

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA No.474/Hyd/2020		
Assessment Year: 2011-12		
M/s. Trinity Infraventures Ltd New Delhi PAN:AABCG1937G (Appellant)	Vs.	A.C.I.T. Central Circle 3(2) Hyderabad (Respondent)
Assessee by:	Sri P. Murali Mohana Rao	
Revenue by:	Smt. N. Esther, DR	
Date of hearing:	02/08/2021	
Date of pronouncement:	14/09/2021	

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2011-12 against the order of the CIT (A)-11, Hyderabad, dated 28.02.2020 confirming the penalty levied by the Assessing Officer u/s 271(1)(b) of the I.T. Act.

2. Brief facts of the case are that there was a search in the case of the assessee on 9.7.2017 and therefore, the case was selected for compulsory scrutiny and accordingly a notice u/s 153A of the Act was issued to the assessee requiring the assessee to file the return of income for the A.Y 2011-12. In response to the same, the assessee filed its return of income on 18.10.2019. Thereafter, notice u/s 143(2) was issued to the assessee on 5.11.2019 requiring the assessee to furnish certain information by 8.11.2019. However, the assessee did not comply with the said

notice. A notice u/s 143(2) was also issued on 4.11.2019 calling for certain information but the assessee did not comply with both the notices. Thereafter, the assessment was completed u/s 143(3) r.w.s. 153A of the Act on 28.12.2019. Thereafter, the Assessing Officer issued notice u/s 274 r.w.s. 271(1)(b) of the Act dated 16.11.2019 for levy of penalty for non-compliance of the notices u/s 142(1) and 143(2) of the Act also. The assessee did not respond to the notice u/s 274 r.w.s. 271(1)(b) of the Act also. Therefore, the Assessing Officer held that the assessee has nothing to say and has no objection for levy of penalty. He accordingly levied penalty of Rs.10,000/- u/s 271(1)(b) of the Act.

3. Aggrieved by the same, the assessee preferred an appeal before the CIT (A) who confirmed the order of the Assessing Officer and the assessee is in 2nd appeal before the Tribunal by raising the following grounds of appeal:

“1. The Order of Appeal of the Ld. Commissioner of IncomeTax (Appeals) in upholding the penalty order ul s 271(1)(b) of the Act. passed by the A.O., without appreciating legal precedence on the issue and the facts emanating in the impugned case, is erroneous both on facts and in law.

2) On the facts and in the circumstances of the case, the Ld. Commissioner of Income-Tax (A) has erred in upholding the penalty levied uls 271(1)(b) of the Act., basing on the invalid notice issued ul s 142(1) before the issue of mandatory notice ul s 143(2) of the Act., as the former notice is to be issued after the issued of mandatory notice u/ s 143(2) of Act.

3) I On the facts and in the circumstances of the case, the Ld. Commissioner of Income-Tax (A) ought to have held that the penalty levied uls 271(1)(b) vide order dt: 30-11-2019 is unsustainable, in as much as non-representation to an invalid notice issued ul 142(1) before the issue of notices u/s 143(2) cannot be taken as violation for levy of the impugned penalty .

4) On the facts and in the circumstances of the case, the Ld. Commissioner of Income-Tax (A) has grossly erred in

upholding the order of imposition of penalty u/s 271(1)(b) of the Act., basing on the failure to represent the case also against the mandatory first notice u/s 143(2) of Act., as no such penalty is contemplated for failure to respond to the above notice, because of the fact that the above notice is a general intimation, requiring the assessee to submit, if it feels, on an issue, which is not specifically required by A.O.

5) On the facts and circumstances of the case, the Ld. CIT (A) has erred in upholding the imposition of penalty by A.O., on the reason of failure to respond to the solitary I single notice, that too invalid, issued on 04-11-2019 u/s 142(1) of Act., for which the assessee could not represent as the Director was away from city on the date of hearing.

6) On the facts and in the circumstances of the case, the Ld. CIT.(A) ought to have dismissed the order of penalty, holding that the A.O. has erred in imposing penalty on the issue of non-compliance to both the notices u/s 143(2) and 142(1) of the Act., as violation falling within the meaning of the provisions u/s 271(1)(b) of Act.

7) I The Ld. CIT (A) has erred in law in upholding the order u/s 271(1)(b) of Act, by holding that the assessee has willfully failed to represent the case basing on a failure to respond to a solitary (invalid) notice u/s 142(1) of the Act., since a single incidence of non-representation alone cannot lead to an act of willful attempt to dis-regard or dis-respect to the provisions of Act.

8) On the facts and in the circumstances of the case, the Ld. C.I.T.(A) ought to have appreciated the factual position that the assessee was away from city on the date of hearing fixed in respect of notice u/s 142(1) of Act and thus he assessee was prevented by sufficient reasons beyond its control.

9) On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in upholding the penalty order u/s 271(1)(b) of Act., which was levied on the reason of non-compliance to both the notices u/s 142(1) and. 143(2) of Act., without properly appreciating the legal position that the first notice u/s 142(1) is invalid and for the second notice u/s 143(2) there is no penalty contemplated by at.

10) On the facts and in the circumstances of the case, the Ld. CIT (A) ought to have appreciated the circumstantial evidence that passing of scrutiny assessment u/s 143(3) of Act itself is ample reason of assessee's representation in the course of assessment proceedings, excepting on an occasion, which incident alone need not always necessarily lead to a conclusion that the assessee has willfully not responded.

11) On the facts and in the circumstances of the case, the Ld. CIT (A) was incorrect in upholding the penalty order u/s 271(1)(b) of Act., passed on 30-11-2019 by A.O. basing on a solitary show cause notice u/s 274rws 271 (l)(b) of Act, without specifying as to against which notice there is failure on the art of the assessee to represent.

12) On the facts and in the circumstances of the case, the Ld. CIT (A) ought to have well appreciated that issuing notice u/s 142(1) and show cause notice 271(1)(b) respectively on a single occasion cannot be said to be a fair and reasonable opportunity and thus punitive action without affording a fair opportunity of hearing is beyond law and unsustainable.

13) On the facts and circumstances of the case, the Ld. CIT (A) ought not to have upheld the penalty order u/s 271(1)(b) of Act., as the assessee is not a regular offender and that no penalty as such was imposed earlier.

14) Any other ground that may be prayed for before or at the time of hearing of the present appeal.”

4. The learned Counsel for the assessee submitted that the Assessing Officer has issued notices u/s 143(2) and 142(1) dated 5.11.2019 and 4.11.2019 respectively requiring the assessee to file the details on or before 8.11.2019 i.e. in a period is less than a week and since the time was not sufficient and the Director was out of station, the assessee could not furnish the same and therefore, the penalty levied by the Assessing Officer is not justifiable and hence not sustainable. He placed reliance upon various case law in support of his contention that where a reasonable cause has been shown u/s 273B of the Act, the penalty u/s 271(1)(b) is not to be imposed.

5. For the proposition that where the assessment order was passed u/s 143(3) of the Act and not u/s 144 of the Act, penalty u/s 271(1)(b) cannot be levied, he placed reliance upon the following decisions:

- i) Hon'ble Gujarat High Court in the case of Jyoti Power Corporation (P) Ltd reported in (2018) 92 taxmann.com 307.
- ii) ITAT Pune in the case of Sun Infrastructure (P)M Ltd in ITA Nos. 3015 to 3017/PUN/2017.

6. In support of his contention that penalty u/s 271(1)(b) should not be imposed when the assessee give reasonable cause u/s 273B of the Act, he placed reliance upon the following case law:

- i) ITAT Delhi in the case of Shri Subhash Sathe in ITA Nos.2765 to 2771/DEL/2016.

7. As regards the contention that the penalty is not leviable where no reasonable opportunity of being heard was given, he placed reliance upon the following case law.

- a) ITAT Ahmedabad in the case of Swarnaben M. Khanna reported in (2010)37 SOT 25
- b) ITAT Delhi in the case of Anil Kumar Seth in ITA Nos.7516 to 7522/Del/2017.
- c) ITAT Hyderabad in the case of SPR Publications (P) Ltd in ITA No 475/Hyd/2020.

8. The learned DR, on the other hand, supported the orders of the Assessing Officer and the CIT (A).

9. Having regard to the rival contentions and the material on record, we find that the assessee was given only 3 or 4 days to comply with the notices which undoubtedly is not sufficient time for compliance of the notices. Therefore, the penalty levied u/s 271(1)(b) is not sustainable on this ground alone. Further, as pointed by the learned Counsel for the assessee, the assessment

was completed u/s 143(3) of the Act after considering the detailed submissions of the assessee and therefore, it cannot be said that the assessee has not cooperated with the Assessing Officer. Thus, the provisions of section 273B are attracted and before the CIT (A), the assessee had made detailed submissions, but the CIT (A) has failed to consider the same before confirming the order of the Assessing Officer. Therefore, the appeal of the assessee is allowed and the penalty of Rs.10,000/- is deleted.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 14th September, 2021.

Sd/- (LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 14th September, 2021.

Vinodan/sps

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3	CIT (A)-11,Hyderabad
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5	DR, ITAT Hyderabad Benches
6	Guard File

By Order