

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

ITA No. 393, 394, 395, 396, 397, 398, & 399/Srt/2022
(Assessment Years: 2012-13 to 2018-19)

(Hearing in Physical Court)

Hansaben Maganbhai Vaghasiya, 174, Shree Gadhpur township, Pasodara Gam, Ta- Kamrej, Surat-395206 PAN No. ADYPV 3826 A	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	02/02/2023
Date of pronouncement	10/02/2023

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)], all dated 13/06/2022 for the Assessment years (AY) 2012-13 to 2018-19 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 ITA No. 393 to 397/Srt/2022 for the A.Y. 2012-13 to 2016-17, the assessee has challenged the penalty levied under Section 271(1)(b) of the Income Tax Act, 1961 (in short, the Act) and in ITA No. 398 & 399/Srt/2022 for the A.Y. 2017-18 to 2018-19, the assessee has challenged the penalty levied under Section 272A(1)(d) of the Act. For appreciation of fact, the appeal in ITA No. 393/Srt/2022 for A.Y. 2012-13 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. 5,000/- 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 23/01/2018 in case of a group of persons dealing in Crypto-currency. The assessee was also covered in the said search action. Consequent upon such search action,

notice dated 29.05.2019 under Section 153A was issued to the assessee on to file return of income for A.Y. 2012-13. In response to notice under Section 153A, the assessee filed his return of income on 29.09.2019 declaring total income of Rs. 2,61,330/-. The assessment was completed on 20.06.2021 under Section 143(3) r.w.s. 153A of the Act by making additions on account of unaccounted receipts.

4. The Assessing Officer initiated and levied penalty under section 271(1)(b) of Rs. 20,000/- vide his order dated 02.02.2021. 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 02/12/2020 and 17.12.2020 for A.Y. 2013-14. The Assessing Officer issued notice under Section 274 r.w.s. 271(1)(b) of the Act dated 23.02.2021 asking the assessee as to why penalty be not levied for non-compliance of notices 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. 20,000/-, for non-

compliance of notices dated 02.12.2022 and 17.12.2020 under Section 142(1) of the Act.

5. Feeling aggrieved by the order of Assessing Officer, in levying penalty, the assessee filed appeal before the ld. CIT(A). Before the ld. CIT(A), the assessee submitted that all details were submitted from time to time to the Assessing Officer. For non-compliance for 02.12.2022 & 17.12.2020, 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 co-operated during the assessment and finally order under Section 143(3) r.w.s. 153A.

6. The ld. CIT(A) after considering the submission of assessee held that for first notice dated 02.12.2020 for the fixing the date of hearing on 14.12.2020, the assessee filed adjournment application on 14.12.2020, so he directed to delate the penalty of Rs. 10,000/-. For notice dated 17.12.2020, which was to be complied by 28.12.2020, the ld CIT(A) noted that for compliance of this notice time was

extended till 01.01.2021 and further to 11.01.2021, but the assessee again failed to comply such notice, however, such notice was ultimately complied, so restricted the penalty to the extent of Rs. 5,000/-. The ld CIT(A) thus, granted partial relief to the assessee. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

7. 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 passed by Assessing Officer on 20.05.2021 and no addition was made in the assessment order. The assessing officer accepted the explanation of assessee and accepted the return income. The Assessing Officer levied penalty under Section 271(1)(b) for non-compliance of notice dated 02.12.2020 & 17.12.2020. The ld. AR submits that in the month of December, 2020, it was a severe period of Covid-19 infection throughout the country and the assessee could not file his explanation

and sought adjournment. It is not the case of assessing officer that the assessee remained silent on various notices 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. Before the ld. CIT(A), the assessee explained that there was reasonable cause for non-filing/response and seeking time for making compliance to the notices issued by assessing officer. Though, the ld. CIT(A), accepted that complete details were filed by assessee, yet the penalty order for alleged single default, was sustained to the extent of Rs. 5,000/-.

8. The ld. AR for the assessee 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, submitted that due to nation-wide serious pandemic position period of limitation for statutory compliances before various authorities or legal forum was extended by Hon'ble Apex Court from 15/03/2020 to 28/02/2022. The ld. AR for the assessee

further submits that the Hon'ble Supreme Court in Centaur Pharmaceuticals Ltd. and Others Vs Stanford Laboratories Limited 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 their subsequent order 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, though in such cases the penalty was sustained to the extent of Rs. 10,000/-. There is no provision to levy or sustained the penalty under section 271(1)(b) to the extent. Either it should have been deleted in toto or to be sustained in full for alleged single default.

9. 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 of Rs. 5,000/-. 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.

10. 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 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).

11. 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 20.05.2021. I noted that

the Assessing officer levied the penalty of Rs. 20,000/- for non-compliance of two notices vide his order dated 02/02/2021, that is prior to passing the assessment order. I further find that the ld. CIT(A) accepted the explanation of assessee with regard to first notice, however, for second non-compliance, the ld CIT(A) despite accepting the facts that the second notice was ultimately complied, sustained the penalty to the extent of Rs. 5,000/-. I find that there is no such discretionary power to restrict the penalty to the extent of Rs. 5,000/-. The order passed by ld CIT(A) is not in consonance with the provisions of section 271(1)(b), therefore, I direct to delete the penalty which is sustained to the extent of Rs. 5,000/- . Even otherwise I find convincing force in the submission of ld. AR of the assessee that during corresponding period, wherein 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 and assessment order was passed under section 143(3)/ 153A.

12. 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.

13. In view of aforesaid factual and legal position, I direct the Assessing Officer to delete the entire remaining impugned

penalty. In the result, ground of appeal raised by assessee is allowed.

14. In ITA No. 394 to 399/Srt/2022 for the A.Y. 2013-14 to 2018-19, the facts are identical, except in AY 2018-19, the assessing officer made certain addition on the basis of seized material. The Assessing Officer levied penalty either under section 271(1)(b) or under section 272 A(1)(d) with similar reasons. 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. Considering our decision in ITA 393 /Srt/2022 for the A.Y. 2012-13, the penalties in all the appeals are deleted.

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

Order pronounced in the open court on 10th February 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 10/02/2023
**Ranjan*

Copy to:
1. Assessee –
2. Revenue -
3. CIT(A)

4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat