

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 01/Rjt/2020
निर्धारण वर्ष/Asstt. Years: 2007-2008

Babubhai Mohanbhai Sorthiya, "Aai Shree Gel Maa bhavan, Chora Mavdi Gam, Rajkot. C/O D.R ADHIA "OM SHRI PADAMLAYA", Nr. Trikamrayji Haweli, 16-Jagnath Plot, Dr.Yagnik Road, Opp. Imperial Hotel, Rajkot-360001. PAN: BHUPS6647H	Vs.	I.T.O., Ward-1(!)(3), Rajkot.
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Assessee by :	Written Submission
Revenue by :	Shri BD Gupta, CIT. D.R

सुनवाई की तारीख / **Date of Hearing** : **21/11/2022**
घोषणा की तारीख / **Date of Pronouncement**: **23/11/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-1, Rajkot, dated 06/12/2019 arising in the matter of penalty order passed under s. 271(1)(b) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2007-08.

2. The assessee has raised following grounds of appeal:

1. *The Ld. CIT(A) has erred in law and facts in passing order confirming penalty U/s. 271(1)(b) of Rs. 20,000/-. The same needs cancellation.*
2. *The Ld. CIT(A) has erred in law and facts in passing order confirming penalty U/s. 271(1)(b) of Rs. 20,000/- although no legal service of the notices for which penalty is levied is there. The penalty needs cancellation.*
3. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that the order confirming penalty has been passed **without considering statutory position**. The penalty order passed is bad in law. The penalty needs cancellation.*
4. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that the order confirming penalty has been passed **without cogent reason**. The penalty order passed is bad in law. The penalty needs cancellation.*
5. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that the order confirming penalty has been passed based on irrelevant consideration. The penalty order passed is bad in law. The penalty needs cancellation.*
6. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that the order passed confirming penalty is bad in law, illegal and not sustainable in the eye of law. The penalty needs cancellation.*
7. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that the initiation of the penalty proceedings itself was bad in law. The penalty needs cancellation.*
8. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that there was no legal service of notice was served on the assessee giving reasonable time. The penalty needs cancellation.*
9. *The Ld. CIT(A) has erred in law and facts in not providing adequate and reasonable time. The penalty needs cancellation.*
10. ***Without prejudice**, the assessee was having reasonable cause on consideration of which no penalty ought to have been levied. The penalty needs cancellation.*
11. *Without prejudice, no reasonable opportunity has been given by the Ld. CIT(A) at appellate stage . The same needs annulment.*
12. *Taking into consideration over all legal, statutory and settled law beside factual aspects of the case no penalty ought to have been levied. The penalty needs cancellation.*
13. *The appellant craves leave to reserve his right to amend / alter / add and/or substitute any / all grounds of appeal before the actual hearing takes place.*

3. The only issue raised by the assessee in this appeal is that Ld CIT(A) erred in sustaining the penalty of Rs. 20,000/- levied u/s 271(1)(b) of the Act.

4. Briefly, the facts are that the assessee is an individual. The Assessing Officer during the course of assessment proceedings u/s 143(3) of the Act issued notices u/s 142(1) of the Act dated 01-11-2017 and 04-12-2017 but the assessee failed to comply with the same. In view of above, the AO while finalizing assessment order under section 143(3) of the Act initiated penalty proceedings u/s 271(1)(b) of the Act vide notice dated 15-12-2017 and further opportunity was provided vide show cause notice u/s 271(1)(b) r.w.s. 274 of the Act dated 25-05-2018.

5. The assessee in response thereto requested the AO to keep the penalty in abeyance till finalization quantum appeal. The AO found the request of the assessee unacceptable and held that the assessee failed to explain the reason for non-compliance of notices issued under section 142(1) of the Act. Thus, the AO imposed the penalty of Rs. 20,000/- for the defaults committed by the assessee as discussed above.

6. On appeal by the assessee, the learned CIT (A) also confirmed the penalty levied by the AO.

7. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

8. The learned AR before us filed a written submission wherein it was contended that the assessment was framed under section 143(3) read with section 263 of the Act which implies that the substantial compliance was made during the assessment proceedings. Therefore, no penalty can be imposed in the given facts and circumstances.

9. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

10. We have heard the learned DR and carefully perused the materials on record. At the outset it was observed that in the identical facts and circumstances the Delhi Tribunal in case of Smt. Rekha Rani vs. DCIT reported in 60 taxmann.com 131 has decided the issue in favour of assessee in part by observing that penalty for the first default of non-compliance of notice under section 143(2)/142(1) of the Act was sufficient enough. The relevant extract of the order reads as under:

5. We have considered the submissions of learned DR and have perused the order of the Assessing Officer and the learned CIT(A). we find that there was no reasonable cause on the part of the assessee for not appearing on the different dates of hearing before the Assessing Officer in response to notice issued under Section 143(2) of the Act. However, we find that the default is same and, therefore, penalty of Rs. 10,000/- could be imposed for the first default made by the assessee in this regard. The penalty under Section 271(1)(b) could not be imposed for each and every notice issued under Section 143(2), which remained not complied with on the part of the assessee. The provision of Section 271(1)(b) is of deterrent nature and not for earning revenue. Any other view taken shall lead to the imposition of penalty for any number of times (without limits) for the same default of not appearing in response to the notice issued under Section 143(2) of the Act. This does not seem to be the intention of the legislature in enacting the provisions of Section 271(1)(b) of the Act. In case of failure of the assessee to comply with the notice under Section 143(2) of the Act, the remedy with the Assessing Officer lies with framing of "best judgement assessment" under the provisions of Section 144 of the Act and not to impose penalty under Section 271(1)(b) of the Act again and again. In this view of the matter, we restrict the penalty levied under Section 271(1)(b) of the Act to the first default of the assessee in not complying with the notice under Section 143(2) of the Act. Accordingly, the penalty imposed is restricted to Rs. 10,000/- as against Rs. 50,000/- confirmed by the learned CIT(A). The grounds of appeal of the assessee are thus partly allowed.

10.1 Respectfully following the aforesaid order of Delhi Tribunal, we set aside the order of Ld. CIT(A) and direct the AO to delete the penalty to the tune of ₹ 20,000/- and confirm the penalty of ₹. 10,000/-only. At this juncture, before parting, it is important to note that the assessment has been framed under section 143(3) read with section 263 of the Act but the assessee did not furnish the details called for by the AO during the assessment proceedings. Therefore the reference made by the learned counsel for the assessee to the order of the Delhi tribunal in the case of *Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust in ITA Nos. 2900 and 2901 of 2006* cannot help the assessee. As such the principles laid down by the Delhi

Tribunal are not applicable to the present facts of the case. Hence, this ground of assessee's appeal is partly allowed.

11. In the result, the appeal of the assessee is **partly allowed**.

Order pronounced in the Court on 23/11/2022 at Ahmedabad.

**Sd/-
(T.R SENTHIL KUMAR)
JUDICIAL MEMBER**

(True Copy)

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

23/11/2022