

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.800-804/Kol/2016
Assessment Year:2007-08 to
2011-12

M/s Shree Brindaban Rice Mill, Bangalbari, Uttar Dinajpur [PAN No. AAVFS 8631 E]	बनाम/ V/s.	DCIT, Central Circle-XXVII, Aayakar Bhawan Purva, 110, Shanti Palli, E.M. Bypass, Kolkata-107
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	Shri Subash Agarwal, Advocate
राजस्व की ओर से/By Revenue	Shri A.K. Tiwari, CIT-DR
सुनवाई की तारीख/Date of Hearing	25-10-2017
घोषणा की तारीख/Date of Pronouncement	31-10-2017

आदेश /O R D E R

PER BENCH:-

These are five appeals filed by the assessee is against the common orders of Commissioner of Income Tax (Appeals)-21, Kolkata vide dated 15.02.2016. Assessments were framed by DCIT, Central Circle-XXVII, Kolkata u/s 153A/143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his orders dated 27.03.2014 & 15.02.2014 for the assessment years 2007-08 to 2011-12 respectively.

Shri Subash Agarwal, Ld. Advocate appeared on behalf of assessee and Shri A.K. Tiwari, Ld. Departmental Representative appeared on behalf of Revenue.

2. Since the facts and circumstances are identical in all the appeals, the same were heard together and are being disposed of by this consolidated order for the sake of

convenience. We first take up the appeal in **ITA No.800/Kol/2016** relating to A.Y. 2007-08 as lead case.

3. The ground as raised by the assessee reads as under:-

“1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the penalty to the tune of Rs.30,000/- imposed by the AO u/s 271(1)(b) of the Act.

2. For that the Ld. CIT(A) ought to have deleted the entire penalty of Rs.30,000/- imposed u/s 271(1)(b) since the assessee was prevented by reasonable cause for non appearance during the course of assessment proceeding.

3. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”

4. The only issue raised by the assessee in this appeal is that Ld CIT(A) erred in confirming the penalty order of AO u/s 271(1)(b) of the Act.

5. Briefly, the facts are that the assessee is a partnership firm and engaged in the business of Rice and the flour milling, supply of essential commodities to Government of West Bengal. The Assessing Officer during the course of assessment proceedings u/s 153A/143(3) of the Act issued notices u/s 142(1) of the Act on various dates but the assessee failed to comply the same. The necessary details stand as under.

<u>S.No.</u>	<u>Date</u>	<u>Particulars</u>	<u>Remarks</u>
1.	16.4.2013	Notice issued U/s 142(1)	Compliance by the assessee
2.	26.6.2013	Notice issued U/s 142(1)	Non-Compliance by the assessee
3.	1.7.2013	Notice issued U/s 142(1)	Non-Compliance by the assessee
4.	16.12.2013	Notice issued U/s 142(1)	Non-Compliance by the assessee Reply was filed late i.e. 21.1.2014

In view of above, the AO during assessment proceedings initiated penalty proceedings u/s 271(1)(b) of the Act. Finally, the AO after considering the reply of the assessee imposed the penalty for Rs.30,000/- for all the defaults committed by the assessee as discussed above.

6. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the health condition of one of the partner of the firm was very critical, therefore the compliances could not made. The assessee in support of its claim has also produced the copy of medical certificates. The assessee in support of its claim has also relied on the judgment of the Hon'ble Apex Court in the case of

Hindustan Steel Limited v. State of Orissa reported in 83 ITR 26(SC). However, Ld. CIT(A) disregarded the contention of the assessee and confirmed the order of AO by observing as under:-

“5. Decision:

The appellant has filed three grounds of appeal but all grounds are mainly regarding imposition of penalty u/s. 271(1)(b) of the Act. In view of this the matter is discussed with the Ld. A/R and accordingly all the grounds are taken up together for adjudication. The Ld. Authorized Representative of the appellant appeared on 10.02.2016 and challenged the imposition of penalty u/s. 271(1)(b) of the Act, on the ground that the am was already completed on 28.03.2014 but penalty order u/s. 271(1)(b) of the Act is passed on 15.09.2014 and therefore the AO is not justified. In course of discussion it is explained as to why penalty proceeding is initiated at the time of the completion of assessment and the penalty proceeding has to e completed with prescribed time period. Then the Ld A/R referred to the illness of Shri Ranjit Kumr Paul, a member of the family and argued that since Shir Ranjit Kumar Paul was not well, there were non compliances in response to the notices u/s. 142(1) of the Act during assessment proceeding. This explanation has not been submitted till date. The copy of discharge summary of Shri Ranjit Kumar Paul shows that he was operated in Appollo Hospital on 20.5.2011 and duly discharged on 06.06.2011. Later on he was hospitalized for two days in February/March, 2013.

5.1 The penalty u/s 271(1)(b) of the Act is imposed on the assessee for the noncompliance to the notices issued u/s. 142(1) of the Act issued on 26.06.2013, 01.07.2013 and 13.12.2013 wherein request was made to the se to appear on 08.07.2013, 12.07.2013 and 20.02.2013. Reference is made to the operation of Shri Paul in 2011 and two days hospitalization in February/March 2013.

5.2 It is seen that Shri Ranjit Kumar Paul was not in the hospital during the period when non-compliance took place. It is also seen that the appellant, besides not informing the Assessing Officer about the said medical reason during the assessment proceeding or subsequently during the penalty proceedings, did not mention a word about it at the time of the filing of appeal or even later till 10.02.2016. The appeal in this case was filed on 14.11.2014. Even after that the appellant did not refer to this as the reasons for the non-compliance during the assessment proceeding which resulted into the initiation and subsequently imposition of penalty u/s 271(1)(b) of the Act. This is neither referred in the grounds of appeal nor in the statement of facts. Only during the course of the instant appeal proceeding i.e. on 10.02.2014 the appellant has referred to the said excuse regarding illness of a member of the family due to which there were non-compliances but the A/R of the appellant failed to explains to how did it stop the appellant’s Ld A/R from appearing before the Assessing Officer.

5.3 The Ld. A/R submitted that “during the course of penalty proceedings u/s. 271(1)(b), the A/R of the assessee filed a bonafide submission explaining the reason for non-appearance and also requested for the dropping the penalty proceeding u/s. 271(1)(b) of the Act. It is pertinent to mention that the referred submission dt. 23.05.2014 does not mention a word about the illness of Shri Ranjit Kumar Paul. The AO has duly reproduced the entire submission in the relevant penalty order u/s 271(1)(b) of the Act. The said submission of the Ld. A/R dt. 23.05.2014 is reproduced below,

‘... .. I have been alleged to have failed to respond on few occasions on the given dates as per your notice served u/s 142(1)/143(2) for A.Y 2006-07 to

AY 2006-07 to AY 2012-13, however, I had no intentions to defy or disobey the order. Further it is also a matter of fact that no penalty notice u/s. 271(1)(b) was served from your end during the pendency of assessment proceedings and the same was served only at the time of completion of assessment u/s. 153A/143(3), that is on 28.03.2014, hence the alleged offence has already been exonerated by your Honour and therefore no further action shall be sustained in the eye of Law. Hence, I request your Honour that the penalty proceedings u/s. 271(1)(b) for Assessment Year z2006-07 to AY 2012-13 may please be dropped for the same of justice.'

It is apparent that no valid reason is mentioned and the illness of Shri Paul is certainly not mentioned as the reason for the referred non-compliances of the notices u/s. 142(1) of the Act.

5.4 The Ld A/R continued to argue that Shri Ranjit Kumar Paul's illness had prevented them from complying with the notices u/s. 142(1) of the Act. However, it is seen that Shri Ranjit Kumar Paul was not representing before the department or for that matter associated with any income tax proceeding. The Ld. A/R agreed with this but he insisted that the illness of Shri Paul was the only reason. It is seen that the appellant has made a plea while requesting for the condonation of delay in the filing of appeal. At that point of time the appellant has submitted that "the Cost Accountant Shri Gurudas Dey was on leave so the delay in the filing of appeal." Shri Grudas Dey is the Ld. A/R of the appellant in this case. Thus it is seen that the said excuse, that one person in family was not well so no compliance, is not considered valid. In course of appeal proceeding, the Ld A/R failed to explain as to why the illness of Shri Ranjit Kumar Paul, which is the only excuse for non-compliance, was not brought to the knowledge of the Assessing Officer during assessment/penalty proceeding or later, at the time the filing of instant appeal, or for that matter till 10.02.2016 and secondly, how did he referred illness prevented the appellant in complying through any authorized representative?

5.5 The Ld A/R could not reply to the above but argued repeatedly that due to the illness of Shri Ranjit Kumar Paul, the non-compliances took place. This is no reasonable explanation. The A/R was also requested to inform whether all activities of the appellant stopped due to the stated excuse or only the compliance before the Assessing Officer got affected. The A/R did not reply. The case law, (Hindustan Steel Ltd. Vs. State of Orissa 83 ITR 26) cited by the appellant, has been referred but that is not applicable in the instant appeal matter. Thus it is seen that the assessee had deliberately not complied with the notices duly issued by the AO u/s 142(1) of the Act. Later on, the appellant has taken a plea regarding illness of one of the family member which is an apparent case of afterthought. It is also seen that the referred non-compliances affected the assessment proceeding and the same gets reflected in the observation, in this regard, as made in the relevant assessment order. In view of that, the instant penalty proceeding was initiated. Every time the hearing is fixed, the assessing officer has to prepare and then without any prior intimation or request for adjournment, the assessee does not appear. Even afterwards the assessee does not submit any explanation. This type of deliberate non-compliance, as done by the assessee in this case, adversely affects the process of assessment and the completion of the important assessment proceeding got delayed.. a discussed the explanations of the Ld. A/R dt. 10.02.2016 does not substantiate the claims as made in the grounds of appeal. Thus in view of the facts and circumstances of the case, the Assessing Officer was justified in imposing penalty u/s. 271(1)(b) of the Act and levy Rs.30,000/- for

non-compliance of notices u/s. 142(1) of the Act. Therefore appeal on the referred ground is dismissed.”

Aggrieved by the above finding of Ld. CIT(A), the assessee is in appeal before the Tribunal.

7. The Id. AR before us submitted that all the queries raised by the AO during assessment proceedings were duly replied by the assessee as evident from the order of AO paragraph number 8 which reads as under:-

“8.0 In course of assessment proceedings further queries was raised against which replies have been filed, looked into and placed on record.”

Accordingly the Id AR submitted that substantial compliances were made by the assessee during the course of assessment proceedings. Therefore no penalty in the instant case is called for. The Ld AR in this regard has relied on the order of Hon'ble ITAT in the case of *Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust Vs. Assistant Director of Income tax* reported in 115 TTJ (Del) 419. The relevant extract reads as under:-

“2.5 We also find that finally the order was passed under s. 143(3) and not under s. 144 of the Act. This means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO. Therefore, in such circumstances, there could have been no reason to come to the conclusion that the default was willful”.

On the other hand, the Id. DR submitted that the medical certificates were not produced before the AO to justify that there was reasonable cause which prevented the assessee to response the notices issued under section 142(1) of the Act. The Id. DR also contended that the assessee in the instant case was intentionally delaying the proceedings to take the assessment at the fag-end in order to divert the attention of the AO. He vehemently supported the order of lower authorities.

8. In rejoinder, Ld AR submitted that all the medicals bills were duly produced before the Ld CIT(A) and he got co-terminus power to verify the same but he failed to do so. The Ld AR also submitted that the penalty cannot be imposed on account of

technical ground. In this regard the learned AR relied on the judgment of Hon'ble Supreme Court in the case of Hindustan Steel (*supra*).

9. We have heard the rival contentions of both the parties and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. At the outset it was observed that in the identical facts and circumstances the Hon'ble Delhi Tribunal has decided the issue in favour of assessee in the case of *Akhil Bhartiya Prathamik Shikshak Sangh Bhawan Trust (Supra)* by observing that the assessment was framed under section 143(3) of the Act which proves that substantial compliances were made by the assessee. Thus it cannot be held that the default committed by the assessee was willful. Thus, we are inclined not to uphold the order of lower authorities.

9.1 Similarly, we also find that the Hon'ble Apex Court in the case of Hindustan Steel (*supra*) has held that the penalty should not be imposed unless the assessee acted deliberately. The relevant extract reads as under :

“Obligation is the result of a quasi- criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.”

As we have already decided the issue in favour of assessee in view of the above facts, therefore we are not inclined to comment on the contentions raised by the Ld DR at the time of hearing as well as observations made by the Ld CIT(A) in his order. Respectfully following the aforesaid judgments we reverse the order of authorities below. Accordingly, AO is directed to delete the same.

10. In the result, assessee's appeal is allowed.

Coming to ITA No.801-804/Kol/2016 for A.Ys.08-09 to 11-12.

11. In the remaining appeals, since the facts are exactly identical, both the parties are agreed whatever view taken in the above appeal (ITA No.800/Kol/2016) may be taken in this appeals also, we hold accordingly.

12. In the result, all the appeals of assessee stand allowed.

13. **In combine result, all the five appeals of assessee are treated as allowed.**

Order pronounced in open court on 31/10/2017

Sd/-

(न्यायिक सदस्य)

(S.S.Viswanethra Ravi)

Judicial Member

*Dkp-Sr.PS

दिनांक:- 31/10/2017

कोलकाता / Kolkata

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

Accountant Member

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक /Assessee-M/s Shree Brindaban Rice Mill,Bangalbari, Uttar Dinajpur
- 2.राजस्व /Revenue-DCIT,CC-XXVII, Aayakar Bhawan Purva, 110 Shanti Palli, E.M By-pass, Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary,
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता