

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

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1317/Kol/2023
Assessment Year: 2015-16

M/s. Shanker Fuels Pvt. Ltd. 301, Manglam 24, Hemant Basu Sarani Kolkata - 700001 [PAN: AAEC51106J]	Vs	Asst. Commissioner of Income Tax, Central Circle -3(1), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	None
Revenue by :	Shri Kiran Chatrapoty, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 31/01/2024
घोषणा की तारीख /Date of Pronouncement: 19/02/2024

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 "ld. CIT(A)") dt. 15/09/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2015-16.

2. There is a minor delay in filing of this appeal. In the larger interest of justice, the same is hereby condoned and the appeal is admitted for adjudication on merits.

None appeared on behalf of the assessee despite issuance of notice nor is any application for adjournment placed before us. We, therefore, deem it proper to adjudicate the appeal and decide it on merits *ex-parte, qua* the assessee, after hearing the ld. D/R.

3. We have heard the ld. D/R and perused the material placed before us. The sole grievance of the assessee is against the finding of the

ld. CIT(A) confirming the levy of penalty of Rs.10,000/- u/s 271(1)(b) of the Act levied by the Assessing Officer for not complying to the notice issued u/s 142(1) of the Act even when the assessment u/s 153A/143(3) of the Act has already been completed.

4. We find that though the assessee in the instant case has not complied to the statutory notice u/s 142(1) issued by the AO on 10/11/2017, which is the basis for levy of penalty u/s 271(1)(b) of the Act, however, ultimately the assessment order has been passed u/s 153A/143(3) of the Act. The Assessing Officer has also acknowledged that the assessee replied stating the reasons for such non-compliance, which we find are reasonable. Under these given facts and the circumstances, this issue is no more *res-integra* by the decision of various Coordinate Benches of the Tribunal wherein it has been held that where the assessment order was finally passed u/s 153A/143(3) or 143(3) and not u/s 144 of the Act due to subsequent compliance during the assessment proceedings, that would be considered as good compliance and the defaults committed earlier should be ignored and taking a lenient view the penalty u/s 271(1)(b) of the I.T. Act 1961 should not be levied. Since the assessment in the instant case has ultimately been completed u/s 153A/143(3) of the Act on the basis of various details filed by the assessee before the AO, therefore, considering the totality of the facts of the case and relying on the decision of the Tribunal in the case of *Co-ordinate Bench at Delhi in ITA no. 6203 & 6204/Del/2019 Shiv Kumar Nayyar vs. ACIT*. We are of the considered opinion that it is not a fit case for levy of penalty u/s 271(1)(b) of the Act. We, therefore, set aside the order of the Ld. CIT(A)

and direct the AO to cancel the penalty so levied by him.

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

Order pronounced in the Court on 19th February, 2024 at Kolkata.

Sd/-

**(ANIKESH BANERJEE)
JUDICIAL MEMBER**

Sd/-

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

Kolkata, Dated 19/02/2024

SC S.P.

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