

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.106 to 110/SRT/2023

Assessment Years: (2013-14 to 2017-18)

(Physical Hearing)

Ramabhai Kanjibhai Patel, At-Surajpuja, PO-Surajpura, TA-Palanpur, Palanpur-385001.	Vs.	The DCIT, Central Circle-2, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AEFPP4997J		
(Assessee)		(Respondent)

Assessee by	Shri P. M. Jagasheth, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	10/05/2023
Date of Pronouncement	11/05/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

There are the five appeals, filed by the assessee, pertaining to assessment years (AYs) 2013-14 to 2017-18, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the Id. CIT(A)”], which in turn arise out of separate penalty orders passed by the Assessing Officer under section 271(1)(b)/272A(1)(d) of the Income Tax Act, 1961 [hereinafter referred to as the “Act”].

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.106/SRT/2023 for assessment year 2013-14, have been taken into consideration for deciding the above appeals *en masse*.

3. Grounds of appeal raised by the assessee in lead case, (in ITA No. 106/SRT/2023 for AY.2013-14), are as follows:

“1. On the facts and in the circumstances of the case as well as 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. Assessee craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”

4. The facts necessary for disposal of the appeals are stated in brief. During the assessment proceedings, a notice under section 142(1) of the Income Tax Act, 1961, was issued by Assessing Officer on 30.01.2021. Vide the said notice, the assessee was asked to furnish details for AY.2013-14. However, the assessee failed to furnish complete reply in response to the said notice. Thereafter, a show cause notice under section 274 r.w.s. 271(1)(b) dated 14.02.2021 was issued to assessee. However, no reply was furnished by the assessee in response to said notice. In view of the above, the Assessing Officer was satisfied that this is a fit case for levy of penalty under section 271(1)(b) of the Income Tax Act, 1961 for non-compliance of the terms of statutory notice. Therefore, Assessing Officer levied a penalty of Rs.10,000/- under section 271(1)(b) of the Income Tax Act, 1961 for non-compliance of notice under section 142(1) dated 30.01.2021 issued to the assessee.

5. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has partly allowed the appeal of the assessee. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before us.

6. Shri P. M. Jagasheth, Learned Counsel for the assessee, reiterated the submissions made during the appellate proceedings and stated that assessee during the assessment proceedings submitted all the necessary details and complied with the notices issued by the Assessing officer from time to time. Regarding the non-compliance of notice of hearing issued on 30.01.2021, the Ld Counsel of the assessee submitted that the same notice issued on 15.01.2021 and the assessee had duly filed submission of the said notice on 08.02.2021. The

delay in submission of part details was due to Covid-19 pandemic and everyone was doing work with proper safety measures. Hence, it should not be considered as default for non-compliance of legal notice and penalized the same u/s 271(1)(b) of the Act. The Id Counsel also submitted that the assessment order was finally passed u/s 143(3) r.w.s. 153A of the Act and not u/s 144 of the Act. Hence delay in filing submission should not be constructed strictly, more so when the assessee has co-operated and replied and attended all the hearings.

7. On the other hand, Ld. DR for the Revenue submitted that assessee did not make the compliance of various notices during the assessment proceedings, so penalty should be levied under section 271(1)(b) of the Act, therefore Ld. DR prayed the Bench that order passed by the Assessing Officer may be upheld.

8. We heard both sides in detail and also perused the records of the case including the paper book filed by the assessee. We note that issue under consideration is no longer *res-integra*, on the identical and same facts, the Co-ordinate Bench of this Tribunal in case of Sanskruti Mega Structure Pvt. Ltd. vs DCIT, ITA No.28/SRT/2018, dated 19.05.2021, has deleted the penalty under section 271(1)(b)/272A(1)(d) of the Income Tax Act, observing as follows:

“10. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities. We have also deliberated upon the various case laws relied by the ld. AR of the assessee including the decision of Hon’ble Supreme Court in Suo Moto Writ Petition No. 3/2020. We find that the Assessing Officer finalised the assessment order on 07/06/2021. While finalizing the assessment order, no variation in the returned income was made, thus accepted the return income. Moreover, the assessment was completed under Section 143(3) r.w.s. 153C of the Act. The Assessing Officer before levying penalty issued notice under Section 274 r.w.s. 271(1)(b) dated 23/01/2021. In response to said show cause notice, the assessee specifically submitted that there is Covid-19 pandemic and everybody is doing work with safety measures and that his Accountant were busy in audit work. The reply of assessee was not accepted. The Assessing Officer levied penalty for non-compliance of notice dated 03/12/2020. In our view, the assessee has shown sufficient cause within the meaning of Section 273B in response to reply of show cause notice, therefore, no penalty under Section 271(1)(b) of the Act was leviable and the assessee is liable to succeed on this ground alone.

11. We have further noted that the notice dated 03/12/2020 was issued to the assessee. In response to said notice, the assessee sought adjournment on

28/12/2020. The adjournment was allowed to assessee and on the request of assessee, the hearing of the case was fixed on 04/01/2021. In our view, once the Assessing Officer himself allowed adjournment, the cause of action for non-compliance was waived on that moment itself.

12. We find that the ld. CIT(A) while confirming the action of Assessing Officer proceeded one step further and held that the assessee committed two defaults. In our view, the observation of ld. CIT(A) is contrary to the record and with the contents of order of penalty under Section 271(1)(b) of the Act. As recorded above, the assessee has shown sufficient cause for non-compliance, moreover, such non-compliance was done by granting adjournment by the Assessing officer himself. Further considering the decision in various case laws relied by the ld. AR of the assessee wherein it was held that when the assessment was framed under Section 143(3), merely because the assessee could not make compliance for single hearing due to bonafide reason on the penalty under Section 271(1)(b) of the Act cannot be imposed on the assessee for such bonafide default due to reasons beyond his control. In view of aforesaid factual and legal position, we direct the Assessing Officer to delete the impugned penalty. In the result, ground of appeal raised by assessee is allowed.

13. In ITA No. 135 to 138/Srt/2022 for the A.Y. 2013-14 to 2016-17, the facts are identical. The Assessing Officer levied penalty with similar reasons. Considering our decision in ITA No. 134/Srt/2022 for the A.Y. 2012-13, the penalties in all the appeals are deleted.

14. In ITA No. 139 & 140/Srt/2022 for the A.Y. 2017-18 and 2018-19, the Assessing officer levied penalty under Section 272A(1)(d) of the Act. We 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 21/12/2020 as levied in earlier years which we have already deleted. Therefore, considering the principle of consistency, the penalty under Section 272A(1)(d) of the Act for both the years are also deleted.

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

9. We note that due to Covid-19 pandemic, the assessee could not make sufficient compliance before the Assessing Officer. However, ultimately, the assessment was completed under section 143(3) of the Act by the Assessing Officer which goes to prove that the earlier absence of the assessee has been duly condoned by him. Reliance in this regard is placed in the following decisions:

- (i) *Ganesh B Pokhriyal vs ACIT in ITA No.5291/Mum/2018 dated 29/11/2019*
- (ii) *Globus Infocom Ltd., vs. DCIT in ITA No.738/Del/2014 dated 29/06/2016*
- (iii) *Akhil Bharatiya Prathmik Shamsak Sangh Bhawan Trust vs. ADIT reported in 115 TTJ 419(Del)*

10. We note that 'Reasonable cause' as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. It can be described as probable cause. It means an honest belief founded upon reasonable grounds, of the existence of a state or circumstances, which assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do. The cause shown has to be considered. The word 'reasonable' has in law the *prima facie* meaning of reasonable with regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. The reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of *bona fides* [*Azadi Bachao Andolan v. UOI* [2001] 116 Taxman 249 (Delhi)]. The words 'reasonable cause' in section 273B must necessarily have a relation to the failure on the part of the assessee to comply with the requirement of the law which he had failed to comply with. We note that during the assessment stage, the assessee has made sufficient compliance of notices issued by the assessing officer. Moreover, no penalty u/s.271(1)(b) of the Act could be levied when an assessment has been completed u/s143(3) of the Act, wherein the ld. AO is deemed to have condoned the absence of the assessee or his authorised representative on earlier occasions when subsequently, the details were furnished by him and the assessments were ultimately completed u/s143(3) of the Act. Hence, we deem it fit that this is not a fit case for levy of penalty u/s.271(1)(b) of the Act. Therefore, we direct the AO to delete the said penalty. Accordingly, the grounds raised by the assessee are allowed.

11. Since, we have adjudicated the issue by taking the lead case in ITA No.106/SRT/2023 for AY.2013-14, and the facts and grounds of appeal raised by the assessee in other appeals are identical and common, therefore our instant adjudication in ITA No.106/SRT/2023 shall apply *mutatis mutandis* to other appeals of the assessee also.

12. In the result, appeals filed by assessee (in ITA Nos. 106 to 110/SRT/2023) are allowed.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced on 11/05/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 11/05/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat