

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KUL BHARAT, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 5544/Del/2018
(Assessment Year : 2015-16)

Discovery Logistics P. Ltd. C-2/77, Swarn Park Extn.- II, Nangloi West Delhi New Delhi-110087 PAN No. AACCD 3558 K (APPELLANT)	Vs.	ACIT Circle – 7(2) New Delhi (RESPONDENT)
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Assessee by	Shri Priyansh Jain, C.A.
Revenue by	Ms. Rinku Singh, Sr. D.R.

Date of hearing:	01.09.2021
Date of Pronouncement:	06.09.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 11.06.2018 passed by the Commissioner of Income Tax (Appeals)-3, Delhi relating to Assessment Year 2015-16.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company which stated to be engaged in the business of transportation, booking and delivery of all types of goods, cargo, vehicle and luggage. Assessee electronically filed its return of income on 29.09.2015 for A.Y. 2015-16 declaring income of Rs.78,46,540/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 19.12.2017 accepting the return income filed by the assessee. AO however vide order dated 06.11.2017 levied the penalty of Rs.10,000/- u/s 271(1)(b) of the Act for non compliance of notice u/s 142(1) of the Act. Aggrieved by the order of penalty passed by AO, assessee carried the matter before the CIT(A) who vide order dated 11.06.2018 in Appeal No. 92/17-18 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds of appeal:

- “1. That in any case and in any view of the matter, action of Learned CIT(A) in confirming the action of Ld AO in imposing penalty u/s 271(1)(b), is bad in law and against the facts and circumstances of the case.
2. That having regard to the facts and circumstances of the case, Ld CIT(A) has erred in law and on facts in not quashing the penalty order passed by Ld AO as the impugned penalty order is contrary to law.
3. That the assessee craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.”

4. Before us, Learned AR submitted that assessee had attended before the AO on various dates which is also evident from the noting made by the AO in the assessment order which states about the AR of the assessee attending the proceedings. He therefore submitted that in such a situation the imposition of

penalty was not justified for the non compliance. He further pointed to the assessment order and submitted that the order has been passed under section 143(3) and not under section 144 of the Act, meaning thereby that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by Assessing Officer and in such a situation, no penalty u/s 271(1)(b) is leviable. For the aforesaid proposition, he placed reliance on the decision of the Tribunal in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust vs. ADIT reported in [2008] 115 TTJ 419 (Del). He also placed reliance on the other decisions placed in the paper book wherein the aforesaid decision in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust (supra) has been followed. He therefore submitted that the penalty levied be deleted.

5. Learned DR on the other hand submitted that as per section 271(1)(b) of the Act, on each instance of default penalty may be levied @Rs. 10,000/- if the concerned authority, during the course of proceedings, is satisfied that the person has failed to comply with the statutory notice or the direction. She further submitted that the provisions of Section 271(1)(b) provides that no penalty is to be imposed if the person proves that there was a reasonable cause for the failure to comply with the statutory notice. She submitted that the AO and CIT(A) did not find any reasonable cause on the part of the assessee for not making compliance before the AO and in such a situation the penalty

levied u/s 271(1)(b) of the Act is justified. She thus supported the order of lower authorities.

6. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect of levy of penalty u/s 271(1)(b) for non-compliance to the notice issued u/s 142(1) of the Act. It is an undisputed fact that the assessment order for A.Y. 2015-16 has been passed u/s 143(3) of the Act. We find that the Co-ordinate Bench of Tribunal in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust (Supra) has held that when the order is passed under section 143(3) of the Act and not under section 144 of the Act, it would mean that subsequent compliance in assessment proceedings are considered to be a good compliance and defaults committed earlier are ignored by Assessing Officer and in such circumstances, there could be no reason to come to the conclusion that the default was willful. We find that the facts in the case under consideration to be identical to that of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust (supra) and in such a situation, we relying on the aforesaid decision of Tribunal in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust (supra) are of the view that penalty imposed u/s 271(1)(b) of the Act was not warranted more so, when the assessment order has been passed u/s 143(3) of the Act. Thus we set aside the penalty order levied by AO and direct the AO to delete the penalty.

Thus the ground of assessee is allowed.

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

Order pronounced in the open court on 06.09.2021

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 06.09.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI