

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH 'B'**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.141/Ahd/2019**

**निर्धारण वर्ष/Asstt. Year: 2015-16**

SPS Tube Industries Plot No.518, Phase-III Kathwada, Nr.GVMMSA Vasahat Odhav, Ahmedabad. PAN : AAXFS 4891 A	Vs.	ACIT, Cir.3(3) Ahmedabad.
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अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
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Assessee by :	Written Submissions
Revenue by :	Shri Rajdeep Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 15/07/2021

घोषणा की तारीख/Date of Pronouncement: 02 /08/2021

**आदेश/ORDER**

**PER RAJPAL YADAV, VICE-PRESIDENT**

Assessee is in appeal against order of the Id.CIT(A)-3, Ahmedabad dated 31.12.2018 passed under section 271(1)(b) of the Income Tax Act, 1961.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming order under section 271(1)(b) passed by the AO, by which the Id.AO imposed penalty of Rs.10,000/- for the Asstt.Year 2015-16 due to alleged default of non-compliance of the statutory notice.

3 Brief facts of the case are that the assessee is engaged in business of manufacturing of SS pipes and tubes. It has e-filed return of income on 30.9.2015 declaring income at Rs.1,24,99,840/-. The return was processed under section 143(1) of the Act and thereafter selected for scrutiny assessment. The assessment was completed under section 143(3) by accepting the returned income. Thereafter, the Id.AO initiated penalty proceedings under section 271(1)(b) for non-compliance of notice issued under section 142(1) dated 18.9.2017. Accordingly, a notice under section 274 read with section 271(1)(b) of the Act was issued to the assessee, however, the assessee has not furnished any explanation for non-compliance of notice. The Id.AO accordingly imposed penalty of Rs.10,000/- under section 271(1)(b) of the Act. The same was challenged before the first appellate authority, but did not succeed, hence, the assessee before the Tribunal.

4. Before us, the assessee filed a detailed submission. It is *inter alia* pleaded that the assessee has cooperated with the department for finalization of assessment, that is evident from the assessment order passed under section 143(3) itself. However, the time given in the notice issued under section 142(1) r.w.s. 129 of the Act to furnish voluminous details was very short, and beyond the reach of the assessee to comply. The assessee has demonstrated in the following chart how the impugned notices were issued and how much time was given to the assessee for compliance thereof.

<i>Particulars of Notice issued</i>	<i>Date of Notice</i>	<i>Date of Service of Notice</i>	<i>Due date to comply the notices</i>	<i>Days allowed by the AO to Assessee for compliance</i>
<i>Notice u/s 142(1)</i>	<i>18/09/2017</i>	<i>25/09/2017</i>	<i>28/09/2017</i>	<i>3 Days</i>
<i>Notice u/s 274</i>	<i>13/10/2017</i>	<i>23/10/2017</i>	<i>27/10/2017</i>	<i>4 Days</i>

It is further pleaded that entire administrative staff of the assessee were busy in compilation of various details required for tax audit report under section 44AB as well as in the return of income, and therefore, delay if at all is beyond the control of the assessee and for such reasons, there could not be any penalty under section 271(1)(b) of the Act. It further pleaded that assessment in the case of the assessee was finalized under section 143(3) and not under section 144 of the Act, and there is a considerable compliance of notices as is evident from the observation of the Id.AO in the assessment order in para-3 that representatives of the assessee have attended and furnished the requisite details/evidence from time to time, which were perused and placed on record, and that the case was discussed with the AR present. This goes to show that the assessee has fully cooperated in the assessment proceedings, and there is no room for visiting the assessee with penalty under section 271(1)(b) of the Act. On the other hand, the Id.DR supported orders of the Revenue authorities.

5. We have considered rival submissions and gone through the orders of the Revenue authorities. The assessee was imposed with penalty under section 271(1)(b) of the Act of Rs.10,000/- on the ground he has not complied with statutory notice issued under section 142(1) r.w.s. 129 of the Act. A perusal of the assessment

order under section 143(3) of the Act not suggests any whisper of non-cooperation by the assessee during the assessment proceedings, on the other hand, the Id.AO recorded that assessee's representatives attended, furnished requisite details/evidences from time to time, which were perused and placed on record, and the case details were discussed with the representatives. While going through the submissions of the assessee, it could be understood that there is a reasonable cause for the assessee for non-compliance of notices as tabulated above. There is no deliberate attempt on the part of the assessee, more so when the time given by the Id.AO to the assessee for compliance was very short. Further, assessment under section 143(3) was finalized by accepting the returned income filed by the assessee. The assessee might have missed to make compliance on those dates but ultimately due compliance was made and requisite details were filed by the assessee and had participated in the proceedings before the AO and the assessment has been completed u/s 143(3), and therefore, penalty should not be levied u/s 271(1)(b) of the Act for non compliance of particular notice merely on technical grounds. Various Benches of the Tribunal in a number of decisions have held that where the assessment order was finally passed u/s 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 by taking a lenient view the penalty u/s 271(1)(b) of the I.T. Act 1961 should not be levied. Therefore, in the case on hand, we are satisfied that the assessee had reasonable causes for non-compliance of a particular notice, which does not warrant imposition of penalty under section

271(1)(b) of the Act. Thus, we set aside order of the Id.CIT(A) and cancel the impugned penalty.

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

Order pronounced in the Court on 2<sup>nd</sup> July, 2021.

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT