

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1969/Del/2020
Asstt. Year: 2006-07

Shri Shyam Sunder Jindal, 12-A, Green Avenue, Sector-D, Pocket-III, Vasant Kunj, Delhi – 110 070 PAN AAGPJ0184N	Vs.	ACIT, Central Circle-30, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Rohit Jain, Advocate Ms. Deepashree Rao, Advocate Shri Shivam Gupta, Advocate
Department by:	Shri Dharamvir Singh, CIT-DR
Date of Hearing:	01.04.2024
Date of pronouncement:	03.05.2024

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 04.11.2020 of the Ld. Commissioner of Income Tax (Appeals)-30, New Delhi ("**CIT(A)**") whereby he sustained the penalty of Rs. 10,000/- imposed by the Ld. Assessing Officer ("**AO**") under section 271(1)(b) of the Income Tax Act, 1961 (**the "Act"**) for Assessment year ("**AY**") 2006-07 for non-compliance of the notice issued under section 142(1) of the Act dated 10.10.2018.

2. The assessee has taken the following grounds:-

"1. *That the Commissioner of Income-tax (Appeals) [CIT(A)] erred on facts and in law in dismissing, ex-parte, the appeal vide order dated 04.11.2020, without giving proper/ effective/ valid notice of hearing*

and without judiciously considering/ adjudicating the grounds raised by the appellant.

- 1.1 *That the CIT(A) erred on facts and in law in dismissing, ex-parte, the appeal of the appellant without proper/ effective/ valid service of notice of hearing on the appellant, and proceeding on presumed service by purportedly uploading hearing notice online on the income tax portal.*
- 1.2 *That the CIT(A) erred on facts and in law in passing the impugned order, ex-parte, without affording adequate opportunity of being heard to the appellant and without even considering the factual averments set out in the statement of facts.*

Without Prejudice

2. *That the CIT(A) erred on facts and in law in confirming the levy of penalty under section 271(1)(b) of the Income Tax Act, 1961 ('the Act') without appreciating that the penalty order dated 27.06.2019, passed by the assessing officer was illegal and bad in law.*
 - 2.1. *That on the facts and circumstances of the case and in law, the CIT(A) erred in not appreciating that the appellant had duly complied with the notice(s) issued under section 142(1) of the Act.*
 - 2.2. *That the CIT(A) erred on facts and in law in confirming the findings of the assessing officer that the appellant had failed to furnish requisite/information/documents in terms of notice issued under section 142(1) of the Act, without appreciating that the appellant filed appropriate reply in response to the notice issued and consequently, there was no default on the part of the appellant.*
 - 2.3. *That the CIT(A)/ Assessing Officer erred in not following the binding decision of the ITAT dated 28.02.2017 in ITA No.6425/Del/2015, deleting identical penalty levied under section 271(1)(b) of the Act in the appellant's own case for the very same assessment year, in gross violation of principles of judicial propriety.*
 - 2.4. *That the CIT(A)/ Assessing Officer further failed to appreciate that prerequisite conditions for imposition of penalty were not satisfied and the default, in any case, was reasonable not justifying any penalty in terms of section 273B of the Act.*
3. *This is the penalty proceedings initiated during the course of set aside fresh proceedings in the second round.*
4. *The facts in brief are that in the first round, the assessment for AY 2006-07 was completed on 27.02.2015 under section 153A of the Act on*

income of Rs. 76,13,140/-. This assessment was set aside by the Tribunal with a direction to the Ld. AO to adjudicate the matter afresh vide order dated 10.04.2017 in appeal No. 5448/Del/2016.

5. During the course of set aside fresh proceeding, the Ld. AO issued a notice under section 142(1) of the Act on 10.10.2018 calling for information in respect of account of the assessee in HSBC Geneva/Zurich, Switzerland having Code BUP9070145843. The assessee responded to the notice denying having any such bank account by him or his family members.

6. According to Ld. AO during the assessment proceedings in FY 2014-15 the assessee was called upon to give consent but the consent form has not been submitted till date. He, therefore issued show cause notice on 24.12.2018 for penalty under section 271(1)(b) of the Act for AY 2006-07 to which reply was furnished. The explanation offered by the assessee was not acceptable to the Ld. AO. He treated non-production of account statement by the assessee to be a non-compliance of notice under section 142(1) of the Act and imposed the impugned penalty.

7. The appeal before the Ld. CIT(A) filed by the assessee was not successful. This brought the assessee before the Tribunal.

8. The Ld. AR submitted that during the penalty proceedings, the Ld. AO insisted upon the assessee to submit signed consent waiver form which the assessee did not comply. This led the Ld. AO to impose the impugned penalty. The Ld. AR further submitted that the original assessment order made by the Ld. AO was set aside by the Tribunal vide its order dated 10.04.2017 in ITA No. 5448/Del/2016 and restored to the file of the Ld. AO for fresh adjudication against which the assessee filed further appeal before the Hon'ble Delhi High Court. The appeal of the assessee has since been decided by the Hon'ble Delhi High Court vide its order dated 13.12.2023 in

ITA No. 612/2017 whereby the original assessment order itself has been quashed. In view of this the assessment order passed in second round of proceedings stands vitiated. Consequently, the impugned penalty can have no legs to stand and deserves to be deleted.

9. The Ld. CIT-DR had nothing to say but to support the order of the Ld. AO/CIT(A).

10. We have considered the submission of the parties and perused the records. It is noticed that penalty levied under section 271(1)(b) of the Act pursuant to first round of proceedings was deleted by the Tribunal vide order dated 28.02.2017 in ITA Nos. 6425 and 6426/Del/2015, copy of which is placed at pages 89-96 of the assessee's Compilation.

11. It is relevant to extract the observations of Hon'ble Delhi High Court in its order (supra) on the issue of signing of consent waivers form below:-

"14 As regards the stand of the respondent/revenue that the appellant/assessee had refused to sign the consent form. Mr. Jain submits that the consent form was framed in such a manner that if the appellant/assessee were to sign the form, he would end up incriminating himself even when position taken by him was that he did not maintain a bank account with the Geneva branch of HSBC Bank. 14.1 In support of this plea, our attention has been drawn to the consent form which the appellant/assessee was called upon to execute. Inter alia, the consent form required the appellant /assessee to furnish the account number(s), master particulars, name(s) of account holders, name(s) of the beneficial owner(s)/settlor(s)/beneficiaries, and if the account was held through an entity, whether he had the necessary legal authority to grant access qua the subject account.

15. Given that the appellant/assessee has denied the ownership of the subject account and the respondent/revenue has not been able to place before the court reliable material which would have us believe that the appellant's/assessee's stand was not correct, we are of the view that the question of law framed in the matter would have to be answered in favour of the appellant/assessee and against the respondent/revenue."

12. Vide our order of date in ITA No. 425/Del/2022 in quantum appeal, we have quashed the orders of the Ld. AO/CIT(A) passed by them in the second round of assessment proceedings. In such a scenario, the present appeal against the orders of penalty under section 271(1)(b) of the Act arising out of quantum assessment proceedings in the second round cannot survive. We, therefore delete the impugned penalty levied by the Ld. AO and sustained by the Ld. CIT(A).

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

Order pronounced in the open court on 3rd May, 2024.

**Sd/-
(G.S. PANNU)
VICE PRESIDENT**

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 03/05/2024

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi