

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 325 to 331/Srt/2023
(Assessment Years: 2013-14 to 2019-20)

(Hearing in Physical Court)

Dilipkumar Shivshankar Acharya, 502, Siddhi Vinayak Paredise, Near SMC child Holl, Adajan, Surat-395009. PAN No. ACQPA 1053 K	Vs.	D.C.I.T., Central Circle-2, 5 th Floor, Aaykar Bhawan, Majura Gate Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri P.M. Jagasheth, CA
Respondent represented by	Shri Vinod Kumar Sr. DR
Date of Institution of Appeals	09/05/2023
Date of hearing	04/08/2023
Date of pronouncement	07/08/2023

Order under section 254(1) of Income Tax Act

PER: BENCH:

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 09/03/2023, 10/03/2023, 23/03/2023 and 11/04/2023 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 all these appeals the assessee has challenged the penalty levied under Section 271(1)(b)/271(b) and/or 272A1(1)(d) of the Income Tax Act, 1961 (in short, the Act). For appreciation of fact, the appeal in ITA No. 325/Srt/2023 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 29/10/2020 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 total income of Rs. 2,63,450/-. 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 undisclosed investment of Rs. 1.75 Crore. There is no

reference in the assessment about any default in response of any show cause notice or about the initiation of penalty under section 271(1)(b).

4. The Assessing Officer initiated and levied penalty under section 271(1)(b) of Rs. 10,000/- vide his order dated 25.03.2021. 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 13/02/2021 for A.Y. 2013-14. The Assessing Officer issued notice under Section 274 r.w.s. 271(1)(b) of the Act dated 19/03/2021 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 13/02/2021 in his order dated 25/03/2021. The assessing officer also levied similar penalty for AY 2013-14, vide his order dated 30.03.2021 & 13.05.2021 for same assessment year.
5. Aggrieved by the order of penalties by Assessing Officer, the assessee filed appeal before the ld. CIT(A). The assessee also filed appeal against the levy of similar penalty levied vide order dated 25/03/2021, 30/03/2021 and 13/05/2021 for same

assessment years. All those three appeals were clubbed by Id. CIT(A) being ITBA Appeals No. CIT(A) Surat-4/10117, 101104 & 10118/2012-13 and was heard in a consolidated manner. Before the Id. 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 13/02/2021, 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.

6. The Id. CIT(A) after considering the submission of assessee held 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 Id. 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 Id. CIT(A) in consolidated order dated 25/03/2021, upheld the penalty of Rs. 10,000/- in ITBA Appeal CIT(A) Surat-4/10117. However, in other two appeals in ITBA Appeals CIT(A)Surat-4/101104 &

10118/2012-13, the assessee was granted relief vide order dated 09/03/2023. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

7. 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 assessment order was allegedly passed by Assessing Officer on 04/10/2021 and addition on account of undisclosed investment was made in the assessment order. The Assessing Officer levied penalty under Section 271(1)(b) for non-compliance of notice dated 13/02/2021. 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 13/02/2021, 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/-, though similar plea was accepted in remaining two appeals for same assessment year. The ld. AR for the assessee invited our 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 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.

8. The ld. AR for the assessee further 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.

9. On the other hand, the ld. Sr. DR for the revenue supported the orders of lower authorities. The ld. Sr. DR submits that passing the assessment order under section 143(3) 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 subsequent compliance was made by assessee only, 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).

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. We find that the Assessing Officer allegedly passed the assessment order on 04/10/2021. We noted that the Assessing officer levied the penalty of Rs. 10,000/- vide his order dated 25/03/2021 i.e. prior to passing the assessment order. We 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 us, 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 13/02/2021. We 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.

11. We also 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. We further find that similar view was followed in a series of decisions as has been relied by the Id. 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, We 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. 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.

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

13. In ITA No. 326 to 331/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)/271(b) or 272A1(1)(d). Section 271(1)(b) and 272A(1)(d) are pari-meteria. Considering our order in ITA No. 325/Srt/2023 for the A.Y. 2013-14, the penalties in all these appeals are deleted with similar directions.

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

Order pronounced in the open court on 07th August 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 07/08/2023

**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat