

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 869/Kol/2023
Assessment Year: 2015-16

Tarun Koley S/o- Manindra Nath Koley Parbatipur, Tamluk Purba Medinipur - 721636 [PAN: AEYPK0244C]	Vs	Income Tax Officer, Ward- 27(3), Haldia
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Smt. Mita Rizvi, A/R
Revenue by :	Shri P.P. Barman, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 12/10/2023
घोषणा की तारीख /Date of Pronouncement: 20/11/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The above captioned appeal is directed at the instance of the revenue against the order of the National Faceless Appeal Centre, (hereinafter the "Id. CIT(A)") dt. 24/07/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2015-16.

2. The sole grievance of the assessee is against the finding of the Id. CIT(A) confirming the levy of penalty of Rs.10,000/- u/s 271B of the Act levied by the Assessing Officer for not complying to the notice issued u/s 142(1) of the Act.

3. At the outset, the Id. Counsel for the assessee submitted that the assessee is not conversant with the intricacies and procedures of the Income-tax requirements, especially with regard to the Income-tax e-proceedings and was completely dependent on the advices of the tax

advocate, Shri Gourhari Guria, who used to look after the accounts and income tax matters of the assessee. At the time of issuance of notice u/s 142(1) of the Act, the country was passing through Covid-19 pandemic and the tax advocate, Shri Gourhari Guria, contracted Covid virus and after prolonged suffering ultimately died on 25/05/2021. Due to this reasons, compliance to the notice u/s 142(1) of the Act was also not made and, therefore, in the light of provision of Section 271B of the Act, there was reasonable cause on the part of the assessee for the said failure and thus prayed for deletion of the impugned penalty.

On the other hand, the Id. D/R vehemently argued supporting the orders of the lower authorities.

4. We have heard rival contentions and perused the record placed before us. Penalty u/s 271B of the Act at Rs.10,000/- is in challenge before us. We observe that the assessee is an individual and is in the business of civil contractor. Income of Rs. 5,61,140/- declared in the e-return for Assessment Year 2015-16 filed on 30/09/2015. Tax audit report was also filed on 24/09/2015. On the basis of certain information of purchase of immovable property, notice u/s 148 of the Act was issued and duly e-served and thereafter the assessment proceedings commenced and notice u/s 143(2) of the Act were issued. Further, there was no compliance to notice u/s 142(1) of the Act dt. 11/03/2021 fixing the date of hearing on 18/03/2021. Again the showcause notice was issued on 24/08/2021 requiring the assessee to appear himself or through his A/R on 08/09/2021 but again there was no compliance. The Id. Assessing Officer on observing that the assessee has not

complied to the said notice issued u/s 271B of the Act and finally levied penalty of Rs.10,000/-.

5. We observe that the income tax matter of the assessee were being looked after by Shri Gourhari Guria, tax advocate and at the time when notice u/s 142(1) of the Act and other showcause notice were issued, the country was passing through Covid-19 pandemic and further the tax advocate contracted Covid-19 virus and after prolonged suffering died on 25/05/2021 and copy of death certificate is placed on record. Considering this fact, we are of the considered view that the assessee was prevented by sufficient cause for not complying to the notice u/s 142(1) of the Act and, therefore, in view of the provision of Section 273B of the Act which provides for the circumstances, wherein penalties cannot be levied which *interalia* includes penalty u/s 271B of the Act and in case it is found that there was a reasonable cause for the said failure, the penalty is not be imposed. Considering the facts of the instant case, we are of the considered view that the assessee being prevented from complying to the said notice for reasonable cause which was mainly on account of the illness and death of the tax advocate, we hereby delete the penalty levied u/s 271B of the Act and allow the sole ground raised in the instant appeal.

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

Order pronounced in the Court on 20th November, 2023 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 20/11/2023

**SC Sp/2*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata