

INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC),
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 362, 363, 364, 365, 366, 367 & 368/Srt/2022
(Assessment Years: 2013-14 to 2019-20)

(Hearing in Virtual Court)

M/s Shree Granite, R.S. No. 196, Block No. 161, Paiki-4, Opp. Dahima Nagar, Near Subhash Garden, Dandi Road, Jhangirabad, Surat-395005. PAN No. AAZFS 9929 S	Vs.	D.C.I.T., Central Circle-2 & 3, Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri P.M. Jaggasheth, CA
Respondent represented by	Shri Vinod Kumar Sr. DR
Date of hearing	23/01/2023
Date of pronouncement	23/01/2023

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 01/08/2022 for the Assessment years (AY) 2013-14 to 2019-20 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. 2013-14 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 to 2019-20, the assessee has challenged the penalty levied under Section 272A(1)(d) of the Act. For appreciation of fact, the appeal in ITA No. 362/Srt/2022 for A.Y. 2013-14 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 16/08/2018 in case of Pearl Group Surat. The assessee was also covered in the search action. Consequent upon such search action, notice under Section 153A was issued to the assessee on 17/03/2020 to file return of income for A.Y. 2013-14. In response to notice under Section 153A, the assessee filed his return of income on 02/01/2021 declaring income of Rs. 16,370/-. The assessment was completed on 30/09/2021 accepting the returned income under Section 143(3) r.w.s. 153A of the Act.

4. The Assessing Officer initiated and levied penalty under section 271(1)(b) of Rs. 10,000/- vide his order dated 17.02.2021. 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 03/02/2021 was issued to the assessee for furnishing details for AY 2013-14, and that the assessee failed to make compliance. The Assessing Officer issued notice under

Section 274 r.w.s. 271(1)(b) of the Act dated 14/02/2021 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 assessee. The Assessing officer levied penalty of Rs. 10,000/- for non-compliance of notice under Section 142(1) of the Act dated 03/02/2021. Aggrieved by the order of Assessing Officer, in levying penalty, the assessee filed appeal before the ld. CIT(A). The ld. CIT(A) confirmed the action of Assessing Officer by taking a view that assessee has not filed his submissions during the appellate proceedings and failed to availed the opportunity for filing his submission. The assessee was allowed three opportunities which shows that the assessee is a habitual defaulter for non-compliance of statutory notices. Further aggrieved, the assessee has fled the present appeal before this Tribunal.

5. 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. 153A of the Act in accepting the returned income in all the years. The Assessing Officer levied penalty for non-compliance of notice dated 03/02/2021, however, in the assessment order the assessing officer recorded that assessee furnished his reply. Para -3.1 of the assessment order contains the reference of notice 03/02/2021. Further in para -4 of the assessment order, the assessing officer recorded that the assessee furnished his reply. The assessing officer made no addition in the assessment, therefore, there was no cause of action for levying penalty. 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. The ld AR for the assessee submits that there is no satisfaction recorded in the assessment order for initiation of the penalty under section 271(1)(b) or under section

272A(1)(d) and in absence of such satisfaction, the order of penalty is not sustainable.

6. The ld. AR for the assessee further submits that more than 106 appeals were filed by assessee and his group against levying of similar penalties and in 99 appeals the ld. CIT(A) either accepted the submission of assessee and quashed the penalty order and in some cases, the penalty was upheld. In this batch of seven appeals, the ld. CIT(A) held that assessee has not made compliance to the notices issued from his office. In fact, notice was issued through the e-mail address of assessee's earlier representative and such notice was not communicated to the assessee. The assessee has no intention to avoid compliance of such notice when the assessee and his representative were appearing in other 99 related/connected appeals.
7. 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 good compliance and the defaults committed earlier were ignored by the Assessing Officer and therefore, there is no cause for levying of such penalty under Section 271(1)(b) of the Act. To support his submission, the ld. AR has relied upon the following decisions:

- ❖ Akash Manganlal Patel Vs DCIT ITA No. 141 to 147/Srt/2022 order dated 26/09/2022
- ❖ Jayantilal Arjunbhai Patel Vs DCIT ITA No. 134 to 140/Srt/2022 order dated 26/09/2022
- ❖ Sanjaybhai Arjunbhai Patel Vs DCIT ITA No. 148 to 154/Srt/2022.
- ❖ 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.

8. On the other hand, the ld. Sr. DR for the revenue supported the orders of lower authorities. The ld. Sr. DR submits that acceptance of return of income has no effect on non-compliance of notice during the assessment. The penalty under Section 271(1)(b) or 272A(1)(d) is levied for non-compliance of notice issued by Assessing Officer or by ld. CIT(A). The assessee was given full opportunity before levying penalty under Section 271(1)(b) or under Section 272A(1)(d) of the Act as the case may be. From the order of lower authorities, it is clearly discernible that assessee is in habit for non-compliance. This is a fit case for levy of penalty, as has been levied by Assessing Officer and confirmed by the ld. CIT(A). So far as objection of ld AR for the assessee that no satisfaction is recorded in the assessment order for levying penalty under section 271(1)(b), the ld Sr DR submits that such action is independent of the assessment order.

9. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities. I have also deliberated upon the various case laws relied by the ld. AR of the assessee. I find that the Assessing Officer passed the assessment order on 30/09/2021. The Assessing Officer accepted returned income without any variation or addition. I noted that the Assessing officer levied the penalty of Rs. 10,000/- vide his order dated 17/02/2021 i.e. prior to passing the assessment order. I find that in para-3.1 the assessing officer recorded that notice dated 03.02.2021 was served through ITBA system for furnishing details. In next para in Para-3.1, the assessing officer recorded that the assessee furnished its reply on e-proceedings on various dates. There is no reference in the assessment order about non-compliance of notice dated 03.02.2021.

10. I find that the ld. CIT(A) while confirming the action of Assessing Officer held that no submission is filed before him despite affording reasonable opportunity. I find that Division Bench of Delhi Tribunal in Akhil Bhartiya Prathmik

Shmshak Sangh Bhawan Trust Vs ADIT (supra) held that where assessee had not complied with notice under Section 142(1) but assessment order was passed under Section 143(3) and not under Section 144, that meant that subsequent compliance in the assessment proceedings was considered as a good compliance and defaults committed earlier were ignored by Assessing Officer and, therefore, penalty under Section 271(1)(b) was not justified. I further find that similar view was followed in a series of decisions as has been relied by the ld. AR for the assessee in his submission. Thus, considering the fact that assessment in the present case was completed under Section 153A/143(3) in accepting return of income, I find that it was sufficient compliance, merely because the assessee could not make compliance for single hearing due to some bonafide reason on the penalty under Section 271(1)(b) of the Act. I find that in the present case, the assessing officer in the assessment order recorded that the assessee made compliance of notice dated 03.02.2021, at the same time he has levied penalty for default of the same notice. Even otherwise, if it is considered

that the assessing officer might have committed mistake while recording various dates of notice, subsequent compliance is sufficient and no penalty is sustainable in the present case.

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

12. In ITA No. 363 to 365/Srt/2022 for the A.Y. 2014-15 to 2016-17, the facts are identical. The Assessing Officer levied penalty with similar reasons. Considering our decision in ITA No. 363/Srt/2022 for the A.Y. 2013-14, the penalties in all the appeals are deleted.

13. In ITA No. 366 to 368/Srt/2022 for the A.Y. 2017-18 to 2019-20, the Assessing officer levied penalty under Section 272A(1)(d) of the Act. I 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 30/01/2021 in these assessment years, in fact, no such

notice is referred in the assessment order. Therefore, the penalty for A.Y. 2017-18 to 2019-20 are deleted on this additional observation as well. Therefore, considering the principle of consistency, the penalty under Section 272A(1)(d) of the Act for both the years are also deleted.

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

Order pronounced in the open court on 23rd January 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 23/01/2023
**Ranjan*

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

By order

Sr. Private Secretary, ITAT, Surat