INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

Before Shri R.S. Padvekar, Judicial Member
And Shri R.K. Panda, Accountant Member

ITA No. 2174/PN/2013
(Assessment Year : 2010-11)

Rajendra Chotamalji Gogad,
C/o. M/s. R.C. Gogad,
Gogad Estate,
Behind Railway Station,
A/P. Manmad, Ral : Nandgaon,
Nashik – 423 208
PAN No.BAIPG4432P .. Appellant

Vs.

JCIT, Range-2, Nashik .. Respondent

ITA No. 2175/PN/2013
(Assessment Year : 2010-11)

Piyush Prakash Gogad,
C/o. M/s. Pushkar Buildcon,
29, Kehar, Anandvan Colony,
College Road,
Nashik – 422 001
PAN No.AHZPG6912H .. Appellant

Vs.

JCIT, Range-2, Nashik .. Respondent

Assessee by	:	Shri S.S. Mutha
Department by	:	Shri B.C. Malakar
Date of hearing	:	29-10-2014
Date of pronouncement	:	31-10-2014

ORDER

PER R.S. PADVEKAR, JM :

These appeals are filed by two different assessees challenging the respective impugned orders of the Ld.CIT(A)-I, Nashik dated 19-11-2013 for the A.Y. 2010-11. The assessees have taken the following ground which is common in both the appeals :

> *"On the basis of facts and in the circumstances of the case and as per law, the CIT(A)-I, Nashik is not justified in confirming the penalty of Rs.10,000/- levied by the Assessing Officer u/s.272A(1)(c) of the Act and further the CIT(A)-I Nashik is not justified in holding that the appellant has deliberately defied the statutory provisions".*

2. The short issue for consideration is whether the Assessing Officer was justified in levying penalty u/s.272A(1)(c) of the Act. The facts which are revealed from the record as under. As observed by the Assessing Officer in the penalty order the case of M/s. P.P. Gogad for the A.Y. 2010-11 was under scrutiny before the Assessing Officer. It appears that the Assessing Officer issued summons to the assessee u/s.131(1) of the Act dated 08-01-2013 for recording some evidence. As observed by the Assessing Officer, as per the summons, the assessee was required to attend before the Assessing Officer on 14-01-2013 at 12 p.m. but the assessee did not attend nor filed any written submission. It appears that another summons was also issued u/s.131(1) on 18-11-2013 requiring the assessee to attend on 23-01-2013 but he did not remain present. The Assessing Officer, therefore, levied penalty of Rs.10,000/- for non-compliance to the summons issued u/s.131 of the Act u/s.271A(1)(c) of the I.T. Act. Similar is the case with Shri Rajendra Chotamalji Gogad. The penalty orders were challenged by the respective assessees before the CIT(A) but without success.

3. Shri Piyush Prakash Gogad (ITA No.2175/PN/2013) contended before the Ld.CIT(A) as under :

> *"The appellant received the notice U/s. 133(6) of the Act from the office of Jt. Commissioner of Income-tax, Range - 2, Nashik on 29/12/2012 asking him to file some information mainly in respect of work carried out by me for M/s.. P.P. Gogad. Because of holiday on 30th & 31st December the appellant could handover the said notice to his counsel for compliance on 01/01/2013. The necessary and possible compliance was made by the appellant on 07/01/2013. Then again a Summons was issued to the appellant on 08/01/2013 asking to furnish the bank account as well as photo identity. The date of compliance was fixed on 14/01/2013. However, the appellant could not furnished the bank account on 14th Jan because he got the same from bank on 18th Jan, 2013 and also on 14th Jan 'Makar Sankrant' i.e. one of the biggest festival of Maharashtra. However the necessary compliance was made by the appellant on 31/01/2013."*

3.1 Shri Rajendra Chotamalji Gogad (ITA No.2174/PN/2013) contended before the Ld.CIT(A) as under :

> *"The appellant received the notice u/s.133(6) of the Act from the office of Jt. Commissioner of Income-tax, Range - 2, Nashik on 01/01/2013 asking him to file some information mainly in respect of work carried out by me for M/s. P.P. Gogad. The necessary and possible compliance was made by the appellant on 07/01/2013. However Then again a Summons is shown to be issued to the appellant on 08/01/2013 asking to furnish the bank account as well as photo identity. The date of compliance was fixed on 14/01/2013. Throughout the said period the appellant was busy in attending his serious mother who was admitted to Pushpak Hospital, Manmad. However the necessary compliance was made by the appellant on 31/01/2013 by personally attending the office of the A.O."*

4. The Ld.CIT(A) was not impressed with the explanations of both these assessees and confirmed the action of the Assessing Officer for levying penalty by giving the following reasons which are common in both the cases :

> *"4.2 I have carefully considered the facts of the case, the order levying penalty u/s 272A(1)(c) and oral as well*

> *as written submissions on behalf of the appellant. In the present case, the A.O. initially issued notice u/s 133(6) on 29/12/2012 asking for agreement copy, bank statement, details of work carried out by the appellant for M/s P.P. Gogad and copy of return and other documents in regard to the transactions with M/s P.P. Gogad. However, the appellant did not furnish the bank statement and other details as required by the AO but for copy of return. The information furnished by the appellant was very sketchy in nature as evident from his letter dated 04/01/2013. Therefore, the A.O. issued summons on 08/01/2013 which was received by the appellant on 10/01/2013. The appellant was required to attend AO's office on 14/01/2013. The appellant did not attend the AO's office. He also did not furnish the requisite information to the AO on 14/01/2013. The AO thereafter issued notice u/s 274 r.w.s. 272A(1)(c) of the Act on 18/01/2013 asking the appellant as to why penalty u/s 272A(1)(c) should not be levied for his failure to comply with the summons dated 08/01/2013 issued to him u/s 131 of the Act., The appellant did not response to this show cause notice also. The appellant furnished the requisite details on 31/01/2013 only i.e. after the levy of the penalty order. I have gone through the submission of the appellant but find no reasonable cause for not attending before the AO on 14/01/2013 in the said submission. The appellant also did not reply to the show cause notice dated 18/01/2013 to attend AO's office on 23/01/2013. It seems from the available material that the appellant has failed to give any reasonable cause for not complying with the summons u/s 131. It seems from the available material that the appellant has deliberately defied the statutory provisions Hence, the penalty order u/s 272A(1)(c) imposing a penalty of Rs. 10.000/- is confirmed."*

Now the assessees are in appeal before us.

5. We have heard the parties and perused the record. So far as Shri Rajendra Chotamalji Gogad (ITA No.2174/PN/2013) is concerned, we find that his mother was not keeping well when the Assessing Officer asked him to appear before him. Moreover, as per the reply filed before the Ld.CIT(A) he made necessary compliance by attending before the Assessing Officer on 31-01-2013. In respect of Shri Piyush Prakash Gogad (ITA No.2175/PN/2013) is concerned, we find that he has also explained the reasons for his non-attendance before the Assessing Officer due to the Holidays on 30-12-13 &

31-12-13 and also on 14-01-2013. As explained by the assessee, he could not furnish the bank account on 14-01-2013 because he got the same from bank on 18-01-2013 and 14th January was Makar Sankranti festival in Maharashtra. As per the explanation of the said assessee, he also made necessary compliance on 31-01-2013. On perusal of the reasons given by both the assessees, we find there was a reasonable cause for their non-attendance in response to summons issued u/s.131 of the Act within the meaning of sec.273B of the Act.

5.1 We find the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa reported in 83 ITR 26 has held as under :

> *"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 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."*

5.2 In our opinion, there was a reasonable cause for non-attendance of both these assessees before the Assessing Officer. Moreover, nowhere it is demonstrated by the AO that the act of these assessees are deliberate and in defiance of law. In our opinion, there is no justification for levy of penalty on both the assessees.

We accordingly delete the penalty in the cases of both these assessees.

6. In the result, both the appeals are allowed.

Pronounced in the open court on 31-10-2014.

Sd/-	**Sd/-**
(R.K. PANDA)	**(R.S. PADVEKAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Pune Dated: 31st October, 2014
Satish

Copy of the order forwarded to :

1. Assessee
2. Department
3. CIT(A)-I, Nashik
4. CIT-I, Nashik
5. The D.R, "**A**" Pune Bench
6. Guard File

By order

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Assistant Registrar,
ITAT, Pune Benches, Pune