

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1086/Mum/2021
(A.Y: 2016-17)

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| Stuti Trading LLP B-401, Naman Midtown, Tulsi Pipe Road, Elphiston Road, Mumbai – 400028. | Vs. | ITO 20(3)(4) Piramal Chamber Mumbai – 400012. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACXFS7406F | | |
| Appellant | .. | Respondent |

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|-----------------|---------------------|
| Appellant by : | None |
| Respondent by : | Mr.Hoshang .B.Irani |

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| Date of Hearing | 15.03.2022 |
| Date of Pronouncement | 21.03.2022 |

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals) passed u/s 271(1)(b) and 250 of the Income Tax Act. The assessee has raised the following grounds of appeal.

- 1. On the facts and circumstances of the case and in law the Authorities below, has erred in levying penalty of Rs. 10,000/- u/s 271(1)(b) of the Act and the reason assigned for doing so where wholly wrong, irrelevant and not in accordance with provision of IT Act and rules made thereunder:*

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2. The appellant craves leave to add, alter, modify and delete all or any of the aforesaid grounds of appeal on or before the date of hearing.

2. The brief facts of the case are that, the assessee is a LLP engaged in the business of trading and manufacturing of gems and jewellery and precious stones. The assessee's case was selected for scrutiny under CASS and notice u/s 143(2) of the Act was served on the assessee, Further the notice u/s 142(1) of the Act was issued on 23.08.2018 informing the date of hearing on 30.08.2018. Since there was no compliance to the notice on the scheduled date of hearing, the A.O has initiated penalty proceedings u/s 271(1)(b) of the Act. Whereas the assessee has filed the explanations vide letter dated 17.09.2018 mentioning that due to shifting of premises, the assessee could not comply with the details within the time and has furnished the details through e-mail. The A.O. was not satisfied with the explanations and observed that the assessee should have complied with the statutory notice within the time allowed and levied a penalty u/s 271(1)(b) of the Act of Rs. 10,000/- and passed the order on 02.01.2019.

3. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) in the appellate proceedings considered the grounds of appeal and issued the notice on 18.01.2021 and 25.02.2021 for online submissions. However no submissions are filed by the assessee for non compliance of notice u/s 142(1) of the Act. The CIT(A) considered the facts that the assessee has

responded to the notice after expiry of 17 days and has confirmed the action of the A.O in levying the penalty u/s 271(1)(b) of the Act and dismissed the assessee appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. We heard the Ld. DR submissions and perused the material on record as none appeared on behalf of the assessee. The sole crux of the disputed is with regard to levy of penalty u/s 271(1)(b) of the Act for non compliance of notice u/s 142(1) of the Act within the time allowed. On perusal of the facts and information on record, we find that the assessee was served notice u/s 142(1) of the Act on 23.08.2018 and fixing the date of hearing on 30.08.2018. Whereas the assessee has not complied with the notice on the date of hearing therefore the A.O has initiated penalty proceedings u/s 271(1)(b) of the Act. We find that the assessee vide letter dated 17.09.2018 has filed the explanations on delay that due to shifting of office premises the assessee could not file the information on time. The A.O accepted the fact that assessee's reply was received on 17.09.2018 after expiry of 17 days but levied penalty. Whereas in the appellate proceedings, the assessee has submitted in the statement of facts that the assessee has attended hearings thereafter from time to time and the assessing officer has completed the assessment.

5. We considering the facts, circumstances and the explanations that the assessee has complied with the statutory

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notice u/s 142(1) of the Act not before the prescribed time by the A.O but complied with the notice after delay of 17 days which cannot be disputed and the scrutiny assessment was completed. Further, the reasonable cause explained that the delay was due to shifting of office premises which is bonafide and cannot be disputed. Accordingly, we find the penalty cannot be sustained and set aside the order of the CIT(A) and direct the Assessing officer to delete the penalty and allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 21.03.2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 21.03.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

ITA No. 1086/Mum/2021
Stuti Trading LLP. Mumbai.

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(Asst. Registrar)
ITAT, Mumbai