

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4433/Del/2014 : Asstt. Year : 2006-07

ITA No. 4434/Del/2014 : Asstt. Year : 2007-08

ITA No. 4435/Del/2014 : Asstt. Year : 2008-09

ITA No. 4436/Del/2014 : Asstt. Year : 2009-10

ITA No. 4437/Del/2014 : Asstt. Year : 2010-11

ITA No. 4438/Del/2014 : Asstt. Year : 2011-12

ITA No. 4439/Del/2014 : Asstt. Year : 2012-13

Sh. Krishan Kumar Modi, A-1, Maharani Bagh, New Delhi	Vs.	ACIT, Central Circle-2, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AANPM0159M		

**Assessee by : Sh. Rohit Jain, Adv. &
Ms. Deepanshree Rao, Adv.**

Revenue by : Mohd. Gaysuddin Ansari, CIT DR

Date of Hearing: 16.02.2023	Date of Pronouncement: 12.05.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of Id. CIT(A)-III, New Delhi dated 12.05.2014.

2. Since, the issue involved in all these appeals are similar, they were heard together and being adjudicated by a common order.

3. In ITA No. 4433/Del/2014, the assessee has raised the following grounds of appeal:

"1. That the Commissioner of Income Tax (Appeals) erred on facts and in law in not holding that the impugned order dated 01.10.2013, levying penalty under section 271 (1)(b) of the Income-tax Act, 1961 ('the Act') is without jurisdiction, illegal and bad in law.

2. That the Commissioner of Income Tax (Appeals) erred on facts and in law in upholding the levy of penalty of Rs. 10,000 under section 271 (1)(b), without appreciating that the appellant had duly responded to and complied with the notice issued under section 142(1) of the Act.

3. That the Commissioner of Income Tax (Appeals) erred on facts and in law in holding that the appellant failed to co-operate in the investigation proceedings by refusing to sign the 'consent-form', without appreciating that the appellant was not at all competent to sign such form.

4. Without prejudice, that the Commissioner of Income Tax (Appeals) failed to appreciate that penalty under section 271(1)(b) r.w.s. 273B of the Act was even otherwise not leviable since there existed 'reasonable cause' for not furnishing the 'consent-form' sought by the assessing officer."

4. The assessee has also raised the following additional grounds of appeal:

"1. That on the facts and circumstances of the case and in law, the penalty order dated 01.10.2013 passed under section 271(1)(b) of the Income Tax Act, 1961 ('the Act') in respect of invalid proceedings under section 143(3) r.w.s. 153A of the Act, is without jurisdiction, illegal and bad in law.

2. That on the facts and circumstances of the case and in law, the penalty levied under section 271(1)(b) of the Act on account of alleged non-compliance in

connection with material/ document beyond the scope of proceedings under section 143(3) r.w.s. 153A I of the Act, is illegal and bad in law."

5. Admission of the additional ground has been opposed in principle by the Id. DR. Keeping in view, the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs CIT (1998) 229 ITR 383, the additional ground filed by the assessee is accepted. The relevant portion of the judgment is as under:

"5. Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

6. In the case of Jute Corporation of India Ltd. v. C.I.T. this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify

curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T. v. Anand Prasad (Delhi), C.I.T. v. KaramchandPremchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits."

6. Respectfully following the above judgment of the Hon'ble Apex Court, the additional grounds taken up by the assessee are hereby admitted.

7. A search & seizure operation u/s 132 of the Income Tax Act, 1961 was carried out in the case of the assessee on

09.11.2011. Subsequently, notice u/s 153A of the Act was issued on 02.11.2012 to file return of income within 19 days from the service of notice. During the course of assessment proceedings, a notice u/s 142(1) was issued to the assessee on 15.07.2013 seeking certain information/documents from the assessee relating to his foreign bank accounts and consequently the assessee did not file the requisite "consent letter" vide notice u/s 142(1). Consequently, a show-cause notice was issued to the assessee on 26.09.2013 for imposing penalty u/s 271(1)(b). In response to the notice u/s 142(1), the assessee vide his letter dated 30.09.2013 reiterated the same facts as were mentioned in his letter dated 24.07.2013. Upon such failure, the AO imposed the penalty of Rs.10,000/- u/s 271(1)(b) for non-compliance of information being sought u/s 142(1).

8. Aggrieved, the assessee filed appeal before the Id. CIT(A) who confirmed the penalty order of the Assessing Officer levying the penalty u/s 271(1)(b) and then the assessee filed appeal before ITAT.

9. The complete background of the issue is as under:

9.1 In April/May, 2011 Government of India received information from a Foreign Government under the Double Taxation Avoidance Agreement (DTAA), that certain Indian passport holders have opened and had maintained bank accounts with Hongkong and Shanghai Banking Corporation (HSBC) in Switzerland, etc. The information received was covered under the confidentiality clause of the DTAA, and its contents could not be disclosed by the Income Tax department

without express consent of the country which had shared the information.

9.2 Based on the above information received, investigations were initiated by the department in July 2011. Some persons appeared *suo-motu* before the tax authorities and have admitted that they have had bank account with HSBC and also paid the due tax on the maximum amount deposited/outstanding in the account. In several cases, searches were conducted and the persons searched also admitted to have opened accounts overseas and not disclosed it for tax purposes in India. However, during the investigations, several persons have denied have admitted opening the account but denied of having any transactions. In cases, where details of the transactions in the accounts were not available, or where persons have denied any account or any transaction in the account, reference has been made to HSBC by way of a "Consent Letter" signed by the alleged account holder and duly notarized, to enable HSBC to furnish the requisite details such as account opening form, other documents, names of beneficiaries, details of transactions, etc. to the account-holder.

9.3 It is also pertinent to note that the Income Tax Act, 1961 has also been amended to provide for reopening of tax assessments for a period of 16 years to cover such cases which has escaped assessment. It is only in such cases where such persons have refused to deliver the signed and notarized "Consent Letters" that penalty has been initiated and imposed under section 271(1)(b).

9.4 While confirming the penalty order, the Id. CIT(A) held that in the light of the above facts, these cases are not of simple tax evasion but of suspected tax evasion by transferring or keeping funds overseas in an illicit manner. The persons suspected of having opened and maintained undisclosed bank account overseas, were required to sign and execute/notarize the "Consent Letter" to verify the truth of the allegation against them. The Id. CIT(A) held that the purpose of the penal provision contained in section 271(1)(b) is to ensure compliance to tax enquiry/investigation. This penalty is attracted where there is failure to comply with notices under section 142(1) or under section 143(2). The penal provisions contained in Chapter XXI relevant to enforcement of sections 142/143 are Sections 271 and 272A. The Id. CIT(A) held that in the facts of the present case there was a information the appellant is engaged in suspected tax evasion by transferring or keeping funds overseas in an illicit manner. The appellant is suspected of having opened and maintained undisclosed bank account overseas and was required to sign the "consent form" to verify the allegation. The Id. CIT(A) held that mere signing of the "consent form" does not cause any jeopardy to the appellant - if his denial of having opened any bank account is correct he has nothing to worry. But refusal to sign the "consent form" tantamounts to refusal to join the investigation. The Id. CIT(A) held that the purpose of the penal provision contained in section 271(1)(b) is to ensure compliance to tax investigations and since the assessee having failed to sign the "consent form", and having no reasonable cause to do so, has violated the said provision.

10. Thus, the issue before us is, whether the revenue is correct in levying penalty u/s 271(1)(b) for failure to sign on the so called "Consent Letter" which is not an authorized form notified by the Government.

11. Heard the arguments of both the parties and perused the material available on record. The provisions of the Act and the judicial pronouncements on the issue of levy of penalty u/s 271(1)(b) are examined in detail.

12. The provisions of Section 273B reads as under:

"273B. Penalty not to be imposed in certain cases.- Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B , section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FB,section 271G, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure."

13. Thus, in terms of the aforesaid section, no penalty is imposable on the person for any failure referred to in the relevant penal provisions prescribed therein, including section 271(1)(b) of the Act, if the assessee proves that there was a reasonable cause for the said failure.

14. It, thus, transpire that the imposition of penalty under section 271(1)(b) of the Act on account of alleged failure to comply with notice issued is not automatic. If there is a reasonable cause for such a failure, then, penalty is not at all imposable in terms of section 273B of the Act.

15. In the context of section 273B of the Act, the expression "reasonable cause" has been explained to mean a cause which prevents a man of ordinary prudence and average intelligence, acting under normal circumstances, without negligence or inaction or want of bona fide.

16. We find that,

- The case of the assessee involving the deposits in the foreign bank account of HSBC bank, Geneva has been a subject matter of adjudication by the Tribunal in ITA No. 2892 to 2984/Del/2017 and 3951 to 3956/Del/2017 wherein at para no. 5.9 in page 37, it was held that the assessee has offered Rs.5.8 Cr. to tax in the A.Y. 2012-13 and the same was treated to be taxed on substantial basis and the addition made in the earlier years on protective basis has been deleted. The additions made by the AO for the earlier years has been deleted.
- The Hon'ble High Court vide order dated 22.02.2021 in ITA No. 48 to 54/2021 has affirmed the above order of the Tribunal.
- Thus, the due taxes have been paid by the assessee and collected by the revenue.
- The similar issue of levy of penalty u/s 271(1)(b) for not signing the concerned form has been deleted by the Co-

ordinate Bench of Tribunal in the case of Shyam Sunder Jindal vide order dated 28.02.2017 in ITA No. 6425 & 6426/Del/2015.

- Further, the Hon'ble High Court of Madras in case of CIT Vs. V. V. Venkatataramiah (11 ITR 308) held that the penalty cannot be levied if there is a reasonable cause.
- The Hon'ble Apex Court in the case of Hindustan Steel Ltd. (83 ITR 26) held that an order imposing penalty for failure to carry out a statutory 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 guilty of conduct, contumacious or dishonest, or acted in conscious disregard to 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.

17. Hence, keeping in view, the details of the tax payment, investigation of the revenue, provisions of the act and the judicial pronouncement, we delete the penalty levied by the AO u/s 271(1)(b).

18. In the result, the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 12/05/2023.

Sd/-

(C. M. Garg)
Judicial Member

Dated: 12/05/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR