

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

ITA No. 249/Srt/2023 (Assessment Year 2017-18)
(Physical hearing)

Rameedevi Mulnath Sidh, 303, Shankheswar Complex, Yogi Park, Althan, Surat, Gujarat-395017 PAN No. ADIPS 9728 E	Vs.	I.T.O., Ward 2(3)(4), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Ms. Chaitali Shah, C.A.
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	18/04/2023
Date of hearing	24/05/2023
Date of pronouncement	28/06/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 28/03/2023 for the Assessment Year (AY) 2017-18. The assessee has raised following grounds of appeal:

- "1. On the facts and in circumstances of the case as well as law on the subject, the Id. CIT(A) has erred in passing ex parte order without giving reasonable and sufficient opportunity of being heard.*
- 2. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A) has erred in confirming the action of Assessing Officer in levying penalty of Rs. 10,000/- u/s 272A(1)(d) of the I.T. Act, 1961.*
- 3. It is, therefore, prayed that penalty levied by the Assessing Officer and confirmed by CIT(A) may please be deleted.*
- 4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

2. Rival submissions of the parties heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that the assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short, the Act) on 24/12/2019 by estimating income of assessee @ .50% of total credits against the income offered by assessee @ 0.05% on the credit. The Assessing Officer also considered the total credit at Rs. 55.67 crores against the credit of Rs. 41.42 crores offered by assessee. The assessment was completed on furnishing complete information in response to various notices issued by the Assessing Officer. The Assessing Officer levied penalty under Section 272A(1)(d) of Rs. 10,000/- for non-compliance of certain notices issued under Section 142(1) of the Act as recorded in para 1 of order dated 09/11/2019. On appeal before the Id. CIT(A), the action of Assessing Officer was upheld. The Id. AR of the assessee submits that the Coordinate Benches of the Tribunal in a number of decisions held that subsequent compliance of notices under section 142(1) is a sufficient compliance and penalty for non-compliance not leviable. The Id. AR of the assessee also furnished screen shot of various responses made during assessment in respect of various notices issued by the Assessing Officer. To support her submission, the Id. AR of the assessee relied upon the decision of Delhi Tribunal in Akhil Bhartiya Prathmik Samshak Sangh Bhawan Trust Vs ADIT, 5 DTR 0429 (Delhi Trib) and Ramesh Bhai Kanjibhai Patel Vs DCIT in ITA no. 106 to 110/Srt/2023.

3. On the other hand, the learned Senior Departmental Representative (Sr. DR) for the revenue supported the orders of the lower authorities.
4. I have considered the submissions of both the parties and perused the record carefully. There is no dispute that during the assessment, the Assessing Officer fixed the date of hearing on seven occasions and ultimately assessment was completed under Section 143(3) of the Act on the basis of information provided by the Assessee. The Assessing Officer issued show cause notice under section 274 read with section 272(A)(1)(d) for levying of penalty for non-compliance of various notices under Section 142(1) vide notice dated 31/10/2019. The Assessing Officer recorded that the assessee was required to file reply by 05/11/2019 and that no reply was furnished. The Assessing Officer accordingly levied penalty of Rs. 10,000/- vide order dated 09/11/2019. On further appeal before the Id. CIT(A), penalty was confirmed.
5. I find that in Akhil Bhartiya Prathmik Samshak Sangh Bhawan Trust Vs ADIT (supra), the Coordinate Bench of Delhi Tribunal held that when assessment having been made under Section 143(3) and not under Section 144, it means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the A.O., hence, penalty under Section 271(1)(b) could not be levied. Further, the division bench of this Tribunal in Ramesh Bhai Kanjibhai Patel Vs DCIT (supra) held that no penalty

under Section 271(1)(b) of the act could be levied when an assessment has been completed under Section 143(3) of the Act, wherein the Assessing Officer 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 assessment were ultimately completed under Section 143(3) of the Act.

6. In view of above factual and legal position, I am of the view that this is not a fit case for levy of penalty under Section 272A(1)(d) of the Act. Therefore, I direct the Assessing Officer to delete the penalty levied vide order dated 09.11.2019. In the result, grounds of appeal raised by the assessee are allowed.
7. In the result, this appeal of assessee is allowed.

Order announced in open court on 28th June, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 28/06/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat