

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR  
& SHRI WASEEM AHMED, ACCOUNTANT MEMEBR**

आयकर अपील सं./I.T.A. No. 180/Rjt/2018  
(निर्धारण वर्ष / Assessment Year : 2007-08)

<b>Vipulkumar Vinodrai Dhakan Devla Gate, Amreli</b>	<b>बनाम/ Vs.</b>	<b>The I.T.O. Ward 3(1)(5), Amreli</b>
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AKJPD9029K		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	None
प्रत्यर्थी की ओर से / Respondent by :	Shri B. D. Gupta, Sr. DR

सुनवाई की तारीख / Date of Hearing	31/05/2022
घोषणा की तारीख /Date of Pronouncement	31/05/2022

**ORDER**

**PER MAHAVIR PRASAD, JM:**

The appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-3, Rajkot ('CIT(A)' in short) vide Appeal No. CIT(A)-3/A3/401/15-16 dated 01.03.2018 arising in the penalty order dated 27.07.2015 passed by the Assessing Officer (AO) under s. 271(1)(b) of the Income Tax Act, 1961 (the Act) concerning AY. 2007-08.

2. The grounds of appeal raised by assessee read as under:

- “1. *The Ld. CIT(A) has erred in law and facts in passing order confirming penalty U/s. 271(1)(b) of Rs. 10,000/-. The same needs cancellation.*
2. *The Ld. CIT(A) has erred in law and facts in passing order confirming penalty without considering the reply filed by the assessee and without giving opportunity to submit his explanation. The order being bad in law needs cancellation.*
3. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that the order confirming penalty has been passed without considering statutory position. The penalty order passed is bad in law. The penalty needs cancellation.*
4. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that the order passed confirming penalty is bad in law, illegal and not sustainable in me eye 01 law. The penalty needs cancellation.*
5. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that the initiation of the penalty proceedings itself was bad in law. The penalty needs cancellation.*
6. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that there was no legal service of notice on the assessee giving reasonable time. The penalty needs cancellation.*
7. *The Ld. CIT(A) has erred in law and facts in not considering that the Ld. A.O. has erred in not providing adequate and reasonable time. The penalty needs cancellation.*
8. *The Ld. CIT(A) has erred in law and facts in not providing adequate and reasonable time. The penalty needs cancellation.*
9. *The Ld. CIT(A) has erred in passing common order for 3 non compliance jointly for 3 non compliance. Passing of common order is not permissible the order passed by needs cancellation.*
10. *The penalty order having been passed after limitation prescribed, the same is time barred and needs cancellation.*
11. *Without prejudice, the assessee was having reasonable cause on consideration of which no penalty ought to have been levied. The penalty needs cancellation.*
12. *Taking into consideration over all legal, statutory and settled law beside factual aspects of the case no penalty ought to have been levied. The penalty needs cancellation.*
13. *The appellant craves leave to reserve his right to amend / alter / add and/or substitute any / all grounds of appeal before the actual hearing takes place.”*

3. The assessee had not filed his return of income. The case was reopened by issuing notice u/s.148 of the Act on the ground that the assessee had given cash of Rs.3,80,000/- to M/s. Panchnath Enterprise and obtained cheque from the later party. Therefore, notice u/s.148 was issued on 28.03.2014 and duly served upon the assessee on 28.03.2014. Thereafter, notice u/s. 143(1) was issued to the assessee on 19.05.2014 and duly served by RPAD. Further, another notices u/s. 142(1) and u/s. 143(2) of the Act along with detailed questionnaire were issued to the assessee on 07.08.2014 and duly served upon the assessee. However, nobody attended on the given date or furnished the details called for vide notice u/s. 142(1). Ultimately, the assessment was finalized u/s. 144 r.w.s. 147 of the I T Act,1961 on 27.03.2015 making addition of Rs.3,80,000/- u/S.69A and assessed total income at Rs.3,80,000/-. Penalty proceedings' u/s. 274 r.w.s. u/s. 271(1)(b) of the Act were initiated while finalizing the assessment order, separately.

3.1 Earlier notice u/s.142(1) and 129 of the Act was issued to the assessee on 11.12.2014. In response to the said notice nobody attended on the given date or furnished the details called for. Final show cause notice dated 24.03.2015 was issued and duly served upon the assessee by R.P.A.D. on 26.03.2015. However, nobody attended on the given date or furnished the details called for in the said notice dated 24.03.2015 requesting to put forth his contentions by 27.03.2015.

3.2 As the assessee has failed to comply, in spite of sufficient opportunities given, it is presumed that the assessee has nothing to explain. It is construed that the assessee has given his silent acceptance on the issues involved and therefore, the order is finalized on the basis of material evidences placed on record.

3.3 In this case, the penalty proceedings u/s 271(1)(b) of Act have been initiated separately on the basis of the facts that emerged during the assessment proceedings. The A.O. had called for furnishing of details regarding cash of Rs.3,80,000/- given to M/s. Panchnath Enterprise and obtained cheque from the later party. From what is discussed, it is clear that assessee has failed to comply with the final notice under sub-section (1) of section 142 on 24.03.2015.

3.4 In view of the above, the AO satisfied that this is a fit case for levy penalty u/s. 271(1)(b) of the IT, Act, 1961. Accordingly, he levied penalty of Rs. 10,000/- (Rs. Ten Thousand Only ) for failure on part of the assessee to comply with the notice u/s 142(1) of the Act issued on 19.05.2014, 21.07.2014 and 11.12.2014.

4. The Ld. CIT (A) dismissed the assessee's appeal by observing as under:

*"I have carefully considered the submission of the appellant and perused facts of the case in A.O's order.*

*5.1 It is apparent from AR's letter itself that there is no dispute about three occasions of defaults (to notices u/s 142(1)). AR has argued that AO has imposed only one penalty u/s 271(1) (b) and he had not specified as to which default is being penalized and therefore to that extent penalty order is vague, non specific and hence it should be deleted. I don't agree with Id. AR's arguments both on facts as well as reasoning. Para 3 and 4 of penalty order clearly speak that the quantum default is of notice u/s 142(1) issued on 24.03.2015 requiring submissions from appellant latest by 27.03.2015. This notice was non-complied by the appellant and due to this non-compliance assessment order had to be finalized without receiving any explanations/submissions from the appellant. It is also apparent from the penalty order as well as AR's submission that no reason whatsoever was furnished for non-compliance of the impugned notice. Therefore the AO was absolutely imposing penalty u/s 271(1)(b) of Rs. 10000/-. The appeal of the appellant is bereft of any reason and fit to be dismissed."*

5. We have heard the learned Sr.D.R. at length. Since, the matter had been passed ex parte. Despite of the fact that assessee had sought

adjournment for hearing of the above matter, but the learned CIT(A) did not consider the adjournment application. Since the order of the CIT(A) is an ex parte order and has lack of reasoning, did not pass order on merit and to our opinion, same is amount to miscarriage of justice. Therefore, in the interest of justice, we set aside this matter back to the file of the learned CIT(A) subject to the condition that assessee shall deposit a cost of Rs.1000/- with the department within 60 days from the receipt of this order. Thereafter, learned CIT(A) shall decide the matter as per law.

6. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

**This Order pronounced in Open Court on 31/05/2022**

Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER  
Ahmedabad: Dated 31/05/2022

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER

*True Copy*

*S.K.SINHA*

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Deputy/Asstt. Registrar  
ITAT, Rajkot