

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. Nos. 133 to 141/PAT/2023
Assessment Years: 2013-2014 to 2021-2022
&
I.T.A. Nos. 142 & 143/PAT/2023
Assessment Years: 2020-2021 & 2021-2022**

***Rakesh Chaubey,.....Appellant
Besides R.K. Public School,
Opposite Jain Mandir,
Ramesh Printing Works Lane,
Mithapur Khagaul Road,
Patna-800001, Bihar
[PAN:ABWPC7431Q]***

-Vs.-

***Deputy Commissioner of Income
Tax/ACIT,.....Respondent
Central Circle-2, Patna,
Central Revenue Building,
Income Tax Golamabar,
Patna-800001, Bihar***

Appearances by:

*Shri A.K. Rastogi, Sr. Advocate, appeared on behalf of the
assessee*

*Shri Rupesh Agrawal, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing : August 24, 2023

Date of pronouncing the order : August 28, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present group of appeals is directed at the instance of assessee against the separate orders of Id. Commissioner of Income Tax (Appeals), Patna-3 passed on 21st April, 2023 in each assessment year.

2. Brief facts of the case are that the assessee has filed his return of income. Thereafter it appears that search was carried out upon the assessee and notice under section 153A was issued. The assessments have been framed under section 153A and dissatisfied with those assessments, the assessee carried the matter in appeals before the Id. CIT(Appeals).

3. Apart from the quantum appeal, Id. Assessing Officer has visited the assessee with penalty under section 271A of the Income Tax Act. The penalty under section 271A of the Income Tax Act is imposable on account of failure of the assessee to keep and maintain any such books of account and other documents as required by section 44AA or the Rules made there under in respect of any previous year or to retain such books of account and other documents for the period specified in the said Rule. The Id. Assessing Officer has imposed a penalty of Rs.25,000/- in each year.

4. Dissatisfied with the penalty order, the assessee carried the matter in appeals before the ld. CIT(Appeals). Apart from the penalty appeal, quantum appeals were also pending before the ld. CIT(Appeals). During the penalty proceeding, the assessee contended that levy of penalty be kept in abeyance because quantum appeals are pending before the ld. CIT(Appeals), but ld. Assessing Officer did not accept this contention of the assessee and visited the assessee with penalty. Similarly ld. 1st Appellate Authority has dismissed these appeals for want of prosecution. For the facility of reference, the conclusion of the ld. CIT(Appeals) recorded in the 1st appeal, i.e. ITA No. 133/PAT/2023 in A.Y. 2013-14 reads as under:-

“The appellant Shri Rakesh Kumar Chaubey was covered by a search operation u/s 132A of the Act on 06.10.2020. During the course of search proceedings as well as during the assessment proceedings, the appellant failed to produce books of accounts for verification by the AO. Accordingly, the AO issued penalty notice u/s 271A for non-maintenance of books of accounts. During the course of penalty proceedings u/s 271A, the appellant did not prove that the books of account was maintained by him. The appellant did not comply to the notices. He merely requested the AO to keep the penalty proceedings in abeyance till finalization of quantum appeal from the Commissioner of Income-Tax (Appeal) for the relevant AY. The AO was of the opinion that penalty u/s 271A was not connected with the points of addition made in the assessment order and accordingly after discussion on the circumstances, the AO levied the penalty of Rs. 25,000/- for non-

maintenance of books of accounts as required u/s 44AA of the Act. During the course of appellate proceedings, several notices were issued u/s 250, the appellant has chosen not to comply these notices. The appellant has taken five grounds in this appeal. However, he has not made any written submission or produce any documentary evidence to support these grounds. In view of the aforesaid discussion, I dismissed the appeal filed by the appellant for non-compliance”.

5. Sub-clause (6) of Section 250 contemplates that ld. 1st Appellate Authority would formulate the point in dispute and thereafter record reasons in support of such conclusion on those points. The ld. Counsel for the assessee submitted that after decision of these penalty appeals, ld. CIT(Appeals) has decided the quantum appeals whereby he has deleted all the additions by holding that no incriminating material was found during the course of search on the basis of which additions could be made under section 153A of the Income Tax Act. The ld. Counsel for the assessee has further apprised that the 1st Appellate Authority has relied upon the judgment of the Hon’ble Supreme Court in the case of PCIT-Vs.- Abhisar Buildwell Pvt. Ltd. (149 taxmann.com 399).

6. On the other hand, ld. D.R. submitted that levy of penalty under section 271A has no relevancy with the quantum of addition if deleted or sustained.

7. Considering the above facts, we deem it appropriate to remit these appeals back to the ld. CIT(Appeals) for re-adjudication on merit. The order of the ld. CIT(Appeals) is not in coherence of the mandate given in sub-clause (6) of section 250, therefore, these appeals in all these years are not sustainable. We set aside all these orders impugned in the present appeals and restore the issue before the ld. 1st Appellate Authority for re-adjudication in all these years.

8. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the open Court on 28.08.2023.

Sd/- (Rajesh Kumar) Accountant Member Kolkata, the 28th day of August, 2023	Sd/- (Rajpal Yadav) Vice-President
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*Copies to :(1) Rakesh Chaubey,
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ITA Nos. 133-141/PAT/2023 (AY 2013-14 to 2021-22)
&
ITA Nos. 142 & 143/PAT/2023 (A.Y. 2020-21 & 2021-22)
Rakesh Chaubey

- (3) *Commissioner of Income Tax (Appeals), Patna-3;*
(4) *Commissioner of Income Tax- ,*
(5) *The Departmental Representative*
(6) *Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.