

आयकर अपीलिय अधिकरण
मुंबई पीठ "डी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " D", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं.2205 TO 2209/मुं/2022
(नि.व .2013-14 से 2015-16 एवं 2017- 18 से 2018-19)
ITA NO. 2205 TO 2209/MUM/2022
(A.Y. 2013-14 TO 2015-16 & 2017-18 TO 2018-19)

Rohit Shah,
Flat No.502, 5th Floor,
Starling Heritage Plot No.388,
Shankar Mattam Road,
Matunga CR, Mumbai 400 019

PAN: AAGPS-5764-D

..... अपीलार्थी /Appellant

बनाम Vs.

Commissioner of Income Tax (Appeals)-50,
3rd Floor, Earnest House, NCPA,
Nariman Point,
Mumbai – 400 021

..... प्रतिवादी/Respondent

Assessee by : None
Revenue by : Smt. Mahita Nair
सुनवाई की तिथि/ Date of hearing : 02/11/2022
घोषणा की तिथि/ Date of pronouncement : 29/11/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These five appeals are directed against the order of Commissioner of Income Tax (Appeals)-50, Mumbai dated 29/07/2022 common for Assessment Year 2013-14, 2014-15, 2015-16, 2017-18 and 2019-20, respectively,

confirming levy of penalty u/s. 271(1)(b) of the Income Tax Act, 1961 [in short 'the Act'].

2. These appeals germinate from same set of facts and identical grounds have been raised by the assessee in all these appeals. Therefore, these appeals are taken up for adjudication together and are decided by this common order.

3, None appeared to represent the assessee. However, written submissions have been received from the Chartered Accountants of the assessee stating that the issue raised in the present set of appeal is covered by the order of Tribunal in the case of assessee's wife Neeta Shahin ITA No.1193/Mum/2022 for Assessment Year 2014-15 decided on 08/08/2022 and in the case of assessee's son Hardik Shah by the order of Tribunal in ITA No.1206/Mum/2022 for Assessment Year 2013-14 and ITA No.1207/Mum/2022 for Assessment Year 2014-15 decided on 10/08/2022.

4. Smt. Mahita Nair representing the Department defended the impugned order and prayed for dismissing the appeals of assessee. The Id. Departmental Representative submitted that the assessee deliberately failed to respond to notices issued u/s. 142(1) of the Act. Therefore, the Assessing Officer levied penalty of Rs.10,000/- u/s. 271(1)(b) of the Act in each of the assessment years. The CIT(A) after examining the explanation furnished by the assessee has rightly upheld the levy of penalty.

5. We have heard the submissions made by Id. Departmental Representative and have examined the orders of authorities below. We have

also considered the decisions of the Co-ordinate Bench on which reliance has been placed by the assessee. A perusal of the impugned order reveals that non-compliance of notice issued u/s. 142(1) of the Act was attributed to the unprecedented situation caused by COVID-19 Pandemic. The notice u/s. 142(1) of the Act which were purportedly not complied were issued in the month of January/February 2021. We find that in the case of Hardik Shah in ITA No.1206, 1207/Mum/2022 (supra) similar reasons were given for non-compliance of the notice issued u/s. 142(1) of the Act. The Co-ordinate Bench deleted the penalty levied u/s. 271(1)(b) of the Act following the order of Tribunal in ITA No.1208 to 1212/Mum/2020 dated 29/06/2022. The relevant extract of the order of Tribunal in ITA No.1206-1207/Mum/2022 (supra) reads as under:

“ 4. Both sides heard, orders of authorities below examined. The Assessing Officer vide order dated 20/02/2021 levied penalty of Rs.10,000/- under section 271(1)(b) of the Act for non-compliance of the notice issued under section 142(1) of the Act. In the impugned assessment years, non-appearance/non-compliance of notice issued under section 142(1) of the Act has been attributed to unprecedented situation caused by COVID-19 Pandemic. We find that the Co-ordinate Bench of the Tribunal in assessee's own case while adjudicating assessee's appeals for assessment year 2015-16 to 2019-20 against the order confirming levy of penalty under section 271(1)(b) of the Act deleted the penalty by observing as under:

“ 4. A perusal of the submissions which was rendered before the Assessing Officer and Id. CIT(A), as incorporated in the appellate order, shows that the assessee had stated that, due to pandemic situation of Covid-19, the movement and attendance of the staff of authorised representatives and Chartered Accountant's was seriously affected. There was practical difficulty in all these appeals as either the staff or their family members were infected with Covid and, therefore, even if part compliance was made, it was not a case for levy of penalty under Section 271(1)(b) of the Act.

5. Once the assessee has given such a reason and during that time the entire country was going through the pandemic situation of Covid-19 restrictions and despite that, assessee has made part compliance and later on,

assessment has been completed under Section 153A/143(3) of the Act, then we do not find any reason as to why such a harsh step of initiating and levying of penalty under Section 271(1)(b) of the Act should be imposed for part non-compliance. In fact, the Hon'ble Supreme Court taking cognisance of the pandemic situation had extended the time limit from 15.03.2020 till 28.02.2022 though for the purpose of limitation. Now, the Assessing Officer is alleging that the assessee did not fully comply with notices dated 09.01.2021 and 01.02.2021 and even the Id. CIT(A) did not find it to be reasonable cause, which in our opinion is a too stringent view under these circumstances. Accordingly, we hold that there was sufficient reasonable cause within the ambit and scope of Section 273B of the Act and, therefore, penalty levied under Section 271(1)(b) of the Act of Rs.10,000/- in all the assessment years is directed to be deleted."

5. For parity of reasons impugned orders are set-aside and penalty order under section 271(1)(b) of the Act are deleted."

6. In the present set of appeals, the facts are identical, therefore, respectfully following the order of Co-ordinate Bench penalty levied u/s. 271(1)(b) of the Act is directed to be deleted for parity of reasons.

7. In the result, appeals by the assessee for Assessment Years 2013-14, 2014-15, 2015-16, 2017-18 and 2019-20, are allowed.

Order pronounced in the open court on Tuesday the 29th day of November, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 29/11/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai