

INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 134, 135, 136, 137, 138, 139 & 140/Srt/2022
(Assessment Years: 2012-13 to 2018-19)

(Hearing in Virtual Court)

Jayantilal Arjunbhai Patel, 37, Shreeji Plaza, Opera House, Mumbai-400004. PAN No. ADWPP 0386 P	Vs.	D.C.I.T., Central Circle-1, Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri P.M. Jaggasheth, CA
Respondent represented by	Shri Vinod Kumar Sr. DR
Date of hearing	26/09/2022
Date of pronouncement	26/09/2022

Order under section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. These set of seven appeals by the single assessee are directed against the separate orders of the learned Commissioner of Income Tax (Appeals)-4, Surat [in short, the ld. CIT(A)] all dated 25/02/2022 for the Assessment years (AY) 2012-13 to 2018-19 respectively.
2. In all these appeals, certain facts are common, the assessee has raised common grounds of appeal, therefore, with the consent of parties, all the appeals were clubbed, heard

together and are decided by this consolidated order to avoid the conflicting decision. In the appeals for A.Y. 2012-13 to 2016-17, the assessee has challenged the validity of penalty levied under Section 271(1)(b) of the Income Tax Act, 1961 (in short, the Act) and in appeals for A.Y. 2017-18 and 2018-19, the assessee has challenged the penalty levied under Section 272A(1)(d) of the Act. For appreciation of fact, the appeal in ITA No. 134/Srt/2022 for A.Y. 2012-13 is treated as **'lead'** case, wherein, the assessee has raised following grounds of appeal:

- “1. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing Officer in levying penalty of Rs. 10,000/- U/s 271(1)(b) of the I.T. Act, 1961.*
- 2. It is therefore prayed that the above penalty may please be deleted as learned members of the tribunal may deem it proper.*
- 3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”*

3. Brief facts of the case are that a search and seizure action under Section 132 of the Act was carried out on 23/01/2018 against Shri Sanjay A. Patel, who was dealing with various

'Crypto Currency'. In the course of search action, details of bank account pertaining to assessee were also found. Consequent upon such search, notice under Section 153C was issued to the assessee on 24/09/2019. In response to notice under Section 153C, the assessee filed his return of income on 15/10/2019 declaring income of Rs. 4,44,170/-. The assessment was completed on 07/06/2021 accepting the returned income vide assessment order dated 07/06/2021 under Section 143(3) r.w.s. 153C of the Act.

4. The Assessing Officer initiated and levied penalty under section 271(1)(b). The assessing officer while passing the penalty order under Section 271(1)(b) recorded that during the assessment proceedings, notice under Section 142(1) dated 03.12.2020 was issued to the assessee for calling certain details. The Assessing Officer further noted that vide notice dated 03/12/2020, the date of compliance was fixed on 16/12/2020. The assessee sought adjournment and the date was fixed for compliance on 04/1/2021. On 04/01/2021, the case was further adjourned to 11/01/2021. The assessee

defaulted in making compliance of notice dated 03/12/2020. The Assessing Officer issued notice under Section 274 r.w.s. 271(1)(b) of the Act dated 23/01/2021 asking the assessee as to why penalty be not levied for non-compliance of notice under Section 142 of the Act. The assessee filed its reply as recorded in para 4 of penalty order. In the reply, the assessee stated that in the said notice, the assessee requested to provide reasons for issuing direction for Special Audit under Section 142(2A). The said notice was received on 02/12/2020 which was the last month of audit. The Accountant of assessee was busy in audit work and due to pandemic of Covid-19, everybody was taking due caution for safety measures. Tax audit period was finished on 15/01/2021 and immediately, reply was prepared with necessary details and filed before assessing officer. The reply of assessee was not accepted by the Assessing Officer. The Assessing Officer in para 5 of his order, recorded that vide notice dated 03/12/2020, the assessee was required to response by 16/12/2020, the assessee was given sufficient time but no response was made.

The Assessing Officer levied penalty of Rs. 10,000/- vide order dated 01/02/2021.

5. Aggrieved by the order of Assessing Officer, in levying penalty, the assessee filed appeal before the ld. CIT(A). Before the ld. CIT(A), the assessee stated that consequent upon search on Shri Sanjay A. Patel, notice under Section 153C was issued to the assessee. The assessee made compliance of notice under Section 153C of the Act and filed return of income. Assessment under Section 143(3) r.w.s. Section 153C was completed on 07/06/2021, in accepting return of income. During the assessment, the assessee furnished all necessary details as well as complied with all the notices issued by the Assessing Officer from time to time. For non-compliance of notice of hearing on 03/12/2020, the assessee filed adjournment application on 28/12/2020. The delay in filing such adjournment application was due to Covid-19 pandemic and every one was undertaking proper safety measures. The auditor of assessee was having work load of audit work due to Covid-19 pandemic. Such action should not be considered as

non-compliance. The assessee cooperated in assessment and replied all the questions and attended hearing. It is not the case that the assessment was completed under Section 144 for non-compliance. Once the assessment is completed and no addition is made, non-compliance is deemed to have been waived. The assessee relied on various case laws.

6. The Id. CIT(A) was considering the submissions of assessee has held that merely because complete details were filed by assessee during the assessment proceedings will not mitigate the default committed twice. Further, because the assessment was completed under Section 143(3) r.w.s. 153C of the Act, such act will not exonerate the assessee in defaulting to appear before the Assessing Officer on two occasions. The Assessing Officer has levied penalty only for one default. With the aforesaid observation, the Id. CIT(A) held that he is of the opinion that the said default was willful and deliberate and upheld he penalty of Rs. 10,000/- levied under Section 271(1)(b) of the Act. Further aggrieved, the assessee has fled the present appeal before this Tribunal.

7. We have heard the submissions of the learned authorised representative (ld. AR) of the assessee and the learned Senior Departmental Representative (ld. Sr. DR) of the Revenue and have also perused the orders of the lower authorities carefully. The ld. AR of the assessee submits that the assessee has made full compliance during the assessment for all the assessment years. The assessment was completed under Section 143(3) r.w.s. 153C of the Act in accepting the returned income in all the years. The Assessing Officer levied penalty for non-compliance of notice dated 03/12/2021, despite the fact that the Assessing Officer himself allowed the adjournment on the application of assessee and adjourned the case for 04/01/2021 and again on 11/01/2021. Thus, no cause of action for levying penalty were survived. The assessee furnished complete details which was accepted and no variation in the returned income for all the assessment years was made by Assessing Officer.
8. The ld. AR for the assessee submits that in December, 2020 and January, 2021 it was the pandemic period of severe

Covid-19 infection. The Hon'ble Supreme Court in *suo moto* writ petition No. 3 of 2020, vide order dated 23/09/2021, which was which was extended from time to time it was directed for extension of period of limitation for compliance of various statutory provisions or for taking any remedial action, copy of order is placed on record. The ld. AR submits that due to Nation-wide severe pandemic infection, the assessee as well as his representative was taking proper care and caution and this fact was informed to the lower authorities. The assessee has shown sufficient cause within the meaning of Section 273B and no penalty was leviable. Even then the lower authorities levied the penalty under Section 271(1)(b) of the Act. The ld. AR submits that the Coordinate Benches of the Tribunal in a series of decisions held that when the assessment has been made under Section 143(3) and not under Section 144, it means that subsequent compliance in the assessment proceedings was considered as a copy of compliance and the defaults committed earlier were ignored by the Assessing Officer and therefore, there is no cause for levy

of penalty under Section 271(1)(b) of the Act. To support his submission, the ld. AR has relied upon the following decisions:

- ❖ Sanskruti Mega Structure Pvt. Ltd. Vs DCIT ITA No. 28/Srt/2018 order dated 19/05/2021,
- ❖ Shri Puremswarup Jethabhai Patel Vs ACIT ITA No. 2658 to 2664/Ahd/2016 order dated 19/01/2018,
- ❖ Smt. Devyaniben P Patel Vs ACIT ITA No. 2658 to 2664/Ahd/2016 order dated 19/01/2018,
- ❖ Akhil Bhartiya Prathmik Shmshak Sangh Bhagwan Trust Vs ACIT (2008) 115 TTJ 419 (Delhi),
- ❖ Shibani Malhotra Vs ACIT 2022 ITL 409 (Delhi Trib),
- ❖ Smt. Swati Jigneshjain Vs ITO ITA No. 1971/Mum/2021 order dated 14/06/2022.

9. On the other hand, the ld. Sr. DR for the revenue supported the orders of lower authorities.

10. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities. We have also deliberated upon the various case laws relied by the ld. AR of the assessee including the decision of Hon'ble Supreme Court in Suo Moto Writ Petition No. 3/2020. We find that the Assessing Officer finalised the assessment order on 07/06/2021. While finalizing the assessment order, no

variation in the returned income was made, thus accepted the return income. Moreover, the assessment was completed under Section 143(3) r.w.s. 153C of the Act. The Assessing Officer before levying penalty issued notice under Section 274 r.w.s. 271(1)(b) dated 23/01/2021. In response to said show cause notice, the assessee specifically submitted that there is Covid-19 pandemic and everybody is doing work with safety measures and that his Accountant were busy in audit work. The reply of assessee was not accepted. The Assessing Officer levied penalty for non-compliance of notice dated 03/12/2020. In our view, the assessee has shown sufficient cause within the meaning of Section 273B in response to reply of show cause notice, therefore, no penalty under Section 271(1)(b) of the Act was leviable and the assessee is liable to succeed on this ground alone.

11. We have further noted that the notice dated 03/12/2020 was issued to the assessee. In response to said notice, the assessee sought adjournment on 28/12/2020. The adjournment was allowed to assessee and on the request of assessee, the

hearing of the case was fixed on 04/01/2021. In our view, once the Assessing Officer himself allowed adjournment, the cause of action for non-compliance was waived on that moment itself.

12. We find that the ld. CIT(A) while confirming the action of Assessing Officer proceeded one step further and held that the assessee committed two defaults. In our view, the observation of ld. CIT(A) is contrary to the record and with the contents of order of penalty under Section 271(1)(b) of the Act. As recorded above, the assessee has shown sufficient cause for non-compliance, moreover, such non-compliance was done by granting adjournment by the Assessing officer himself. Further considering the decision in various case laws relied by the ld. AR of the assessee wherein it was held that when the assessment was framed under Section 143(3), merely because the assessee could not make compliance for single hearing due to bonafide reason on the penalty under Section 271(1)(b) of the Act cannot be imposed on the assessee for such bonafide default due to reasons beyond his control. In view of aforesaid

factual and legal position, we direct the Assessing Officer to delete the impugned penalty. In the result, ground of appeal raised by assessee is allowed.

13. In ITA No. 135 to 138/Srt/2022 for the A.Y. 2013-14 to 2016-17, the facts are identical. The Assessing Officer levied penalty with similar reasons. Considering our decision in ITA No. 134/Srt/2022 for the A.Y. 2012-13, the penalties in all the appeals are deleted.

14. In ITA No. 139 & 140/Srt/2022 for the A.Y. 2017-18 and 2018-19, the Assessing officer levied penalty under Section 272A(1)(d) of the Act. We noted that the provisions of Section 272A(1)(d) of the Act are *pari materia* with the provisions of Section 271(1)(b) of the Act. The Assessing officer levied the penalty for alleged non-compliance of notice dated 21/12/2020 as levied in earlier years which we have already deleted. Therefore, considering the principle of consistency, the penalty under Section 272A(1)(d) of the Act for both the years are also deleted.

15. In the result, all these appeals of the assessee are allowed.

Order pronounced in the open court on 26th September, 2022 in open court and result was also placed on notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 26/09/2022
**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat