

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI. RAMIT KOCHAR, ACCOUNTANT MEMBER
ITA Nos.64 to 67/ALLD/2020
AYs: 2014-15 to 2017-18**

Smt. Amita Rajvedi, 800/603A, Lajpat Rai Road, Allahabad, U.P. PAN-ABPPR5725F	vs.	Dy. CIT, Circle-1, Allahabad
(Assessee)		(Respondent)

Appellant by:	Sh. Praveen Godbole, C.A.
Respondent by:	Mr. A.K. Singh, Sr. DR
Date of hearing:	13.07.2022
Date of pronouncement:	25.07.2022

ORDER

PER BENCH:

These four appeals by the assessee are directed against the four separate orders of CIT(A) all dated 03.03.2020 arising from penalty orders passed under section 271(1)(b), for the assessment years 2014-15 to 2017-18, respectively.

2. The assessee is an individual and engaged in the medical profession. The assessee is practicing as Gynecologist for last many years. There was a survey under section 133A conducted on 11.9.2018 at the professional premises of the assessee. During the course of survey operations, some papers and other material was impounded by the survey party. Thereafter, the return of income for the assessment year 2017-18 was taken up for scrutiny by issuing notice under section 143(2) on 28.9.2018. Simultaneously, the notices under section 148 were issued on 17.10.2018 to reopen the assessment for the assessment years 2014-15 to 2016-17. The Assessing Officer issued notices under section 142(1) for all the four years but the assessee did not file the return of income in response to notice under section 148 and also did not

furnish the requisite details / information as required vide notice under section 142(1). The Assessing Officer then issued show cause notice under section 274 r.w.s. 271(1)(b) of the Income Tax Act on 16.1.2019. Thereafter, the Assessing Officer passed the penalty orders under section 271(1)(b) on 30.1.2019 for all four assessment years whereby the penalty of Rs. 10,000/- was imposed for each assessment year on account of default / non-compliance of notice issued under section 142(1) of the Income Tax Act. The assessee challenged the levy of penalty by filing the appeal before the CIT(A), but could not succeed. The assessee has raised the common grounds in these appeals as levy of penalty under section 271(1)(b) for the assessment years 2014-15 to 2016-17 is based on identical facts and circumstances being reopened assessment therefore, for the purpose of recording the facts, the appeal for the assessment year 2014-15 is taken as a lead case. The assessee has raised the following grounds:-

- 1. That in any view of the matter imposition of penalty of Rs. 10,000/- vide order dated 30/01/2019 by the assessing officer and his action as confirmed by the Commissioner of Income Tax (appeal) is wrong and incorrect when there was no fault of the appellant in any manner as well as past record of the appellant is neat and clean hence penalty is unjustified and illegal.*
- 2. That in any view of the matter in compliance to notices u/s 142(1) of the IT Act, the appellant made compliances all those notices vide his replies hence the allegation of non compliances as made by the assessing officer is totally incorrect as such imposition of penalty is uncalled for as the order passed by lower authorities and confirmed penalty without application of mind.*
- 3. That in any view of the matter a survey u/s 133A of the IT Act was conducted on 11/09/2018 and in the course of survey certain loose papers were seized for earlier years etc and therefore a notice under section 148 of the IT Act dated 18/10/2018 was issued and in compliance to said notice a request in writing vide the letter dated 29/10/2018 was made requiring thereby copies of seized materials, reasons recorded and also statement recorded but the assessing officer failed to provide the copies of the same to the appellant, hence the action of the assessing officer in imposing penalty which was confirmed by the Commissioner of Income Tax (appeal) without considering the facts properly is unjustified, incorrect and illegal.*
- 4. That in any view of the matter before the learned Commissioner of Income Tax (appeal) a voluminous paper book was filed which includes submission, statement, affidavit, copy of the original return, various case laws including the decisions of jurisdictional High Court, Copies of ITAT order, copies of CIT (Appeals) order in other cases but the Commissioner of Income Tax (appeal) failed to consider the materials/evidences with judicious approach hence his action is not a judicious action in*

the eyes of law and show a fatal flow of laws as such the order confirming the penalty is bad in law.

5. That in any view of the matter in compliance to show cause notice dated 07/02/2019 the appellant's CA made a request to assessing officer for a short adjournment as vide his letter dated 18/02/2019 (date fixed) for short adjournment as his cases are fixed at Lucknow but even request of CA was turned down by the assessing officer and ultimately he imposed the penalty which action is unjustified an unfair hence the penalty is unwarranted.

6. That in any view of the matter without providing the copies of seized materials as sought vide the letter dated 29/10/2018 and 04/01/2019 a complaint under section 276CC of the IT Act was also lodged by alleging non filing of return in compliance to notice u/s 148 of the IT Act but the Hon'ble Allahabad High Court stayed the prosecution proceeding which facts itself show the arbitrariness action on the part of two lower authorities imposing and confirming the penalty hence such actions are not legal therefore the penalty is unwarranted and therefore liable to be deleted.

7. That in any view of the matter the assessee reserves his right to take any fresh ground before the hearing of appeal.”

3. The learned AR of the assessee has submitted that the Assessing Officer issued notice under section 148 on 17.10.2018 asking the assessee to file the return of income within 30 days from the date of service of notice. The learned AR has pointed out that before the expiry of period allowed to the assessee to file the return of income in response to notice under section 148, the Assessing Officer issued notice under section 142(1) on 30.10.2018. In response to the notice under section 148, the assessee filed a reply dated 29.10.2018 requested the Assessing Officer to provide the copies of the documents seized / impounded during the course of survey conducted on 11.9.2018. The Department has not taken any cognizance of the said reply of the assessee and the Assessing Officer ignoring the request of the assessee as well as time allowed to file return of income issued notice under section 142(1) on 30.10.2018. The learned AR has further submitted that the assessee has also filed a reply to notice issued under section 142(1), vide letter dated 4.1.2019 and again requested the Assessing Officer to supply the copies of the documents impounded during the course of survey carried out on 11.9.2018. The assessee also made a reference of the reply dated 29.10.2018 and was annexed to the said reply dated 4.1.2019. The learned AR has thus contended that the assessee has duly replied to the notice issued by the Assessing Officer but for

want of the copies of the impounded material, the assessee was not in a position to either file the return of income or to comply with the notice issued under section 142(1). He has referred to the reply of the notice issued under section 148 as well as under section 142(1) which are placed at page nos. 13 and 18 of the paper book. He has further contended that even the quantum appeals are still pending adjudication before the CIT(A)(National Faceless Appeal Centre, Delhi). He has filed the status of the appeals available on the website of the National Faceless Appeal Centre, Delhi and submitted that the appeals were last listed in the month of February, 2021 and thereafter, no date is mentioned in the status report. The learned AR has also referred to the submissions of the assessee before the CIT(A) which are reproduced in the impugned order at page no. 3 to 6 and submitted that the CIT(A) passed the impugned order by ignoring these facts that the assessee has duly replied to the notice issued by the Assessing Officer and requested for the copies of the seized / impounded material so that the assessee could furnish the return of income as well as the requisite details and information sought by the Assessing Officer, vide notice under section 142(1) of the Act. Thus, the CIT(A) has not appreciated the facts and circumstances under which the assessment was framed and the penalty was levied by the Assessing Officer under section 271(1)(b) of the Income Tax Act and confirmed the levy of penalty while passing the impugned order. He has relied upon the decision of Hon'ble Bombay High Court in the case of **Mahavir Manakchand Bhansali vs. Commissioner of Income Tax** 396 ITR 226 (Bom) and submitted that the Hon'ble High Court has held that the interest for delay in filing the return of income has to be computed after excluding the period from the date the inspection was asked for by the assessee till inspection was given. The Hon'ble High Court has thus held that the Department is not justified in charging the interest for the delay attributable in not supplying the copies of the accounts and other records seized by the Department during the search. He has then relied upon the decision of Hon'ble jurisdiction High Court in the case of **Paramjeet Singh vs. Commissioner of Income Tax, Allahabad** 52 taxmann.com 402 (Alld) and

submitted that the penalty levied under section 271(1)(b) was deleted when the default was explained due to the illness of the Chartered Accountant who could not appear before the Assessing Officer in compliance of the notice. The learned AR has also relied upon the order of the Coordinate Bench of this Tribunal dated 11.4.2018 in case of **Sh. Nand Kishore vs. Income Tax Officer** in ITA No. 206/Alld/2017.

4. On the other hand, learned DR has submitted that the assessee has not specified the documents of which the assessee wanted the copy for the purpose of filing the return of income and compliance to the notice under section 142(1) of the Act. He has further contended that the assessee has neither tried to get the copy of the reasons recorded under section 148 for these years nor seriously tried to obtain the copies of the impounded documents whatsoever, as the assessee also not paid the copying charges and therefore, the assessee cannot take this plea and excuse for non filing the return of income as well as non-compliance of notice under section 142(1) of the Act. He has further contended that it is a case of persistent non-compliance of statutory notices issued under section 142(1) for all the assessment years under consideration. The Assessing Officer issued repeated reminders but of no avail therefore, the assessee has committed the default without any reasonable cause and hence the penalty levied under section 271(1)(b) is justified. He has relied upon the decision of Hon'ble jurisdiction High Court in the case of **Shivji Palace Hotel and Club (P.) Ltd. vs. Commissioner of Income Tax** 37 taxmann.com 215 (Alld). The learned DR has also relied upon the impugned orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. The Assessing Officer levied the penalty under section 271(1)(b), vide order dated 30.1.2019 as under:-

"Assessment proceedings for 'income escaping assessment' u/s 147 were initiated with Notice u/s 148 dated 17-10-2018 issued and served upon assessee online through Income Tax Business Application (ITBA) and by post duly according to provisions of Income Tax Act-1961. Against notice u/s 148 the assessee did not file her return of income within stipulated time.

Subsequently notice u/s 142(1) dated 30-10-2018 was issued and served upon assessee online through Income Tax Business Application (ITBA) and by post duly according to provisions of Income Tax Act-1961.

Due to non-compliance, a reminder was issued online on 15-11-2018. (communication authenticated u/s 282A and served u/s 282 & RULE-127 of IT. Act-1961)

Due to further non-compliance another reminder was issued online on 04-12-2018. (communication authenticated u/s 282A and served u/s 282 & RULE-127 of IT. Act-1961)

Due to further non-compliance another reminder was issued online and by post on 28-12-2018. (communication authenticated u/s 282A and served u/s 282 & RULE-127 of I.T. Act-1961)

Due to further non-compliance a show cause notice u/s 274 r.w.s. 271(1)(b) was issued online and by post on 16.01.2019. (communication authenticated u/s 282A and served u/s 282 & RULE-127 OF I.T. Act-1961). No reply has been submitted. Till date assessee has not complied with notice u/s 142(1) despite being given sufficient time and opportunity of being heard.

Hence a penalty of Rs 10,000 (ten thousand rupees only) is imposed on assessee under section 271(1)(b) of the Income Tax Act-1961. Notice of demand is issued alongwith this order, according to which the demand has to be deposited by the assessee.

This order is issued with seal and signature of the undersigned, (served online and by post)

NOTE: The assessee is required to comply with ALL the terms of the notice u/s 142(1) within a week's time from date of service of this order, otherwise the assessment has to be finalized u/s 144 and suitable penal action may follow according to Income Tax, Act-1961 and Indian Penal Code-1860, This may be treated as a show cause notice before completing the assessment under {44 of Income Tax Act-1961."}

6. It is manifest from the order passed under section 271(1)(b) that the Assessing Officer has recorded the fact that the re-assessment proceedings were initiated by issuing notice under section 148 dated 17.10.2018 but the assessee did not file any return of income within the stipulated time. It is pertinent to note that in the notice under section 148 dated 17.10.2018, the Assessing Officer allowed 30 days' time to the assessee to file the return. For ready reference, the notice issued under section 148 placed at page no. 14 of the paper book is reproduced as under:-

Notice Under Section 148 of the Income Tax Act, 1961/317

Sir, Madam/M/s.

Whereas I have reason to believe that your income chargeable to Tax for the Assessment Year 2014-15 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/re-assess the income/loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the ADL/JCIT, RANGE -1, ALLAHABAD.”

Therefore, the assessee was having the time upto 16.11.2018 to file the return of income in response to the notice under section 148. In the meantime, the assessee has requested the Assessing Officer /DCIT Circle-1, vide letter dated 29.10.2018 to supply the copies of the documents / records including the Audited statements of accounts etc., which were impounded during the course of survey. The said reply placed at page no. 13 of the paper book is reproduced as under:-

“The Deputy Commissioner of Income Tax
Circle-1, Allahabad

Dt. 29.10.2018

Sir,

Re-Request for supply of documents impounded during the course of survey

In reference to above I beg to submit that certain documents / records including my audited statement of accounts etc. were impounded during the course of survey at my business premises on 11.09.2018. The aforesaid documents / records are urgently required for compilation of my income tax returns for the year relevant to the assessment year 2018-19.

2. It is therefore requested to your goodself may kindly supply the copy of aforesaid documents / records.”

7. The Assessing Officer instead of supplying the copies of the impounded materials / documents which includes the Audited statements of accounts and also ignoring the fact that the assessee was having time upto 16.11.2018 to file the return of income issued notice under section 142(1) on 30.10.2018. The copy of the said

notice is placed at page no. 2 of the paper book of the Department whereby the Assessing Officer asked the assessee to furnish on or before 14.11.2018 accounts and information specified in the annexure to the said notice. Once, the assessee has requested the Assessing Officer to give the copies of the impounded material which including the Audited statement of accounts so that the assessee would file the return of income in response to the notice under section 148 and the non supply of the same by the Assessing Officer would certainly makes the assessee handicapped and helpless to comply with the notice under section 142(1) of the Act. Even otherwise, the said notice dated 30.10.2018 issued for all the assessment years taken up for re-assessment under section 147 is premature when the Assessing Officer himself allowed the assessee to file the return within 30 days' from the date of service of notice under section 148 issued on 17.10.2018. The assessee after receiving the notice under section 142(1) filed the reply dated 4.1.2019 mistakenly written as 4.1.2018, which reads as under:-

*"The Deputy Commissioner of Income Tax
Circle-1, Allahabad*

Dt. 4.1.2018 (2019)

Sir,

Re-Compliance to the notice 28/12/2018 issued u/s 142(1) for A.Y. 2014-15, 2015-16, 2016-17 and 2017-18 and request for supply of documents impounded during the course of survey

In connection with above I beg to submit that I have applied for the copy of documents impounded during the course of survey carried out at my hospital premises at 800/603A, Mumfordganj, Allahabad. A copy of application dated 29th October 2018 is enclosed herewith for the perusal of your goodself.

2. As the aforesaid documents is required to compile my returns of income to be filed in compliance to the notice u/s 148 and make the compliance to the notices issued under section 142(1) of the Income Tax Act, 1961. It is therefore requested to your goodself may kindly supply the copy of documents impounded during the course of survey to make the necessary compliance to the notices issued under section 148 and 142(1)."

8. The assessee has reiterated its request to supply the copy of the documents impounded during the course of survey and also made a reference of the earlier application dated 29.10.2018. The Assessing Officer in the meantime ignored the

request of the assessee to supply the copies of the impounded material issued the reminders of notice under section 142(1) on 15th / 16th November, 2018, 4th December, 2018 and 28th December, 2018. The Assessing Officer, then issued a show cause notice under section 274 r.w.s. 271(1)(b) on 16th January, 2019 whereby the assessee was asked to explain till 24th January, 2019, why penalty under section 271(1)(b) should not be levied. The assessee replied to the said show cause notice vide letter dated 30.1.2019 which is not in dispute as the Department has also filed the copies of these replies in the paper book at page nos. 21 to 24. The Assessing Officer has made a note on the reply of the assessee. "This reply was received after the penalty order under section 271(1)(b) was passed." Thus, it is clear that the Assessing Officer has not waited for the reply of the assessee and passed the penalty order within less than two weeks of the issuance of the show cause notice under section 271(1)(b). It appears that the Assessing Officer was in the tearing hurry to impose the penalty under section 271(1)(b) of the Income Tax Act without providing a sufficient opportunity to the assessee to present her case particularly when the time to frame the assessment was available with the Assessing Officer upto 31st December, 2019 and levy the penalty u/s 271(1)(b) upto 31/07/2019. Thus, there was no reason for the Assessing Officer to ignore the reply filed by the assessee and passed the impugned order under section 271(1)(b) less than two weeks from the date of show cause notice issued. The assessee had time and again explained the reasons for not filing the return of income as well as compliance to the notice under section 142(1) as the copies of the impounded material including the Audited financial statements were not supplied to the assessee. This fact is also recorded in the submissions of the assessee before the CIT(A) reproduced at page nos. 3 to 6 as under:-

"That the present appeals are directed against the penalty order dated 30.01.2019 passed u/s 271(1)(b) of the I.T. Act vide which a penalty of Rs. 10,000/- was imposed for each of the aforesaid assessment years against the assessee for the first time in history of the case by alleging that there was non-compliance of notices on certain date. In the present case for all the above assessment years notices u/s 148 of the I.T. Act were issued on 16.10.18 without providing copy of reason so recorded to issue such notice

and even though compliances were made but on 22.02.19 (i.e. within less than 4 months) ex-parte assessments were framed when the time limit for framing the assessment was upto 31.12.19. Further penalty was also imposed by alleging non-compliance which is incorrect as there was no limitation for forming the assessments in 4 months when original returns were already on records. The allegation of non-compliance is at all not correct and for which the assessee is seriously objecting for imposition of such penalty in arbitrary manner. The brief of the case are as under -:

That the assessee is an individual engaged in medical profession from the year 2012 and running a nursing home under the name and style of M/s Ayushi IVF & Laparoscopy Centre (Hospital) and has been filing her returns of income for last more than 25 years. In respect of business activities, regular books of accounts have been maintained and audited too year after year. The assessment records of the assessee in the department from beginning till date are neat and clean in respect of making compliances as a result there was no ex-parte decision nor any penalty under any provisions of the I.T. Act was ever imposed. The returns were always filed in time & taxes were also paid accordingly. In these background imposition of the penalty is totally unjustified and injustice. Details of returns filed for the aforesaid assessment years are as under:

<u>A.Y.</u>	<u>Date of filing return u/s 139(1)</u>	<u>Income Declared</u>	<u>Documents enclosed with the return</u>
2014-15	24.11.2014	Rs. 41,79,180/-	Audit report
2015-16	29.09.2015	Rs. 52,39,450/-	Audit report
2016-17	17.10.2016	Rs. 59,48,360/-	Audit report
2017-18	03.11.2017	Rs. 71,65,970/-	Audit report

That in this way from assessee's side full compliances for the said years were also made as in the past. The said returns were processed and concluded. In the present case a survey u/s 133A of the IT act was conducted on 11.09.2018 at the assessee's business premises and in the course of survey certain papers were round and seized and those papers are neither in assessee's hand writing nor the same bear anybody's signature. Even from perusal of the said papers no final conclusion can be drawn nor the assessee had any such paper earlier nor the same are related with the assessee and the assessee is unaware that who and when such papers were prepared and for what purpose. The said seized papers also does not depict any conclusion of any figures or final accounts nor any corroborative evidences was brought on record in quantum assessment which was also decided ex-parte. According to the assessee the same was the dumb and waste documents only but me assessing officer considered the same by giving too much weightage to such documents uncalled for and made up his mind to penalize the assessee at any cost ignoring the correct facts which cannot be said to be a judicious approach nor a fair justice nor the assessee was provided reasonable and proper opportunity of being heard to defend his case before imposing the penalty in arbitrary manner which is highly unjustified and wrong and therefore the order dated 30.01.2019 passed u/s 271(1)(b) of the IT Act cannot be called to be a judicious order.

That by considering the seized documents the assessing officer issued a notice dated 17-10-2018 u/s 148 of the IT Act online. On receipt of the notice the assessee made repeated requests to the assessing officer to provide copy of reasons so recorded for issue of such notice and to provide copy of seized material. Likewise the assessee also required a copy of the assessee's statement recorded at the time survey but the requests were unheard and till date nothing was provided to the assessee which shows approach and working of the department in present case.

That in compliance to the notices dated 16.10.2018 u/s 148 of the IT Act the assessee filed an application on 29.10.2018 requiring photo copies of the documents seized during the survey, copy of reason if any recorded for issue of the notices u/s 148 of the IT Act and also copy of assessee's statement recorded at time of survey but the department kept silent and provided only copies of few documents only and in spite of assessee's requests copy of reason so recorded for issue of the notice u/s 148 of the IT Act was not provided to the assessee till date and as a result the assessee is unaware that on what basis/ground the proceeding was started. Even the assessee approached the higher authorities also to direct the assessing officer to provide copies, of the aforesaid documents to the assessee but of no use as nothing was done. Sir kindly consider that on 16.10.2018 the notices u/s 148 of the IT Act were issued and on 22.02.2019 assessment was framed and thus in less than 4 months, ex -parte assessments were framed and also penalty was imposed in each of the above mentioned assessment years. Sir, even prosecution proceeding u/s 276CC of the IT Act was initiated but the Hon'ble Allahabad High Court stayed the proceedings. So kindly consider conduct and records of the assessee and also actions of the department which are haste and casual in the eyes of laws. The assessee engaged CA also to look after assessee's interest and tax affair who made compliances of the notices, therefore allegation of non -compliance as made by the Assessing Officer is not correct. In this regard affidavit of the assessee confirming the facts is enclosed.

That from the assessee's side best possible compliances on the basis of available details and documents available with the assessee were made but since the assessing officer failed in providing photo copies of certain documents as mentioned above ignoring the repeated requests of the assessee, therefore the assessee was helpless in furnishing the return u/s 148 of the IT Act though the original returns u/s 139(1) of the IT Act were already filed and are available on record and the assessing officer has also accepted this fact in first line of the assessment orders. More so certain notices were handed over to the counsel for making compliances as all the connected records were with him in his chamber and he was well known to the facts and if he forgot in making compliances to certain notice then for the same assessee should not be penalized for such lapses.

That it is so unfortunate that in spite of the above mentioned facts the assessing officer not only ignored the correct facts rather to cover-up his weakness decided to penalize the assessee at any cost by issuing a show cause notice dated 17.10.2018 u/s 271(1)(b) of the IT Act alleging non-compliance which is unfair and wrong because in

real sense non-compliances was made by the said assessing officer only as he did not provide copies of the reasons If so recorded for issue of the notice u/s 148 of the IT Act as well as copy of the assessee's statement recorded at the time of survey ignoring the assessee's repeated requests. However reply of the show cause notice was filed on 30-01-19 but the assessing officer ignored the same also and without assigning any reason and without providing reasonable and effective opportunity of being heard to the assessee imposed a penalty of Rs. 10,000/- for each of the above mentioned assessment years vide his orders dated 30.01.2019 in arbitrary manner which is highly objectionable, unjustified and wrong, therefore the same is liable to be deleted in all fairness as well as in the facts and circumstances of the case.

That in this regard the assessee reply upon following decisions including the decision of Hon'ble Supreme Court in the case of Hindustan Steel Limited v. State of Orissa (83 ITR 36) where it was held that order imposing penalty for failure to carry out a statutory obligation is the result of quasi criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately. The said order of Hon'ble Supreme Court was followed by various ITAT benches and copies of those decisions are enclosed at page no of the paper book

It is therefore prayed that in the light of submission made above and considering the various decisions penalty as imposed is not correct and liable to be deleted."

9. The assessee has clearly pointed out before the CIT(A) that the Assessing Officer has completed all the proceedings including the assessment within a period of less than four months from the date of issuing notice under section 148 without giving the assessee proper opportunity and supplying the copies of the impounded material. It is also pointed out that the Assessing Officer failed in providing copies of certain documents as mentioned by the assessee in the request filed before the Assessing Officer. The CIT(A) though reproduced the submissions of the assessee in the impugned order however, not appreciated this crucial fact that the assessee has explained the reasonable cause for failure to comply with the notice issued under section 142(1) by way of making the repeated requests to the Assessing Officer to supply the copies of the impounded material. The Assessing Officer has completely ignored the request of the assessee then the question of paying the copying charges or specifying the documents does not arise. The contention of Ld. DR on this point is devoid of merits. Therefore, the case of the assessee falls in the ambit of section 273B of the Income Tax Act, as the assessee has proved that there was a reasonable cause

for failure to comply with the notice issued under section 142(1) of the Act. The decisions relied upon by the learned DR would not help the case of the Revenue in the specific facts of the present case. Accordingly, the penalty levied under section 271(1)(b) for the assessment years 2014-15 to 2016-17 is deleted.

10. For the assessment year 2017-18, the assessee has raised the following grounds:-

“1. That in any view of the matter imposition of penalty of Rs. 10,000/- vide order dated 30/01/2019 by the assessing officer and his action as confirmed by the Commissioner of Income Tax (appeal) is wrong and incorrect when there was no fault of the appellant in any manner as well as past record of the appellant is neat and clean hence penalty is unjustified and illegal.

2. That in any view of the matter in compliance to notices u/s 142(1) of the IT Act, the appellant made compliances all those notices vide his replies hence the allegation of non compliances as made by the assessing officer is totally incorrect as such imposition of penalty is uncalled for as the order passed by lower authorities and confirmed penalty without application of mind.

3. That in any view of the matter a survey u/s 133A of the IT Act was conducted on 11/09/2018 and in the course of survey certain loose papers were seized for earlier years etc and therefore a notice under section 148 of the IT Act dated 18/10/2018 was issued and in compliance to said notice a request in writing vide the letter dated 29/10/2018 was made requiring thereby copies of seized materials, reasons recorded and also statement recorded but the assessing officer failed to provide the copies of the same to the appellant, hence the action of the assessing officer in imposing penalty which was confirmed by the Commissioner of Income Tax (appeal) without considering the facts properly is unjustified, incorrect and illegal.

4. That in any view of the matter before the learned Commissioner of Income Tax (appeal) a voluminous paper book was filed which includes submission, statement, affidavit, copy of the original return, various case laws including the decisions of jurisdictional High Court, Copies of ITAT order, copies of CIT (Appeals) order in other cases but the Commissioner of Income Tax (appeal) failed to consider the materials/evidences with judicious approach hence his action is not a judicious action in the eyes of law and show a fatal flow of laws as such the order confirming the penalty is bad in law.

5. That in any view of the matter in compliance to show cause notice dated 07/02/2019 the appellant's CA made a request to assessing officer for a short adjournment as vide his letter dated 18/02/2019 (date fixed) for short adjournment as his cases are fixed at Lucknow but even request of CA was turned down by the assessing officer and ultimately he imposed the penalty which action is unjustified an unfair hence the penalty is unwarranted.

6. That in any view of the matter without providing the copies of seized materials as sought vide the letter dated 29/10/2018 and 04/01/2019 a complaint under section 276CC of the IT Act was also lodged by alleging non filing of return in compliance to notice

u/s 148 of the IT Act but the Hon'ble Allahabad High Court stayed the prosecution proceeding which facts itself show the arbitrariness action on the part of two lower authorities imposing and confirming the penalty hence such actions are not legal therefore the penalty is unwarranted and therefore liable to be deleted.

7. That in any view of the matter the assessee reserves his right to take any fresh ground before the hearing of appeal."

11. We have heard the learned AR as well as learned DR and considered the relevant materials available on record.

12. The facts leading to levy of penalty under section 271(1)(b) for the year under consideration are identical to the facts for the assessment years 2014-15 to 2016-17 except the fact that the assessment for the assessment year 2017-18 was framed under section 143(3) and not under section 147. The Assessing Officer issued notice under section 142(1) on 30.10.2018, the date when the notice under section 142(1) was issued in the other assessment years also. The assessee has similarly replied to the said notice by requesting the Assessing Officer to provide the copies of the documents and material impounded during the survey. We find that the Assessing Officer ignored the request of the assessee and issued a show cause notice under section 274 r.w.s. 271(1)(b) on 16.1.2019. Thus, till the dates of initiation of penalty proceedings under section 271(1)(b), the Assessing Officer did not supply the documents impounded during the survey. Therefore, this is not a case of issuing notice under section 142(1) prematurely but the show cause notice issued under section 274 r.w.s. 271(1)(b) was without supplying the assessee copies of the impounded material and thereby the assessee could not comply with the notice under section 142(1) of the Income Tax Act. Further, it is evident from the record that for the assessment year under consideration, the Assessing Officer finally supplied the copies of the impounded material only on 28.01.2019 whereas the impugned order under section 271(1)(b) was passed on 30.01.2019. In fact, supplying the copies of the seized document just before passing the penalty order goes to prove that assessee was deprived of the relevant record required for compliance of notice issued under section 142(1) of the Act. Therefore, assessee was having a reasonable cause for non-compliance of the notice under

section 142(1) of the Act for want of the necessary record impounded by the Department and copies of the same was not supplied to the assessee in time so as to do the needful for compliance of notice under section 142(1) of the Act. Accordingly, in the facts and circumstances of the case, we are of the considered view that the assessee was having a reasonable cause for failure to comply with the notice under section 142(1). Hence, in view of our finding on levy of penalty under section 271(1)(b) for the assessment years 2014-15 to 2016-17, the penalty levied under section 271(1)(b) for assessment year 2017-18 is not justified and the same is deleted.

13. In the result, all four appeals of the assessee are allowed.

Order pronounced in the open Court on 25.07.2022.

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER
Date: 25.7.2022
Allahabad
sh

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant- Smt. Amita Rajvedi
2. Respondent-DCIT, Circle-1, Allahabad
3. CIT(A)
4. CIT
5. DR

By order
Sr. P.S.