

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI G. S. PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA Nos.3428,3484,3485,3496,3501,3509/Del/2023
(Assessment Years: 2015-16 to 2021-22)**

Hem Singh Bharana, C-146, 1 st Floor, Sarvodya Enclave, Delhi (Appellant) PAN: AAMPB6082D	Vs. ACIT, Central Circle-29, New Delhi (Respondent)
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Assessee by :	Ms. Chinu Bhasin, CA
Revenue by:	Shri B. K. Singh, Sr. DR

Date of Hearing	22/05/2024
Date of pronouncement	27/06/2024

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. This bunch of appeals by the assessee is arising out of common order passed by learned Commissioner of Income Tax (Appeals)-31, New Delhi all dated 27.10.2023, pertain to Assessment Years 2015-16 to 2020-21 under Sections 250 read with section 271(1)(b) of the Income-Tax Act, 1961 (hereinafter referred as 'the Act'). Since, the appeals relate to the same assessee and involve common issues, they have been clubbed together and disposed of in a consolidated order, for the sake of convenience.

2. The assessee is an individual resident in India. A search and seizure operation carried out on Manoj Kumar Singh and his associated parties/ companies on 14.10.2020. The assessee was subjected to search and put a notice 153C for AY 2015-16 to 2020-21. During the assessment proceedings, the Id AO had issued notice u/s 142(1) of the Act on 06.12.2021 vide which the assessee was asked to submit certain details and documents. However, it is alleged that the assessee had

not complied with the same. A notice u/s 271(1)(b) of the Act was issued to which also allegedly there was no response. Accordingly, penalty proceedings were initiated and with the following observations in para 5 and 6 in impugned penalty order, the penalty of Rs. 10,000/- was imposed upon the assessee:-

5. The assessee had failed to submit the requisite details and documents in compliance to the of notice U/s 142(1) of the Act, till the limitation date of the notice and did not submit any details even after granting him the opportunity vide penalty notice dated 30.12.2021. The assessee has not led any cogent evidence to establish that the default in submission of documents and other relevant particulars were because of any extraneous circumstances. No logical and conniving explanation could be filed by the assessee qua to default committed by him in submission of documents and is enough proof of the fact that the assessee has nothing worthwhile to explain in rebutting the charge of willful default committed by him.

6. As discussed in detail above, The Assessing Officer is satisfied that the assessee has not been able to present any reasonable cause so as to escape from the rigours of section 271(1)(b) of the Act and therefore a penalty of Rs 10,000/- is imposed for non compliance of notice u/s 142(1) of the Act dated 06/12/2021 by the assessee.

In view of above facts, penalty u/s 271(1)(b) of the Act amounting to Rs. 10,000/- is imposed upon the assessee."

3. The Id CIT(A) has sustained the same for which the assessee is in appeal and for convenience of disposal of the appeals before us, the grounds raised for AY 2015-16, are reproduced below:-

"1. The assessment order is bad in law and void-ab- initio and accordingly, ought to be quashed.

2. On the facts and circumstances of the case and in law, the Ld.AO/CIT(A) erred in levying penalty u/s 271(1)(b) for non- compliance without appreciating the fact that the assessee has filed/sought adjournment on the due date of compliance.

3. On the facts and circumstances of the case and in law, the Ld.AO/CIT(A) erred in levying penalty u/s 271(1)(b) for non- compliance without appreciating the fact that the assessee has subsequently filed complete details in compliance of questionnaire issued u/s 142(1) thought it took some time to collate for six years.

4. The assessee craves leave to add, alter, delete or modify any ground of appeal."

4. Heard and perused the record. The Id AR has submitted that the notice u/s 142(1) of the Act was issued on 06.12.2021 and the assessee had responded to the same through ITBA portal. A copy of the notice along with submissions is placed in Paper Book page 34-65. It is submitted by the Id AR that it was 22 pages questionnaire containing 30 questions for each year for all the 6 years and the Id AO expected to reply it within 4 days. She submitted that the assessee had sought adjournment on 10.12.2021 and later made the submissions. The Id AR has also pointed out that in fact in the assessment order the Id AO has accepted the return of income after accepting the submissions placed on record. The Id AR submitted that penalty u/s 271(1)(b) of the Act could not have been imposed, when the assessee had made subsequent compliance and reliance in this regard was placed at order of coordinate bench at Delhi in ITA Nos. 6203 and 6204/Del/2019 in the case of Shiv Kumar Nayyar Vs. ACIT order dated 31.03.2021 and the order of Lucknow Bench in the case of Dinesh Kumar Gupta Vs. ACIT, Kanpur in ITA No. 94/LKW/2016 order dated 29.07.2016.

5. The Id DR on the contrary relied on the orders of the Tax Authorities below.

6. Now, appreciating the impugned penalty order, we find that the Id AO had not at all discussed the plea of the assessee during the penalty proceedings. At page 68 to 69 of the Paper Book is the copy of reply of assessee in penalty proceedings where in all the pleas as raised before are narrated. In this reply dated 05.01.2022 it was submitted that the assessee needed to compile the requisite details and for that reason an adjournment application was filed. The assessee had also made a submission relying on the decision of the Delhi bench of this Tribunal in the case of Shiv Kumar Nayyar (supra). However, as observed by us above, the Id AO has not discussed any submissions and on very general observations had summarily declined to accept the plea. It is settled

provision of law that penalty proceedings under Act are quasi criminal in nature and thus, the plea of the assessee should be specifically dealt with to give a conclusive finding of intentional default to not respond to the notice issued u/s 142(1) of the Act.

7. Then, even before the Id CIT(A), the assessee had taken a specific plea that adjournment application was moved before the AO, which was not considered by the Id AO and the Id CIT(A) makes a specific observations in the impugned order in the para 4.1.7 that as per the order sheet no letter of adjournment was filed on or before 10.12.2021 in response to the notice dated 06.12.2021 issued u/s 142(1) of the Act.

8. Here before us the Id AR has specifically pointed out the fact that in compliance to the notice issued u/s 142(1) of the act on 06.12.2021 the assessee had uploaded successfully its adjournment request on ITBA portal and at page 33 of the Paper Book a screenshot of said request is filed in support of her submissions wherein, transaction ID is also reflecting.

9. On 14.05.2021 this bench had directed the Id Sr. DR to verify this aspect and the bench had also directed the Id AO to be present to explain the discrepancy. Thereafter, on 15.05.2021, the Id AO appeared and displaced the ITBA portal wherein the adjournment application was not reflecting. He merely filed the copy of order sheet entry as reflect in the portal. The Id. AO was also not able to convenience about this screenshot acknowledgement of the application uploaded by the assessee bearing a distinctive transaction ID. The Id AO had thereafter sought time to obtain necessary report from the Director (System) and the bench had adjourned the matter from 15.05.2024 to 22.05.2024, however, no specific report was filed.

10. In the light of the aforesaid, we are of the considered view that as in the penalty proceeding the assessee had taken a specific plea that

adjournment application was moved and the Id AO in the impugned penalty order dated 17.01.2022 had not controverted this fact with any specific finding of fact. The reliance on the order sheet by the Id CIT(A) was not justified and the assessee's plea that the adjournment application was moved deserved to be accepted.

11. Thus, we concluded that as the assessee had sought adjournment in response to the impugned notice dated 06.12.2021 and had also complied this notice u/s 142(1) of the Act, by making the submissions later on, which were also considered by the Id AO, there was no justification to impose penalty. The grounds raised by the assessee are allowed. Consequently, the appeals of the assessee are allowed and the impugned penalty stand deleted.

Order pronounced in the open court on 27/06/2024.

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

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 27/06/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	