

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER  
[Through Video Conferencing]**

ITA No.6313/Del/2017  
Assessment Year: 2010-11

M/s. Sutanuti Marketing P. Ltd., A-52, Top Floor, Street No. 1, Gurunanakpura, Laxmi Nagar, Delhi	<b>Vs.</b>	DCIT, Central Circle, Ghaziabad
<b>PAN :AANCS3330F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	None
Respondent by	Sh. H.K. Choudhary, CIT(DR)

Date of hearing	08.07.2021
Date of pronouncement	16.07.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the assessee is directed against order dated 14/08/2017 passed by the learned Commissioner of Income-tax (Appeals)-IV, Kanpur [in short 'the Learned CIT(A)'] in respect of penalty of ₹ 10,000 levied under section 271(1)(b) of the Income-tax Act, 1961 (in short 'the Act') by the Assessing Officer for non-compliance of notice under section 142(1) of the Act.

**2.** Briefly stated facts of the case are that during the proceeding under section 153 of the Act, the Assessing Officer issued notice under section 142(1) of the Act on 10/11/2016, which could not be complied by the assessee. The assessee also could not comply notice for levy of impugned penalty. The Assessing Officer levied penalty of ₹ 10,000 in his order dated 15/12/2016 under section 271(1)(b) of the Act. The Learned CIT(A) also upheld the penalty. Aggrieved, the assessee is before us.

**3.** None appeared on behalf of the assessee. We have heard Learned Departmental Representative on the issue in dispute and perused the relevant material on record. Before the Ld. CIT(A), it was submitted by the assessee that in the group cases of 14 entity for seven years about 98 cases were pending before the Assessing Officer and learned Authorized Representative of the assessee was regularly appearing before the Learned Assessing Officer in one or other cases and, therefore, no attendance was recorded in this particular case. It is further submitted that written submission and supporting documents have been filed before the Assessing Officer and the assessment was completed under section 143(3) of the Act. We find that ITAT, Delhi Bench in the case of *Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust vs. ADIT* reported in [2008] 115 TTJ 419 (Del.) has held that that where an assessee had not complied with notice issued u/s 142(1) of the Act but the assessment order was passed u/s 143(3) of the Act and not u/s 144, it meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by the Assessing

Officer and therefore, levy of penalty u/s 271(1) (b) of the Act was not justified.

**3.1** Respectfully following the above finding, since final order has been passed under section 143(3) of the Act and not under section 144 of the Act, the penalty levied by the Assessing Officer is deleted. The grounds raised by the assessee allowed

**4.** In the result, the appeal of the assessee is allowed.

***Order pronounced in the open court on 16<sup>th</sup> July, 2021.***

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER**

Dated: 16<sup>th</sup> July, 2021.

RK/-<sub>(DTDC)</sub>

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi