

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'H' NEW DELHI**

**BEFORE DR. BRR. KUMAR, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

**I.T.A. No. 7247/DEL/2019 (A.Y 2016-17)**

UKG Securities Pvt. Ltd. 101/17, Commercial Complex, Meera Tower, Wazirpur Industrial Area, New Delhi – 110 052 PAN AAACU0517F	Vs.	ITO Range : 27(1), New Delhi
<b>Appellant</b>		<b>Respondent</b>

<b>Appellant by</b>	<b>Shri Shailesh Gupta, Adv.</b>
<b>Respondent by</b>	<b>Shri Vivek Vardhan, Sr. DR</b>

<b>Date of Hearing</b>	<b>13.10.2022</b>
<b>Date of Pronouncement</b>	<b>19.10.2022</b>

**ORDER**

**PER YOGESH KUMAR US, JM**

This appeal is filed by the assessee for assessment year 2016-17 against the order of the Id. Commissioner of Income Tax (Appeals)-9, New Delhi [hereinafter referred to as CIT (Appeals)] dated 17.06.2019.

2. The assessee has raised the following grounds of appeal:-

1. *“That the Ld. CIT (A) has erred in law and on facts in arbitrarily and mechanically confirming the levy of penalty by Id. AO u/s 271 (1 )(b) of the Income Tax Act, 1961 of Rs. 10,000/-.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in fact and in law in upholding levy of penalty u/s 271 (1 )(b) of the Act, without appreciating the submission of the appellant that non compliance of notice issued u/s 142(1) of the Act, was not deliberate and due to reasonable cause and therefore provisions of section 273B of the Act is applicable in the case of the appellant.*
3. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in fact and in law in upholding levy of penalty u/s 271 (1 )(b) of the Act, despite the fact that assessment order has been framed u/s 143(3) instead of 144 of the Act which implies that subsequent compliances made by the appellant were considered as good compliance and the defaults committed earlier were ignored by the AO himself.*
4. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in fact and in law in upholding the penalty order under section 271(1 )(b) of the Act as valid while' the said penalty order was passed without recording mandatory satisfaction in the assessment order.”*

3. Brief facts of the case are that the assessee has filed its return for the assessment year 2016-17 declaring loss of Rs. 9,69,342/-. The case was selected for limited scrutiny under section 143(2) of the Act and notice was duly served on the assessee company. Notice under section 142(1) of the Act along with detailed questionnaire was issued to the Assessee, but as per the Ld. AO no response from or on behalf of the assessee company has been filed. Since the assessee has not complied with the statutory notice without any reasonable cause, the Ld. AO has initiated penalty proceedings under section 271(1)(b) of the Act. The Ld. AO has imposed penalty of Rs. 10,000/-under

section 271(1)(b) of the Act vide penalty order dated 1.8.2018. As against the penalty order dated 01.08.2018, the Assessee has preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 17.06.2019, dismissed the appeal of the assessee by confirming the penalty order passed under section 271(1)(b) of the Act.

4. Aggrieved by the order dated 17.07.2018, passed by the Ld. CIT(A), the assessee has preferred the present appeal on the grounds mentioned above.

5. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) has mechanically confirmed the levy of penalty and drawn our attention that the assessment order has been framed under section 143(3) instead of 144 of the Act which implies that the assessee has made subsequent compliance which has been considered as good compliance and the default of non compliance of the notice committed earlier by the assessee were ignored by the AO himself. Therefore submitted that the Ld. AO and the Ld. CIT(A) have committed an error in passing the penalty order and confirming the same. Per contra the Ld. DR has relied on the orders of the lower authorities.

6. We have heard the parties, perused the material on record and gave our thoughtful consideration.

7. It is not in dispute that notice under section 142(1) of the Act along with the questionnaire has been issued, but the assessee has failed to file any reply in response to the said notice. It is also not in dispute that the assessment order has been passed under section 142(1) of the Act not under section 144 of the Act, wherein the Ld. A.O. considering the subsequent compliance made by the assessee and by considering the said compliance as good compliance, ignored the default committed earlier. The said fact has been corroborated with the assessment order dated 22.11.2018 passed under section 143(3) of the Act by the A.O.

8. The similar issue has been considered by the Jurisdictional High Court in the case of Akhil Bhartiya Prathmik Shamshak Sangh Bhawan Trust Vs. Assistant Director of Income Tax, wherein the Hon'ble High Court has held as under:-

*“2.5. We also find that finally the order was passed u/s 143(3) and not u/s 144 of the Act. This means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the A.O. Therefore, in such circumstances, there could have been no reason to come to the conclusion that the default was willful.*

*2.6. In view of the aforesaid discussion, it is held that the Ld. CIT(A) was not right in upholding the levy of penalty. Thus, the appeal is allowed.”*

9. In view of the above discussions, in our considered opinion the penalty order dated 01.08.2018 under section 271(1)(b) of the Act passed by the A.O. and the order of the Ld. CIT(A) dated 17.06.2019 deserves to be set aside by deleting the penalty. Consequently the grounds of appeal of the assessee are allowed.

7. In the result appeal filed by the assessee is allowed.

**Order pronounced in the Open Court on : 19.10.2022.**

**Sd/-**  
**(DR. BRR. KUMAR)**  
**ACCOUNTANT MEMBER**  
Dated : 19/10/2022

**Sd/-**  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

Veena/R.N Sr. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI