

आयकर अपीलिय अधिकरण
मुंबई पीठ " एच "

श्री प्रमोद कुमार, उपाध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " H", MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 1206/मुं/2022 (नि.व .2013-14)
ITA NO.1206/MUM/2022(A.Y. 2013-14
आअसं.1207/मुं/2022 (नि.व .2014-15)
ITA NO.1207/MUM/2022(A.Y. 2014-15)

Hardik Shah,
Flat No.502, Starling Heritage,
Plot No.388, Shankar Mattam Road,
Matunga (C), Mumbai – 400 019.

PAN: AVQPS-5161-F

..... अपीलार्थी /Appellant

बनाम Vs.

Commissioner of Income Tax (A)-50, Mumbai,
3rd Floor, Earnest House, NCPA Marg,
Nariman Point, Mumbai – 400 021.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Haresh Joshi

प्रतिवादी द्वारा/Respondent by : Shri Tejinder Pal Singh

सुनवाई की तिथि/ Date of hearing : 10/08/2022

घोषणा की तिथि/ Date of pronouncement : 10/08/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These appeals by the assessee are directed against the orders of Commissioner of Income Tax(Appeals)-50 , Mumbai [in short 'the CIT(A)'] for the assessment years 2013-14 and 2014-15, respectively. Both the impugned orders are of even date i.e. 28/03/2022. The facts in both appeals are identical,

therefore, these appeals are taken up together and decided by this common order.

2. Shri Haresh Joshi appearing on behalf of the assessee submitted that the assessee had filed return of income for the impugned assessment years in response to notice under section 153A of the Income Tax Act, 1961 [in short 'the Act']. After completion of assessment under section 153A of the Act, penalty proceedings under section 271(1)(c) of the Act were initiated and notice under section 274 r.w.s. 271 of the Act was issued to the assessee for respective assessment years. The Assessing Officer levied penalty under section 271(1)(b) of the Act levying penalty of Rs.10,000/- for non-compliance of notice issued under section 142(1) of the Act. The Id.Authorized Representative of the assessee submitted that penalty under section. 271(1)(b) of the Act for similar reasons were levied for assessment years 2015-16 to 2019-20. The penalty were confirmed by the CIT(A). The assessee carried the issue in appeal before the Tribunal in ITA No.1208 to 1212/Mum/2022. The Tribunal vide order dated 29/06/2022 deleted the penalty. The Id.Authorized Representative of the assessee submitted that in the impugned assessment years the reasons for non-appearance before the Assessing Officer is identical. The Id.Authorized Representative of the assessee prayed for deleting the penalty levied under section 271(1)(b) of the Act for the assessment years 2013-14 and 2014-15.

3. Shri Tejinder Pal Singh representing the Department vehemently defended the impugned order for the respective assessment years and prayed for upholding the same and dismissing the appeals of the assessee.

4. Both sides heard, orders of authorities below examined. The Assessing Officer vide order dated 20/02/2021 levied penalty of Rs.10,000/- under section 271 (1)(b) of the Act for non-compliance of the notice issued under section 142(1) of the Act. In the impugned assessment years, non-appearance/non-compliance of notice issued under section 142(1) of the Act has been attributed to unprecedented situation caused by COVID-19 Pandemic. We find that the Co-ordinate Bench of the Tribunal in assessee's own case while adjudicating assessee's appeals for assessment year 2015-16 to 2019-20 against the order confirming levy of penalty under section 271(1)(b) of the Act deleted the penalty by observing as under:

“ 4. A perusal of the submissions which was rendered before the Assessing Officer and Id. CIT(A), as incorporated in the appellate order, shows that the assessee had stated that, due to pandemic situation of Covid-19, the movement and attendance of the staff of authorised representatives and Chartered Accountant's was seriously affected. There was practical difficulty in all these appeals as either the staff or their family members were infected with Covid and, therefore, even if part compliance was made, it was not a case for levy of penalty under Section 271(1)(b) of the Act.

5. Once the assessee has given such a reason and during that time the entire country was going through the pandemic situation of Covid-19 restrictions and despite that, assessee has made part compliance and later on, assessment has been completed under Section 153A/143(3) of the Act, then we do not find any reason as to why such a harsh step of initiating and levying of penalty under Section 271(1)(b) of the Act should be imposed for part non-compliance. In fact, the Hon'ble Supreme Court taking cognisance of the pandemic situation had extended the time limit from 15.03.2020 till 28.02.2022 though for the purpose of limitation. Now, the Assessing Officer is alleging that the assessee did not fully comply with notices dated 09.01.2021 and 01.02.2021 and even the Id. CIT(A) did not find it to be reasonable cause, which in our opinion is a too stringent view under these circumstances. Accordingly, we hold that there was sufficient reasonable cause within the ambit and scope of Section 273B of the Act and, therefore, penalty levied under Section 271(1)(b) of the Act of Rs.10,000/- in all the assessment years is directed to be deleted.”

5. For parity of reasons impugned orders are set-aside and penalty order under section 271(1)(b) of the Act are deleted.

6. In the result, appeal by assessee in ITA No.1206 &1207/Mum/2022 for assessment years 2013-14 and 2014-15, respectively are allowed.

Order pronounced in the open court on Wednesday the 10th day of August, 2022.

Sd/-

(PRAMOD KUMAR)

उपाध्यक्ष/VICE PRESIDENT

मुंबई/ Mumbai, दिनांक/Dated 10/08/2022
 Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/
 Sr.Private Secretary
 ITAT, Mumbai