

INCOME TAX APPELLATE TRIBUNAL, (SMC) BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 391, 392/Srt/2022 &, 21 to 25/Srt/2023
(Assessment Years: 2013-14 to 2019-20)

(Hearing in Virtual Court)

Jayeshkumar G. Macwan, D-5/6 Uma Park, Opp. Green Valley Apt., B/h Gangeshwar Mahadev Temple, C.S. Marg, Adajan, Surat-395009. PAN No. AHDPM 7194 D	Vs.	D.C.I.T., Central Circle-2, Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri P.M. Jaggasheth, CA
Respondent represented by	Shri Vinod Kumar Sr. DR
Date of hearing	31/01/2023
Date of pronouncement	31/01/2023

Order under section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This 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)], dated 21/11/2022, 15/12/2022, 16/12/2022 and 19/12/2022 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 consolidated order to avoid the conflicting decision. In all these appeals the assessee has challenged the penalty levied under Section 271(1)(b) and / or 272A(1)(d) of the Income Tax Act, 1961 (in short, the Act). For appreciation of fact, the appeal in ITA No. 391/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 said search action. Consequent upon such search action, notice under Section 153A was issued to the assessee on 19/03/2020 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 04/01/2021 declaring total income of Rs. 8,04,020/- The assessment was allegedly completed on 04/10/2021 under Section 143(3) r.w.s. 153A of the Act by making additions on account of unexplained investment and unaccounted receipt.

4. The Assessing Officer initiated and levied penalty under section 271(1)(b) of Rs. 10,000/- vide his order dated 18.02.2021. The assessing officer while passing the penalty order under Section 271(1)(b) recorded that the assessee failed to comply notice under Section 142(1) dated 03/02/2021 for A.Y. 2013-14. 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 in his order dated 18/02/2021. Aggrieved by the order of Assessing Officer, in levying penalty, the assessee filed

appeal before the ld. CIT(A). The assessee also filed appeal against the levy of similar penalty levied vide order dated 18/02/2021, 19/03/2021 and 26/09/2021 for A.Y. 2013-14. All those three appeals were clubbed by ld. CIT(A) and was heard in a consolidated manner. Before the ld. CIT(A), the assessee in all three appeals, submitted that all details were submitted from time to time to the Assessing Officer. For non-compliance for 03/02/2021, the assessee stated that there was delay due to Covid-19 pandemic due to second wave everywhere and everyone was doing work with proper safety measure. Thus, such non-compliance should not be considered as default for penalizing the assessee. Otherwise the assessee always cooperated during the assessment and finally order under Section 143(3) r.w.s. 153A. The ld. CIT(A) after considering the submission of assessee held that on perusal of submissions of assessee he noticed that complete details were filed by assessee and subsequently assessment was finally passed under Section 143(3) r.w.s. 153A which proves that necessary compliance were eventually made before Assessing Officer. The ld. CIT(A) also noted that it is

not a case where the assessee totally ignored the notices. The penalty could be imposed for first default and not for each and every notices which remained non-complied. The ld. CIT(A) in consolidated order in three appeals. In appeal against the order dated 18/02/2021, the ld. CIT(A) upheld the penalty of Rs. 10,000/-. However, in other two appeals, the assessee was granted relief in a consolidated order dated 21/11/2022. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

5. I 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 assessment order was allegedly passed by Assessing Officer on 04/10/2021 and addition on account of unexplained investment was made in the assessment order. The Assessing Officer levied penalty under Section 271(1)(b) for non-compliance of notice dated 03/02/2021. The ld. AR submits that in the month of February, 2021, it was a severe period of Covid-19 infection throughout the

country and the assessee could not file his response before the Assessing Officer. The assessee subsequently made full compliance, the explanation offered by assessee on various issues was accepted and ultimately no addition was made by the Assessing Officer in final assessment order allegedly passed on 04/10/2021. Before the ld. CIT(A), the assessee explained that there was reasonable cause for non-filing/response to the notice dated 03/02/2021, the ld. CIT(A), though accepted that complete details were filed by assessee, yet the penalty order for alleged single default, was passed in levying penalty of Rs. 10,000/-. The ld. AR by inviting my attention on the order of Hon'ble Apex Court in Suo Moto Writ Petition No. 3/2020 dated 23/03/2020 which was modified from time to time and finally on 10/01/2022 directed to extend the period of limitation for various compliances from 15/03/2020 to 28/02/2022 before various forums /authorities. The ld. AR further submits that the Hon'ble Supreme Court in Centaur Pharmaceuticals Limited and Others Vs Stanford Laboratories Ltd. in Special Leave to Appeal (C) No.

17298/2021 dated 04/01/2022 held that High Court has not committed any error in extending the period of limitation in filing written statement and consequently taking on record filed by respondent-original defendant. The Hon'ble Supreme Court further held that by subsequent order (by Apex Court), the period of limitation which could have been extended and/or condoned by the Tribunal/Court is excluded and/or extended even up to 07/10/2021. The ld. AR for the assessee further submits in similar appeal against the penalty levied under Section 271(1)(b) in assessee's group case, this Bench has already deleted similar penalties in Shree Granite Vs DCIT in ITA No. 362 to 368/Srt/2022 order dated 23/01/2023.

6. 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. The ld. AR of the assessee accordingly prayed for deleting the penalty. 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.

7. 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 specific notice issued by Assessing

Officer or by ld. CIT(A). The alleged subsequent compliance was made by assessee when penalty was levied by Assessing Officer. Before levying penalty, 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).

8. 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 allegedly passed the assessment order on 04/10/2021. I noted that the Assessing officer levied the penalty of Rs. 10,000/- vide his order dated 18/02/2021 i.e. prior to passing the assessment order. I find that the ld. CIT(A) while confirming the action of Assessing Officer held that it is not a case where the assessee totally ignored the notices. The penalty could be imposed for first default and

not for each and every notices which remained non-complied. Before me, the ld. AR of the assessee vehemently submitted that in February, 2021, it was a nationwide severe pandemic of Covid and everyone was taking proper care and caution, due to which the assessee could not make compliance of notice dated 03/02/2021. I find convincing force in the submission of ld. AR of the assessee that corresponding period during which the assessee could not make compliance of notice, issued by Assessing Officer was a severe Covid-19 pandemic period. However, thereafter the assessee made full compliance of various notices issued by Assessing officer and ultimately the explanation or submission furnished by assessee was accepted and passed assessment order.

9. I further 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 due to some bonafide reason, no penalty under Section 271(1)(b) of the Act could be levied on the assessee.

10. 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.

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

12. In ITA No. 392/Srt/2022 & 21 to 25/Srt/2023 for the A.Y. 2014-15 to 2019-20, the facts are identical. The Assessing Officer levied penalty with similar reasons either under section 271(1)(b) or 272A(1)(d). Section 271(1)(b) and 272A(1)(d) are pre-meteria. Considering my order in ITA

No. 391/Srt/2022 for the A.Y. 2013-14, the penalties in all these appeals are deleted with similar directions.

13. In the result, all appeals of the assessee are allowed.

Order pronounced in the open court on 31st January 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 31/01/2023

**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat