

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3505/Chny/2019
निर्धारण वर्ष /Assessment Year: 2016-17

Shri Suresh Mutha,
961, Siyat House,
Poonamallee High Road,
Purasawalkam,
Chennai-600 084.

V. The Asst. Commissioner of
Income Tax,
Corporate Circle-4(1),
Chennai.

[PAN: AAEPM 8042 J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.P.Uttamchand Jain, CA

प्रत्यर्थी की ओर से /Respondent by

: Mr. AR.V.Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 11.03.2020

घोषणा की तारीख /Date of Pronouncement

: 11.03.2020

आदेश / O R D E R

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against appellate order dated 26.09.2019 passed by learned Commissioner of Income Tax (Appeals)-8, Chennai (hereinafter called "the CIT(A)"), in ITA No.63/18-19 for assessment Year (ay) 2016-17, the appellate proceedings before learned CIT(A) had arisen from penalty order dated 07.12.2018 passed by learned Assessing Officer (hereinafter called "the AO") u/s.271(1)(b) of the Income-tax Act, 1961 (hereinafter called "the Act") levying penalty

of Rs. 10,000/- for non compliance to notices issued by the AO dated 24.08.2018 and 16.10.2018, both u/s 142(1) of the 1961 Act.

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

- 1. For that the order of the learned Commissioner of Income tax (Appeals) and Assessing Officer is contrary to law, facts and circumstances of the case and in any case is opposed to the principles of equity, natural justice and fair play.*
- 2. For that the Learned Commissioner of Income Tax (Appeals) has erred in confirming the Levy of penalty U/s.271(1)(b) by the Assessing Officer under the facts and circumstances of the case.*
- 3. For that the Learned Commissioner of Income Tax (Appeals) has erred in concluding the levy of penalty is for delay in submission of details under the facts and circumstances of the case.*
- 4. For that the Learned Commissioner of Income Tax (Appeals) has erred in considering the fact the assessment was completed U/s. 143(3) and not under Section 144.*
- 5. For that the Learned Commissioner of Income Tax (Appeals) has erred in confirming the levy of penalty of Rs.10,000/- against show cause notice for more than one notice under the facts and circumstances of the case.*
- 6. For that the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition made out of the Sales Promotion Expenses under the facts and circumstances of the case.*
- 7. For that the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition made out of the Sales Promotion Expenses under the facts and circumstances of the case*

PRAYER

For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that the Honourable Income Tax Appellate Tribunal may be pleased to

- a. Direct the Assessing Officer to delete the Levy of Penalty U/s.271(1)(b).*
- b. Pass such other orders as the Honourable Appellate Tribunal may deem fit.*

3. The solitary issue that arise in this appeal is with respect to challenge made by assessee against levy of penalty of Rs. 10,000/- u/s.271(1)(b) of the Act for non compliances of two notices dated 24.08.2018 and 16.10.2018 both issued u/s 142(1) of the 1961 Act. The

assessee is an individual and the case of the assessee was selected for framing scrutiny assessment through CASS and notice u/s.143(2) of the Act was issued by the AO to the assessee which was admittedly duly served on the assessee. Subsequently, the notice u/s.142(1) of the Act was issued to the assessee and the assessee had e-filed the details called for in the e-proceedings portal. However it so happened that on two occasions when notice(s) dated 24.08.2018 & 16.10.2018 both issued u/s.142(1) of the Act by the AO to the assessee asking to appear and file details on appointed date, the assessee did not come forward and there was non compliances to both these notices by the assessee, which led to issuance of show cause notice u/s.274 r.w.s.271(1)(b) of the Act on 09.11.2018 by the AO , as to why, penalty should not be imposed u/s.271(1)(b) of the Act against the assessee. In response to the aforesaid SCN, the assessee's representative duly appeared before the AO on 16.11.2018 and filed details in person before the AO and also furnished replies which were uploaded in the e-proceedings portal. This non-appearance by assessee on these two occasions to the notices issued by AO u/s.142(1) of the Act , dated 24.08.2018 & 16.10.2018 led to levy of penalty of Rs.10,000/- against the assessee , vide penalty order dated 07.12.2018 passed by the AO u/s.271(1)(b) of the Act.

4. Aggrieved by levy of penalty by the AO u/s 271(1)(b) of the 1961 Act, the assessee filed first appeal with Ld.CIT(A) which was dismissed by Ld.CIT(A) , vide appellate order dated 26.09.2019. The assessee is now

in appeal before tribunal and at the outset, Ld.Counsel for the assessee submitted that non-compliance of these notices u/s.142(1) of the Act dated 24.08.2018 & 16.10.2018 was not deliberate and assessee duly entered appearance before AO later on 16.11.2018 during the course of assessment proceedings and filed all details which led to the culmination in the assessment Order dated 14.12.2018 passed u/s.143(3) of the Act and it was prayed that the liberal view may be taken and penalty of Rs.10,000/- u/s.271(1)(b) of the Act levied by the AO , be hereby deleted.

The assessee has relied on the following decisions:

1. *Hon'ble ITAT, Delhi Bench decision in the case of Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust v. ADIT reported in [2008] 115 TTJ 419 (Delhi).*
2. *Hon'ble ITAT , Ahmedabad decision in the case of Swarnaben M. Khanna & Ors. v. DCIT reported in (2010) 132 TTJ (Ahd) (UO) 1 : (2010) 37 SOT 25.*
3. *Hon'ble ITAT, Jodhpur decision in the case Parmeshwari Textiles v. ITO reported in (2005) 92 TTJ (Jd) 764*

The Ld.DR, on the other hand, vehemently relied upon the appellate order passed by Ld.CIT(A).

5.We have heard both the rival parties and perused the material on records including cited case laws. We have observed that assessee is an individual. The case of the assessee was selected for framing scrutiny assessment through CASS by Revenue u/s.143(3) r.w.s.143(2) of the Act. The notice u/s.143(2) was issued by AO to the assessee and admittedly served on the assessee. Thereafter two notices were issued to the assessee u/s 142(1) of the 1961 Act on 24.08.2018 and 16.10.2018 fixing the date of hearing but the assessee did not appear before the AO on the

date fixed for hearing and hence both these notices remained non-complaint with. Later, the AO issued show cause notice dated 09.11.2018 u/s 271(1)(b) show-causing assessee as to penalty be not levied on assessee within provisions of Section 271(1)(b) of the 1961 Act. The assessee then entered appearance before the AO through AR on 16.11.2018 and filed details as called for by the AO . The said details were also uploaded by assessee on e-proceeding portal of the department . The AO passed an assessment order dated 14.12.2018, u/s 143(3) of the 1961 Act. Thus, the assessment order passed by the AO was under provisions of Section 143(3) of the 1961 Act and not an ex-parte best judgment assessment u/s 144 of the 1961 Act. The AO levied penalty of Rs. 10000 for non compliances of aforesaid two notices dated 24.08.2018 and 16.10.2018 , both issued u/s 142(1) of the 1961 Act by invoking provisions of Section 271(1)(b) of the 1961 Act. In our considered view , the assessee has subsequent to issue of both the aforesaid notices u/s 142(1) of the 1961 Act, entered appearance before the AO on 16.11.2018 during assessment proceedings and filed the requisite details. The AO finally passed an assessment order u/s 143(3) and not an ex-parte best judgment assessment order u/s 144 of the 1961 Act. Thus, it is not a case that the assessee did not entered appearance at all post these notices during assessment proceedings or that it did not furnish the desired details .We have also gone through the cited case laws as relied upon by assessee and in our considered view, the assessee has entered appearance post issue of these notices and furnish the details before the

AO as well in uploaded details in the e-proceedings portal during assessment proceedings and thus keeping in view entire factual matrix of the case and also taking a liberal view, we hereby delete penalty of Rs. 10,000/- levied against the assessee by the AO u/s.271(1)(b) of the Act. We order accordingly.

6. In the result, the appeal filed by assessee in ITA No.3505/Chny/2019 for ay: 2016-17 is allowed.

Order pronounced in the open Court on the 11th day of March, 2020 in Chennai.

Sd/-
(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 11th March, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF