

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.6324/Del./2017
(ASSESSMENT YEAR : 2014-15)**

Shri Krishan Kumar Goel,
18, Rama Krishna Colony,
Model Town,
Ghaziabad (Uttar Pradesh).

vs. DCIT, Central Circle,
Ghaziabad.

(PAN : AEGPG4936H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ms. Anupama Singla, Senior DR

Date of Hearing : 26.05.2022

Date of Order : 01.06.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals) wherein penalty under section 271(1)(b) of the Income-tax Act, 1961 (for short 'the Act') has been confirmed at Rs.10,000/- by order dated 14.08.2017 for Assessment Year 2014-15.

2. In this case, the order dated 15.12.2016 by which penalty was levied reads as under :-

“ In this case, the notice u/s 153A of the I T Act 1961 issued on 18.08.2016. Notice u/s 142(1) was along with questioner was issued on 2711012016 fixing the date of compliance on

09/112016. The assessee has failed to furnish information as per notice u/s 142(1) on the above mentioned date. Further, a show cause notice u/s 271(1)(b) was issued on 05.12.2016, fixing the date on 12.12.2016, but the same was not complied by the assessee.

It is noticed that without any reasonable cause, the assessee has failed to comply with notice u/s 142(1) of the LT. Act 1961 along with questionnaire, and not even submitted any reply of show cause notice issued u/s 271(1)(b) on 12.12.2016. It is clear that the assessee has willfully not complied the notice u/s 142(1), dated 27.10.2016 marked.”

3. The Id. CIT (A) has upheld the above said order despite noting assessee's submissions that there was due compliance by the assessee as under:-

“5.3 The undersigned has carefully gone-through the penalty order and written submission filed by the appellant. It may be seen that a notice u/s 142(1) of the I.T. Act, 1961 dated 27.10.2016 was issued and duly served upon the assessee calling for certain information/explanation. The date for compliance was fixed for 09.11.2016. On 09.11.2016 nobody attended nor any reply was filed. Further notice u/s 271 (1)(b) was issued by AO on 05.12.2016 fixing case' for" hearing on 12.12.2016. Appellant did not comply to this notice also. This goes to prove that appellant has committed default of non-compliance to notices issued by the department. Non-compliance is also evident from the fact that appellant has not even bothered to asked for adjournment. Appellants submission that assessments were completed u/s 143(3) hence penalty u/s ~71(1) (b) is not attracted cannot be accepted because there is no such express provisions in the Act. Therefore, undersigned is of the view that the appellant has not only committed the default under the provision of 271 (1) (b) but also failed to show the reasonable cause for committing such default. Also, case laws cited by the appellant are distinguishable with the facts of the present case.”

4. Against the above order, assessee is in appeal before us.
5. We have heard the Id. DR and perused the records. We note that in the assessment order which has been passed by the same assessing officer by the

order dated 30.12.2016 following has been mentioned in the initial part of the order :-

“Subsequently, notice u/s 153A was issued on 18.08.2016. The assessee e-filed its return of income on 06.09.2016 declaring total income of Rs.23,11,110/- in pursuance to the notice u/s 153A of the Income tax. Notice u/s 142(1) was issued on 07.10.2016. Thereafter, notice u/s 143(2) was issued on 07.10.2016. Notice u/s 142(1) along with questionnaire was issued on 27/10/2016. Show cause notice u/s 142(1) was issued on 06.12.2016. Further, notice u/s 142(1) was issued on 16.12.2016. Sh. M. K. Mishra, CA, authorized representative attended on behalf of the assessee and filed written submissions and supporting documents and the same are placed on record.

6. Thereafter, in the body of the order throughout, AO has mentioned his queries and he has noted that the assessee has duly responded. However not being satisfied with the reply, the AO has made additions and computed the income at Rs.1,88,85,961/-. Nowhere in the order of the AO there is any whisper that AO is not satisfied by the compliance by the assessee to his notices or queries. Now, the same AO has passed the above said penalty order.

7. The above amply shows that there is lack of proper application of mind by the AO levying the penalty as well as the Id. CIT (A) upholding the same. The penalty order by the same AO is quite in contradiction to the assessment order passed by the same AO in which there is no whisper about lack of compliance by the assessee. The penalty has been levied and upheld *de hors* any consideration of the facts actually operating. In this view of the matter, in our considered opinion, assessee is not liable with penalty u/s 271(1)(b).

8. Moreover, **Hon'ble Court in the case of Commissioner of Sales-tax vs. State of Orissa 82 ITR 126** has held that the authority may not levy

penalty if the conduct of the assessee is not found to be contumacious. In our considered opinion, the conduct of the assessee is not at all contumacious. In view of the matter, we set aside the order of Revenue authorities and decide the issue in favour of the assessee.

9. In the result, this appeal of the assessee stands allowed.

Order pronounced in the open court on this 1st day of June, 2022.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 1st day of June, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.