

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

ITA No. 141, 142, 143, 144, 145, 146 & 147/Srt/2022
(Assessment Years: 2012-13 to 2018-19)

(Hearing in Virtual Court)

Akash Maganlal Patel, 174, Shree Gadhpur Township, Pasodara Gam, TA-Kamrej, Surat-395206. PAN No. BHVPP 6740 B	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 Id. CIT(A)] all dated 24/03/2022 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 consolidate 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. 141/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 the assessee, who was engaged in dealing with various Crypto Currencies. The assessee is one of the person of the group indulging in Crypto Currency. Consequent upon said search and incriminating material, notice under Section 153A was issued to the assessee on 30/05/2019. In response to notice under Section 153C, the assessee filed his return of income on 29/06/2019 declaring/offering income of Rs.1,81,450/-. The assessment was completed on 24/08/2021 accepting the returned income of the assessee

under Section 143(3) r.w.s. 153A of the Act. The Assessing Officer while passing the penalty order under Section 271(1)(b) of the Act had recorded that during the assessment proceedings, notice under Section 142(1) was issued to the assessee for calling certain details. The Assessing Officer initiated and levied penalty under section 271(1)(b). The assessing officer while passing impugned order noted that vide notice dated 02/12/2020, the date of hearing for compliance was fixed on 14/12/2020, the assessee sought adjournment and the date was fixed for compliance on 01/1/2021. On 01/01/2021, the case was further adjourned to 11/01/2021. The assessee defaulted in making compliance of notice dated 02/12/2020.

4. 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(1) of the Act. The assessing officer recorded that no reply was filed by the assessee. The Assessing Officer in para 5 of his order, recorded that vide notice dated 02/12/2020 and 17/12/2020, the assessee was required to response by 14/12/2020 and 28/12/2020, the assessee was given sufficient time but no response was made. The Assessing Officer levied penalty of Rs. 20,000/- vide order dated 02/02/2021.

5. Aggrieved by the order of Assessing Officer, in levying penalty, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee stated that consequent upon search on assessee, notice under Section 153A was issued to the assessee. The assessee made compliance of notice under Section 153A of the Act and filed return of income. Assessment under Section 143(3) r.w.s. Section 153C was completed on 24/08/2021, 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 02/12/2020, the assessee filed adjournment application on 14/12/2020 and again of notice of hearing on 17/12/2020, 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 doing work after taking 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 operated 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) after 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. 153A 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 for two defaults. The Id. CIT(A) held that he is of the opinion that out of Rs. 20,000/- penalty levied by the Assessing Officer is on higher side and he Id. CIT(A) upheld the penalty of Rs. 10,000/- levied under Section 271(1)(b) of the Act. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

7. We have heard the submissions of the learned authorised representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) of the Revenue and have also perused the orders of the lower authorities carefully. The Id. 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. 153A of the Act in accepting the returned income in all the years. The Assessing Officer levied penalty for non-compliance of notice dated 02/12/2021, despite the fact that the Assessing Officer

himself allowed the adjournment application of assessee and adjourned the case for 01/01/2021 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 Id. AR for the assessee submits that in December, 2020 and January, 2021 was the pandemic period of severe Covid-19 infection. The Hon'ble Supreme Court in suo moto writ petition vide order dated 23/09/2021 which was extended from time to time directed for extension of period of limitation for compliance of various statutory provisions. The Id. AR submits that due to nationwide 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 Id AR for the assessee submits that before Id CIT(A), the assessee filed his detail submissions and has shown sufficient cause within the meaning of Section 273B. The Id. AR submits that the Coordinate Bench 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 Id. 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) and
- Smt. Swati Jigneshjain Vs ITO ITA No. 1971/Mum/2021 order dated 14/06/2022.

9. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities. The Id Sr DR for the revenue submits that the Id CIT(A) has already granted half of the relief to the assessee.

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 Id. 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 24/08/2021 under section 143(3) rws 153A. While finalizing the

assessment order, no variation in the returned income or assessed income was made in four assessment orders. Moreover, the assessment was completed under Section 143(3) r.w.s. 153C of the Act. We find that before Id CIT(A) the assessee specifically contended that there was severe Covid-19 pandemic during the relevant period and everybody is doing work with safety measures and that his Accountant were busy in audit work. The submissions of assessee was not accepted as bonafide explanation with the scope of section 273B. Though, the Assessing Officer levied penalty for two default, however, the Id CIT(A) restricted it to one default only. In our view, the assessee has shown sufficient cause within the meaning of Section 273B in his submissions before Id CIT(A) and the Id CIT(A) ought to have accepted the same. In our view the assessee has shown sufficient cause within the scope of section 273B of the Act.

11. We have further noted that the notice dated 02/12/2020 was issued to the assessee. In response to said notice, the assessee sought adjournment on 14/12/2020. The adjournment was allowed to assessee and on the request of assessee, the hearing of the case was fixed on 01/01/2021 and again for 11.01.2021. In our view, once the Assessing Officer himself allowed adjournment, the cause of action for non-compliance was waived on that

moment itself. In our view, the action of Id. CIT(A) in confirming the penalty for one default is also liable to be set aside.

12. As recorded above, the assessee has shown sufficient cause for non-compliance before Id CIT(A). The Id CIT(A) was having co-terminus power thus, he ought to have deleted the entire penalty levied under section 271(1)(b) or 272A(1)(d). We find that the assessee has relied on various case laws, wherein coordinate benches of Tribunal have taken view 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. 142 to 145/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. 141/Srt/2022 for the A.Y. 2012-13, the penalties in all the appeals are deleted.

14. In ITA No. 146 & 147/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 02/12/2020 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