

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 6309/Del/2017
(Assessment Year: 2013-14)

PremNathNayyar,
81-A, Vikrant Enclave,
Mayapur-1, New Delhi
PAN: **AEUPN8865Q**
(Appellant)

Vs. ITO,
Ward-49(3),
New Delhi
(Respondent)

Assessee by :	None
Revenue by:	Shri T. Kipgen, Ld. CIT DR
Date of Hearing	05/04/2022
Date of pronouncement	12/04/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. The present appeal has been preferred by the Assessee against the order dated 04.08.2017 impugned herein passed by the Ld. CIT(A)-17, New Delhi (in short 'Ld. Commissioner') u/s 250(6) of the Income Tax Act, 1961 (in short 'the Act') for the Assessment Year 2014-15.

2. The Assessee has challenged the affirmation of levy of penalty levied u/s 271(1)(b) on the ground that because the assessment order has been framed u/s 143(3) of the Act, hence, the levy of penalty u/s 271(1)(b) on account of non-compliance of notices issued u/s 143(2) by the Assessee is not sustainable, in view of various judgments of the jurisdictional coordinate benches including in the case of Shiv Kumar Nayyar Vs. ACIT (ITA No. 6203, 6204/Del/2019 decided on 31.03.2021. For ready reference the concluding part of the judgment is reproduced herein below:-

“7. Ld. Counsel for the assessee strongly challenged the order of the Ld. CIT(A) in confirming the levy of penalty u/s 271(1)(b) of the I.T. Act for all these years. He submitted that the assessment in the instant case was ultimately completed u/s 143(3) of the Act. Referring to various decisions filed in the synopsis Ld. Counsel for the assessee submitted that it has been held in all these decisions that where the assessee has not made any compliance on certain dates but ultimately due compliance was made and replies filed by the assessee and had participated in the proceedings before the AO and the assessment has been completed u/s 143(3) then penalty should not be levied u/s 271(1)(b) of the Act for non compliance of particular notice merely on technical grounds. He submitted that the AO in the instant case has levied penalty for non compliance to the notice dated 5th October 2018 whereas in the show cause notice dated 9.11.2018 the AO has mentioned that there was non compliance of notice u/s 142(1) dated 16th October 2018. He submitted that even for the sake of arguments if the above notice was received within two three days of the notice dated 16th October 2018 even then also the huge details as asked for by the AO was not possible to be submitted up to 25th October, 2018 on account of non availability of reasonable time. Referring to the decision of the Tribunal in the case of Smt. Neetu Nayyar vs. ACIT and Smt. Meena Nayyar vs ACIT vide ITA Nos. 6189/Del/2019 to ITA No. 6194/Del/2016-17 and ITA No. 6195/Del/2019 to ITA No. 6200/Del/2019 for assessment years 2011-12 to 2016-2017 respectively vide order dated 22.12.2020, he submitted that under identical circumstances, the Tribunal has deleted the penalty so levied by the AO and sustained by the Ld. CIT(A). He accordingly submitted that the penalty sustained by the Ld. CIT(A) deserves to be deleted.”

8. Ld. DR on the other hand relied on the order of the Ld. CIT(A). He submitted that Ld. CIT(A) has given elaborate reasons as to why the penalty levied by the AO in the instant case should be sustained. He accordingly submitted that the order of the Ld. CIT(A) should be upheld.

9. I have heard the rival arguments made by both the sides and perused the material available on record. I find that AO in the instant case levied penalty of Rs. 10,000/-each u/s 271(1)(b) of the Act for assessment year 2011-12 to 2012-13 on the ground that assessee did not respond to the notice dated 5th October 2016 fixing the hearing for 25th October, 2018. I find Ld. CIT(A) upheld the penalty levied by the AO, the reasons for which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the assessment was ultimately completed u/s 143(3) of the Act and, therefore, penalty should not be levied merely on technical reasons. Further, it is also his submission that under identical circumstances the coordinate bench of the Tribunal in the case of Smt. NeetuNayyar vs ACIT and Smt. MeenaNayyar vs. ACIT (supra) has deleted the penalty levied by the AO and sustained by the Ld. CIT(A).

12. I find some force in the above arguments of the Ld. Counsel for the assessee. Although the assessee in the instant case has not complied to the statutory notice issued by the AO on 5th October, 2016 fixing the case for hearing on 25th October, 2018 which is the basis for levy of penalty u/s 271(1)(b) of the Act, however, ultimately the order has been passed u/s 143(3). **Coordinate Benches of the Tribunal in a number of decisions have held that where the assessment order was finally passed u/s 143(3) and not u/s 144 of the Act due to subsequent compliance during the assessment proceedings, that would be considered as good compliance and the defaults committed earlier should be ignored and taking a lenient view the penalty u/s 271(1)(b) of the I.T. Act 1961 should not be levied.** Further, the Coordinate Bench of the Tribunal in the case of one of the group member namely Smt. NeetuNayyar vs ACIT and Smt. MeenaNayyar vs. ACIT (supra) has also deleted the penalty levied by the AO u/s 271(1)(b) and sustained by the Ld. CIT(A) under identical circumstances. Since the assessment in the instant case has ultimately been completed u/s 143(3) of the Act on the basis of various details filed by the assessee before the AO, therefore, considering the totality of the facts of the case and relying on the decision of the Tribunal in the case of Smt. NeetuNayyar vs. ACIT (supra) and Smt.

MeenaNayyer vs. ACIT (supra) I am of the considered opinion that it is not a fit case for levy of penalty u/s 271(1)(b) of the Act. I, therefore, set aside the order of the Ld. CIT(A) and direct the AO to cancel the penalty so levied by him for all the 6 years. The grounds raised by the assessee are accordingly allowed.

13. In the result, both appeals filed by the assessee are allowed.”

{Highlighted by us}

3. On the contrary the Id. DR supported the orders passed by the authorities below.

4. Heard the parties and perused the material available on record. In the instant case though the Assessee did not comply with all the notices issued u/s 143(2) of the Act and therefore, the penalty was imposed by the AO, which stands affirmed by the Ld. Commissioner, however it is a fact that assessment order has been passed u/s 143(3) but not u/s 144 of the Act, which goes to show that Assessee in somewhat manner cooperated with the assessment proceedings and attended some of the hearings and therefore deserve lenient view.

Similar and identical facts have already been dealt with by the coordinate bench in Shiv Kumar Nayyar Vs. ACIT (supra) wherein, the coordinate bench also taken into consideration the other decisions of the coordinate benches in case of Globus Infocom Limited, New Delhi Vs. DCIT, Delhi ITAT (ITA 738/Del/2014) and in the case of Akhil Bhartiya Prathmik Shikshak Sangh vs Assistant Director of income Tax, Delhi ITAT (ITA 2900/Del/2005) while cancelling the penalty levied by the AO under the similar circumstances as involved in this case. Hence, we are inclined to follow the judgments passed by the coordinate benches and consequently, the penalty stands deleted.

5. In the result, appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 12/04/2022.

-Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

-Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated: 12/04/2022
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi