

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

(THROUGH VIDEO CONFERENCE)

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6310/Del./2017
ASSESSMENT YEAR : 13-14**

Seema Anand
9-66, Ground Floor,
Chandigarh
New Delhi-110015
(PAN :ASTPA9963B)

Vs. ITO,
Ward-49(1),
New Delhi

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : None
REVENUE BY : Shri Prakash Dubey, Sr. DR**

**Date of Hearing : 08.07.2021
Date of Order : 27.07.2021**

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant Seema Anand, New Delhi (hereinafter referred to as 'the assessee'), by filing the present appeal sought to set aside the impugned order dated 16.08.2017 passed by the Commissioner of Income-tax (Appeals)-17, New Delhi, affirming the penalty order passed u/s 271(1)(b) of the Income Tax Act, 1961 (for short 'the Act'), qua the assessment year 2013-14 on the grounds inter alia that :-

“1. On the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in conforming penalty u/s 271(1)(b) imposed by AO without appreciating the fact that the final assessment order has been framed by AO u/s 143(3) and subsequent compliance amounts to good compliance to the notices issue u/s 142(1)/143(2).

2. On the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in ignoring the binding decisions of the coordinate bench of the Jurisdiction ITAT of Delhi and has thereby erred in conforming penalty of Rs. 40,000 u/s 271(b).

3. On the facts and in the circumstances of the case, Ld. CIT(A) has erred in law and on facts in not appreciating that the Ld. AO assumed jurisdiction u/s 271(1)(b) on the basis of improper and incorrect notices issued u/s 274 of Income Tax, 1961.

4. On the facts and in the circumstances of the case, Ld. CIT(A) has erred in law and on facts in conforming eight penalties imposed by AO u/s 271(1)(b) without appreciating the facts that the assessee has not acted deliberately in defiance of law and has not acted unconscious disregard obligation.

5. On the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in conforming eight penalties imposed by AO through a cumulative orders whereas no show cause notice u/s 274 was issued or served upon the assessee clarifying the eight different deliberate defiance on the part of the assessee.

Prayer

The Assessee prays that order of Ld. CIT(A) conforming penalty u/s 271(1)(b) may be deleted.”

2. Return of income filed by the assessee for A.Y. 2013-14 was subjected to scrutiny and consequently notice u/s 143(2) was issued for 12.09.2014 and 07.08.2015 but none appeared on behalf of the assessee but subsequently representative of the assessee filed some details and continued to appear on numerous dates fixed by the Assessing Officer but again failed to attend the proceedings on four occasions. Assessing Officer framed the assessment u/s

143(3) of the Act at the total income of Rs. 1,12,04,450/-. AO after recording his satisfaction for non-compliance of statutory notices initiated the penalty proceeding u/s 271(1)(b) by way of issuance of notice u/s 274 read with section 271 of the Act. Declining the contentions raised by the assessee, AO proceeded to levy the penalty of Rs. 80,000/- i.e. Rs. 10,000/- for each default u/s 271(1)(b) of the Act.

3. Assessee carried the matter before Ld. CIT(A) by way of filing the appeal who has accepted the appeal by reducing the penalty of Rs. 40,000/- from 80,000/-. Feeling aggrieved with order passed by the Ld. CIT(A), assessee has come up before the Tribunal by way of filing the present appeal.

4. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the ld. DR as well as on the basis of documents available on the file.

5. We have heard the ld. Departmental Representative for the revenue to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, assessment in this case has been framed u/s 143(3) of the Act at the total income of Rs. 1, 12,04,450/-. It is also not in dispute that representative of the assessee put in appearance during assessment proceedings on numerous dates and had filed some details enabling the assessing officer to frame the assessment u/s 143(3) of the Act.

7. From the undisputed facts narrated above, it is proved on record that though the assessee has defaulted in putting in appearance on four occasions before Assessing Officer but he has brought on record requisite documents/ clarifications sought for by the AO enabling him to frame assessment u/s 143(3) of the Act. So her earlier defaults in putting in appearance by the assessee has been condoned by the Assessing Officer and in these circumstances penalty u/s 271(1)(b) of the act is not sustainable.

8. Coordinate Bench of the Tribunal in case of ***Akhil Bhartiya Prathmic Shikshak Sangh Bhawan Trust vs. ADIT reported in [2008] 115 TTJ 419 (Del.)*** dealt with identical issue and held that the penalty levied u/s 271(1)(b) is not sustainable on the ground that “when the assessment has been made u/s 143(3) of the Act and not u/s 144, subsequent compliance in the assessment proceedings has been considered as good compliance and defaults committed

earlier implicitly were condoned by the AO.

9. In view of what has been discussed above impugned order passed by Id. CIT(A) is not sustainable, hence set aside and penalty levied / confirmed stands deleted. Consequently, appeal filed by the assessee is allowed.

Order pronounced in open court on this 27TH day of July, 2021.

SD/-
(O.P.KANT)
ACCOUNTANT MEMBER
Dated the 27TH day of July, 2021
Binita

SD/-
(KULDIP SINGH)
JUDICIAL MEMBER

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.