record. We find that assessee during the assessment proceedings did not comply with the notice issued u/s 142(1) therefore, the authorities below have imposed penalty u/s 271(1)(b) of the Act. However, we find that finally the assessee did appear during the assessment proceedings and assessment was completed u/s 147/143(3) of the Act. Under similar circumstances I.T.A.T. Lucknow Bench of the Tribunal in the case of Smt. Reeta Patel vs Income Tax Officer in I.T.A. No.598/Lkw/2016 has deleted the penalty observing as under:

"5. We have heard the rival parties and have gone through the material placed on record. We find that assessee during the assessment proceedings did not comply with the notices issued u/s 142(1) on various dates which learned CIT(A) and Assessing Officer have noted in their order and therefore, the authorities below have imposed penalty u/s 271(1)(b) of the Act. However, we find that finally the assessee did appear before the assessment proceedings and assessment was completed u/s 143(3) and thereafter, the matter travelled upto Tribunal, which vide order dated 30/01/2017 allowed the appeal of the assessee for statistical purposes. Therefore, we do not see any reason to uphold the order of CIT(A). We reverse the same and allow the appeal filed by the assessee."

Respectfully following the view taken in the above appeal, we do not see any reason to uphold the order of CIT(A). We reverse the same and allow the appeal filed by the assessee."

7. Keeping in view the above facts and circumstances, the appeal of the assessee is allowed.
8. In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 17/08/2021)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:17/08/2021
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar