

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

**IN THE INCOME TAX APPELLATE TRIBUNAL,**

**INDORE BENCH, INDORE**

**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER**

**AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA Nos 235 to 241/Ind/2018**

**Assessment Years: 2010-11 to 2016-17**

Mrs. Manu Rai,  
Q-8, Ras Bahar Colony,  
Shivpuri Road,  
Jhansi

: Appellant

PAN: AHSPR0521F

v/s

Dy. Commissioner of Income Tax, : Respondent  
Central Circle, Bhopal

**ITA Nos 242 to 248/Ind/2018**

**Assessment Years: 2010-11 to 2016-17**

Shri Manish Rai,  
Q-8, Ras Bahar Colony,  
Shivpuri Road,  
Jhansi

: Appellant

PAN: AHSPR0620E

V/s

Dy. Commissioner of Income Tax, : Respondent  
Central Circle, Bhopal

**ITA Nos 249 to 255/Ind/2018**  
**Assessment Years: 2010-11 to 2016-17**

Smt. Meena Devi Rai,  
Q-8, Ras Bahar Colony,  
Shivpuri Road,  
Jhansi

: Appellant

PAN: AFIPR5616C

V/s

Dy. Commissioner of Income Tax, : Respondent  
Central Circle, Bhopal

Appellant by	Ms. Nisha Lahoti, C.A
Revenue by	Smt. Ashima Gupta, CIT
Date of Hearing	19.08.2020
Date of Pronouncement	21.08.2020

**ORDER**

**PER BENCH.**

The above captioned appeals are at the instance of respective assessee(s) which are directed against separate orders of Ld. Commissioner of Income Tax (Appeals)-3, Bhopal (in short 'Ld.CIT'], Indore evenly dated 30.01.2018.

2. As the issue and facts raised in all these appeals are similar, these were heard together and are being disposed off by this

common order for the sake of convenience and brevity. For the purpose of adjudication we will take up the facts of the assessee namely Mrs. Manu Rai, ITA No.235 to 241/Ind/2018 wherein the assessee has commonly challenged the finding of Ld. CIT(A) confirming the penalty of Rs.10,000/- u/s 271(1)(b) of the Act levied by the Ld. A.O in all the seven years.

3. Brief facts of the case as culled out from the records are that the assessee is an individual. The source of income is business and tuition fees. Search and seizure operations u/s 132 were conducted at the various premises of the Shivhare group and its associates on 07.01.2016 which includes the instant appellant. Notices u/s 153A were issued for AY 2010-11 to 2015-16 on 27.10.2016. Assessee filed return in response to these notices. Return for AY 2016-17 was filed on 15.12.2016. Notice u/s 142(1) for AY 2010-11 to 2016-17 was issued on 22.05.2017 fixing the date of hearing 29.05.2017. Reply to this notice was filed by assessee on 14.07.2017. Show cause notice was issued on 07/12/2017 requiring assessee to explain the nature of possession and source of the jewellery and silver articles found from her premises and to reconcile the same

with her declared income/assets with documentary evidences. Detailed reply was filed by the assessee. Proceedings were completed u/s 153A r.w.s 143(3) for AY 2010-11 to 2015-16 and u/s 143(3) for AY 2016-17. Ld. AO passed penalty order u/s 271(1)(b) on 25.10.2017 imposing a penalty of Rs. 10,000 for each of the seven years i.e. AY 2010-11 to 2016-17. Aggrieved assessee preferred an appeal before Ld. CIT(A). Ld. CIT(A) sustained the penalty of Rs. 10,000 imposed by Ld. A.O for each of the seven years i.e. AY ~ 2010-11 to 2016-17.

4. Aggrieved assessee is now in appeal before this Tribunal.
5. Ld. Counsel for the assessee vehemently argued referring to the following written submission placed on record.

A. Assessments completed u/s 153A rws 143(3) for AY 2010-11 to 2015-16 and u/s 143(3) for AY 2016-17

1. Assessments for AY 2010-11 to 2015-16 have been completed u/s 153A rws 143(3) and for AY 2016-17 u/s 143(3). Assessee filed replies before Ld. AO for the purpose of completing assessment fact of which is discernible from the assessment order itself. Also, it is not a case of assessment done ex-parte by applying provisions of section 144. Accordingly, imposition of penalty u/s 271(1)(b) is not eligible.

2. The subsequent compliances in the assessment proceedings are to be considered as good compliances and default committed earlier should be

ignored. Penalty imposed u/s 271(l)(b) for each of the seven years ought to be deleted.

B. Assessed income is same as returned income for AY 2010-11 to 2015-16

1. Assessee submits that the returned income for AY 2010-11 to 2015-16 has been accepted by Ld. AD as assessed income.

2. This evidently demonstrates that submissions of the assessee have been considered by the Ld. AD before completing the assessments u/s 153A rws 143(3).

C. Assessee has complied to the notices issued by Ld. AO

1. Compliance to the various notices issued can be evidently demonstrated from the assessment order passed u/s 153A rws 143(3), as under-

a." .... The assessee has filed the return under section 153A of the Act in pursuance of the above notices for AY s 2010-11 to 2016-17 // [PB 2 para 6]

b." ...Notice u/s 142(1) of the Act, containing detailed questionnaire was issued on 22.05.2017. The assessee has filed written replies to the notice u/s 142(1) for the A. Ys. 2010-11 to 2016-17 which have been considered and placed on record [PB 3 para 7]

c." ....In this regard specific show cause query raised wherein Ms. Manu Rai required to explain the source of this cash failing which amount of Rs. 3,8,6,900/- was proposed to be added. In her reply assessee claimed that the cash belonged to her father .. [PB 3 para 8]

d." *In this regard specific show cause query raised wherein Ms. Manu Rai required to explain the source of this cash failing which amount of Rs. 75,000/was proposed to be added. In her reply assessee claimed that the cash belonged to her father " [PB 4 para 9]*

e."During the course of assessment proceedings 22/05/2017, the assessee was required to explain the nature of possession and source/mode of acquisition of such jewellery and reconcile the same with her declared income/assets. Further, Again, vide show-cause notice dated 07/12/2017 the assessee has been again required to explain the nature of possession and source of this jewellery and silver articles found from his premises and to reconcile the same with her declared income/assets with documentary evidences. The assessee has also been required to state as to why the addition shall not be added to her total income, in absence of necessary evidences.

*In this regard assessee relied detailed submission the is as under...*

[PB 5 para 10.2]

From the above it is evidently clear that the assessee has complied with various notices issued. There is no failure on the part of the assessee on account of noncompliance of notices. The details were available with the Ld. AO for completing the assessment proceedings.

D. Ld. CIT(A) has relied on the decision of Hon'ble Patna High Court in the case of Standard Mercantile Co (1986) 160 ITR 613. This decision is distinguishable on the facts of the instant case. In the above mentioned decision, assessee failed to comply with the notice issued u/s 142(1) and also failed to produce books of accounts. However, in the instant case, assessee has complied with the notices issued u/s 142(1) on subsequent

dates as noted by the Ld. A.O in the assessment order itself. Thus, the decision of Hon'ble Patna High Court is not applicable in the instant case.

Ld. Counsel for the assessee placed reliance on the following decisions:-

- (i) Rambhau Ghyanshyam Asai (HUF)-ITA No.798/Ind/2016 to 804/Und/2016 order dated 16.05.2018 - Hon'ble Bench of Indore ITAT.
- (ii) Akhil Bharatiya Prathmik Shmshak Sangh Bhawan Trust (2008) 115 TTJ 419- Hon'ble Delhi Bench of ITAT.
- (iii) Hemant Kumar Soni - ITA No.1361/Ind/2016 to 1367/Ind/2016 - Hon'ble Indore Bench of I.T.A.T.
- (iv) Vineet Chauhan - ITA No.1061/Ind/2016 to 1067/Ind/2016 - Hon'ble Indore Bench of I.T.A.T.
- (v) M. Ahuja Construction Private Limited - ITA No.655/Ind/2016 to 657/Ind/2016 - Hon'ble Indore Bench of I.T.A.T.

6. Ld. Departmental Representative vehemently argued supporting order of both the lower authorities but could not controvert the fact that the issue is squarely covered by various decision of jurisdictional Indore Bench of I.T.A.T.

7. We have heard rival contentions and carefully gone through the decision of the jurisdictional Tribunal relied and referred by the

assessee. The sole issue raised in the case of Mrs. Manu Rai relates to levy of penalty u/s 271(1)(b) of the Act at Rs.10,000/- for non appearance before the Ld. A.O on the scheduled date of hearing. Perusal of the records shows that in the instant case assessee after failing to appear on the initial date of hearing subsequently complied with the notice issued u/s 142(1) of the Act on subsequent dates as noted by the Ld. A.O in the assessment order itself. Further this fact remain undisputed that based on these compliances the assessments were completed u/s 153A r.w.s. 143(3) of the Act for Assessment Years 2010-11 to 2015-16 and u/s 143(3) for Assessment Year 2016-17. None of these assessments were *ex-parte*. Similar issue under identical facts were dealt by us in the case of Regent Beers & Wines Ltd V/s DCIT ITA No. 350 & 351/Ind/2018 order dated 16.05.2019 wherein we have held as follows:-

6. *We find that the similar issue relating to levy of penalty u/s 271(b) of the Act came up before the Co-ordinate Bench in the bunch of appeals which included assessee's own case for other assessment years. The Tribunal vide order dated 24.1.2019 deleted the penalty of Rs.10,000/- levied u/s 271(b) of the Act by relying on the decision of the Co-ordinate Bench in the case of Pramila Kumari Vs DCIT (2011) 49 CCH 0401 dated 20.3.2017 holding that the penalty was not leviable for non*



*compliance of notice u/s 271(b) of the Act as the assessment were framed u/s 143(3) of the Act showing that necessary co-operation was given by the assessee for completing the assessment proceedings.*

7. *Examining the facts of the instant case in the light of above decision, we find that in the case of Regent Beers & Wines Ltd the assessment for Assessment Year 2015-16 and 2016-17 is framed u/s 153A r.w.s. 143(3) of the Act and in the case of Patel Education & Welfare Society Assessment Year 2010-11 framed u/s 153A r.w.s. 143(3) of the Act. We are therefore of the considered opinion that in all the three cases as the assessment orders have been framed u/s 143(3) of the Act, It proves that the assessee had cooperated in the assessment proceedings and therefore respectfully following the decision of the Tribunal referred above, we delete the penalty of Rs.10,000/- levied u/s 271(1)(b) of the Act in the three appeals bearing No.350 to 352/Ind/2018.*

8. *In the result all the three appeals are allowed.*

8. Similar view was also taken by the Indore Bench of ITAT in the case of Rambhau Ghyanshyam Asai (HUF) ITA No.798/Ind/2016 to 804/Ind/2016 order dated 16.05.2018 (supra) wherein the Tribunal deleted the penalty of Rs.10,000/- u/s 271(1)(b) of the Act after considering the decisions of other Co-ordinate benches namely (i) Akhil Bharatiya Prathmik Shmshak Sangh Bhawan Trust (supra), (ii) Hemant Kumar Soni (supra), (iii) Vineet Chauhan (supra), and

(iv) M. Ahuja Construction Private Limited (*supra*) observing as follows:-

*“Para 15 – “ the assessee has duly complied with the requirements on the subsequent dates because of which the assessment was completed u/s 153C r.w.s. 143(3) of the Act. We are, therefore, of the view that both the lower authorities were not justified in levying and confirming penalty u/s 271(1)(b) of the Act at Rs.10,000/- in each case. We accordingly set aside the orders of the authorities below and delete the penalty of Rs.10,000/- in each of these cases”*

9. In the light of above decisions and on examining the facts of the instant case, we find that the assessee cooperated in the assessment proceedings after attending the proceedings on subsequent dates. Based on these compliances the assessments were completed u/s 153A r.w.s. 143(3) for A.Y 2010-11 to 2015-16 and u/s 143(3) for A.Y 2016-17. Needless to mention that none of the assessment orders were framed *ex-parte*.

10. We therefore in the given facts and circumstances of the case and respectfully following above decisions of the Tribunal, direct the revenue authorities to delete the penalty of Rs.10,000/- levied u/s 271(1)(b) of the Act for Assessment Year 2010-11 to 2016-17 in the

case of Mrs. Manu Rai (ITA No.235 to 241/Ind/2018). The sole ground raised in all the seven appeals stands allowed.

11. Now we take up the remaining appeals of the assessee(s) namely Manish Rai (ITA No.242 to 248/Ind/2018) and Mrs. Meena Devi Rai (ITA No.249 to 255/Ind/2018). Similar issues and facts have been dealt by us in the case of Mrs. Manu Rai in the preceding paragraphs. Before us both the parties i.e. Ld. Counsel for the assessee and Departmental Representative fairly accepted that the issues raised and facts in these appeals of the assessee(s) namely Manish Rai and Mrs. Meena Devi Rai are similar to that of Mrs. Manu Rai which we have adjudicated in the preceding paragraphs. We therefore apply the finding in the case of Mrs. Manu Rai (ITA No.235 to 241/Ind/2018) on the issues raised in these 14 appeals in the case of Manish Rai and Mrs. Meena Devi Rai and allow the sole grounds raised in all these 14 appeals ITA No.242 to 248/Ind/2018 and ITA No.249 to 255/Ind/2018 respectively and direct the revenue authorities to delete the penalty levied u/s 271(1)(b) of the Act at Rs.10,000/- each for Assessment Years 2010-11 to 2016-17.

ITA Nos.235 to 255/Ind/2018  
Manu Rai & Ors

12. In the result all the appeals of the three assessee(s) namely Mrs. Manu Rai (ITA No.235 to 241/Ind/2018), Manish Rai (ITA No.242 to 248/Ind/2018), and Smt. Meena Devi Rai (ITA No.249 to 255/Ind/2018), are allowed.

The order pronounced in the open Court on 21.08.2020.

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

Sd/-

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

नांक /Dated : 21 August, 2020

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore