

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA Nos.241&242/VNS/2019
Assessment Years: 2015-16 & 2016-17**

M/s Resham Vastralaya Pvt. Ltd., Shah Gopal Das Lane, Chowk, Varanasi, U.P. PAN-AADCR2921D (Appellant)	v.	Sh. G.L. Nagar, Income Tax Officer, Ward-1(1), Varanasi (Respondent)
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Appellant by:	Sh. A.K. Pandey, Advocate
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	22.08.2022
Date of pronouncement:	25.08.2022

ORDER

PER VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against the composite order dated 25.04.2019 arising from the penalty orders passed under section 271(1)(b) of the Income Tax Act for the assessment years 2015-16 and 2016-17, respectively.

2. The assessee has raised the common grounds in these appeals. The grounds raised for the assessment year 2015-16 are as under:-

“1. Because on the facts and in the circumstances of the case the Ld. A.O. erred for confirming the penalty u/s. 271(1)(b) of the Income Tax Act, 1961 amounting to Rs. 10,000/- as imposed by the Ld. A.O.

2. Because on the facts and in circumstances of the case the order passed by the authority below is bad in law, invalid, against the principle of natural justice and equity.”

3. The learned AR of the assessee has submitted that for the assessment year 2015-16, the Assessing Officer has levied the penalty under section 271(1)(b) for non compliance of notice under section 143(2) whereas the assessee has fully complied with all the notices issued by the Assessing Officer. He has referred to the order passed by Assessing Officer under section 143(3) dated 11.12.2017 and submitted that the Assessing Officer himself has stated in the order that in compliance to the notice issued under section 143(2)/142(1) the representatives of the assessee appeared from time to time and filed reply and details and also produced bills and vouchers which have been examined by the Assessing Officer at length. Therefore, the penalty levied by the Assessing Officer under section 271(1)(b) is not justified and liable to be quashed.

4. On the other hand, the learned DR has submitted that the Assessing Officer has stated in the penalty order dated 29.03.2018 that the assessee has not complied with the notice issued under section 143(2) as neither anybody appeared nor adjournment application was received by the Assessing Officer in response to the notice under section 143(2) of the Act and consequently the Assessing Officer has levied the penalty under section 271(1)(b) of the Act.

5. We have considered the rival submissions as well as relevant material on record. At the outset, we note that the Assessing Officer in the assessment order passed under section 143(3) has recorded the facts of issuing the notice as well as response on behalf of the assessee at page no. 1 and 2 as under:-

“Return of income was filed on 22.09.2015 and declaring income of Rs. 5,72,390/-. The case was selected for scrutiny under limited category. Consequently, a notice u/s 143(2) of the Income Tax Act dated 07.04.2016 was issued and duly served on the assessee fixing the date of compliance for 25.04.2016. Further notices u/s 142(1) of the Income Tax Act, 1961 were issued on dated 10.02.2017, 28.04.2017, 15.06.2017 and 06.11.2017 duly served upon the assessee. In compliance to said notices u/s 143(2)/142(1) Shri Ajeet Kumar Sarraf FCA and Sh. A.C. Bhardwaja, Advocate, appeared from time to time filed reply and details, produced bills and vouchers, which

have been examined at length. Necessary verification have been made in this regard. Reply and details filed by the assessee find placed on record and the case was discussed.”

6. From the assessment order itself, it is clear that in compliance to the notices issued under section 143(2)/142(1) Sh. Ajeet Kumar Sarraf FCA and Sh. A.C. Bharadwaja, Advocate appeared from time to time and filed reply and details as well as produced bills and vouchers. These details and evidence produced by the assessee were also examined by the Assessing Officer at length. Thus, from the assessment order, it is manifest that there was a due compliance by the assessee to the notices issued under section 143(2)/142(1) of the Act and further the Assessing Officer has also not recorded any satisfaction in the assessment order for initiating the penalty under section 271(1)(b) of the Income Tax Act. In view of the above facts as recorded by the Assessing Officer in the assessment order itself, the penalty levied by the Assessing Officer under section 271(1)(b) for the assessment year 2015-16 is not justified and the same is deleted.

Assessment Year:2016-17

7. For the assessment year 2016-17, the learned AR of the assessee has submitted that the Assessing Officer after considering the reply and explanation of the assessee has passed the assessment order accepting the return income and not made any addition. He has referred to the assessment order passed under section 143(3) on 29.11.2018 and submitted that the assessee complied with the notice issued by the Assessing Officer under section 142(1) and after considering the reply of the assessee, the Assessing Officer has framed the assessment on the returned income itself. Thus, when the Assessing Officer has accepted the reply of the assessee, then the penalty levied under section 271(1)(b) of the Act is not justified and the same may be deleted.

8. On the other hand, learned DR has submitted that the assessee has not complied with the notice issued under section 143(2) and consequently the Assessing Officer initiated the penalty proceedings under section 271(1)(b) by issuing show cause notice dated 4th October, 2018. The Assessing Officer levied the penalty under section 271(1)(b), vide order dated 26.10.2018 and only after the said order dated 26.10.2018, the assessee furnished its reply online on 12th November, 2018. Therefore, the compliance, if any was made by the assessee only after the order under section 271(1)(b) was passed by the Assessing Officer. He has relied upon the orders of the Assessing Officer and CIT(A).

9. We have considered the rival submissions as well as relevant material on record. The Assessing Officer has levied the penalty for the assessment year 2016-17 under section 271(1)(b), vide order dated 26th October, 2018 as under:-

"In the case of the assessee, scrutiny assessment is under process. During the course of assessment proceedings, several statutory notices u/s 143(2) & 142(1) were issued to the assessee, the details of which given as under:-

<i>Date of issue</i>	<i>Date of compliance</i>	<i>Remark</i>
<i>10.08.2017</i>	<i>22.08.2017</i>	<i>Not complied</i>
<i>10.05.2018</i>	<i>29.05.2018</i>	<i>Not complied</i>
<i>04.06.2018</i>	<i>06.06.2018</i>	<i>Not complied</i>
<i>04.09.2018</i>	<i>11.09.2018</i>	<i>Not complied</i>

Since the assessee failed to comply with statutory notices, a show cause notice u/s 271(1)(b) dated 04.10.2018 issued to the assessee fixing the date of compliance on 12.10.2018, requiring to explain as to why penalty u/s 271(1)(b) not imposed on him. But thereafter neither assessee attended nor any compliance to the statutory notices made.

2. From the above, it is clear that the assessee has nothing to say for the default of making non compliance of the above mentioned statutory notices. Since the assessee has not offered any explanation for his non cooperative attitude towards assessment proceedings as well as proceedings u/s 271(1)(b) of the I.T. Act. I have no option but to complete the penalty proceedings treating the assessee being in willful default for non compliance of statutory notices. Considering the facts and circumstances of the case, I impose a penalty of Rs. 10,000/- u/s 271(1)(b) of the I.T. Act, 1961.

3. *Issue notice of demand and challan.*”

10. From the above penalty order, it is manifest that the Assessing Officer levied the penalty for non compliance of the notice issued under section 143(2) and 143(1). The Assessing Officer has not specified in the order as against which notice, whether issued under section 143(2) or 143(1), the penalty was levied. We further note that in the assessment order, the Assessing Officer has recorded the fact that in compliance to notice under section 142(1), the assessee furnished reply online alongwith audit report under section 44AB computation of income, balance-sheet , profit & loss account and details of interest claimed during the year. The assessee also furnished the details regarding monthly opening and closing stock as well as ledger copy of interest paid and interest received. After considering these details and explanation filed by the assessee in compliance to the notice issued under section 142(1), the Assessing Officer framed the assessment of return of income as under:-

“Assessee is engaged in the business of whole sale business of textiles and its made up. Return of income declaring total income of Rs. 4,45,460/- was e-filed by the assessee on 17/09/2016. The case was selected for limited scrutiny through CASS. Notice u/s 143(2) of the Income Tax Act, 1961 was issued and served upon the assessee’s e-mail address on 10/08/2017. Further notices u/s 142(1) of the I.T. Act 1961 were issued on 10/05/2018, 04/06/2018, 04/09/2018 respectively and no compliance were made. Further a show cause notice dated 04/09/2018 was issued and date fix for compliance on 12/10/2018 but no compliance has been made by the assessee. Therefore penalty of Rs. 10,000/- u/s 271(1)(b) has been imposed on 26.10.2018. In compliance to notices u/s 142(1) assessee furnished its reply online on 12/11/2018 alongwith Audited Report u/s 44AB, Computation of income, Balance-sheet, P&L account and details of interest claimed during the year and ledger copy of interest paid & interest received. Assessee also furnished details of monthly opening and closing stock.

The case was selected for limited scrutiny to verify the issue “Whether sales turnover/receipts has been correctly offered for tax and whether deduction claimed on account of interest expenses is admissible”.

The case is examined on these issues and in this case the provision for payment of tax u/s 115JB attracted @18.5% on total income of Rs. 2365873/-.

As the assessee filed Form No. 29B for computing the book profits of the company therefore, assessee is completed on the returned income i.e. Rs. 4,45,460/-."

11. Thus, it is clear that initially there was no compliance on behalf of the assessee to the notice issued under section 143(2) and 142(1) of the Income Tax Act but subsequently, the assessee furnished its reply on 12.11.2018 alongwith audit report as well as all the requisite details as recorded by the Assessing Officer in the assessment order. The Assessing Officer was satisfied with the reply as well as the details and record produced by the assessee. Therefore, though the assessee made the compliance belatedly but it was prior to the assessment order and the Assessing Officer was satisfied with the reply and supporting evidence produced by the assessee and consequently the assessment was framed on the returned income.

12. In view of the above facts and circumstances of the case, when the assessee made the compliance which was accepted by the Assessing Officer while passing the assessment order, the penalty levied under section 271(1)(b) of the Income Tax Act is not justified and the same is deleted.

13. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 25.08.2022 at Varanasi, U.P.

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 25/08/2022

Varanasi

Sh

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant-M/s Resham Vastralaya Pvt. Ltd.
2. Respondent-Sh. G.L. Nagar, ITO, Ward-1(1), Varanasi
3. CIT(A),Varanasi
4. CIT
5. DR

By order
Sr. P.S.