

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 895 to 900/Del/2023
(A.Y. : 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20)**

Alankit Imaginations Ltd. 205-208, Anarkali Complex, Jhandewalan Extn., New Delhi PAN : AABCA1078L	Vs.	DCIT, Central Circle-28, New Delhi
(APPELLANT)		(RESPONDENT)

**ITA No. 901 to 910/Del/2023
(A.Y. : 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16,
2016-17, 2017-18, 2018-19, 2019-20)**

Alankit Associates Pvt. Ltd. 205-208, Anarkali Complex, Jhandewalan Extn., New Delhi PAN : AABCA1078L	Vs.	DCIT, Central Circle-28, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Salil Kapoor, Sh. Sumit Lalchandhani & Sh. Shivam Yadav, Adv.
Revenue by	Sh. Kanv Bali, Sr. DR

Date of hearing:	13.09.2023
Date of Pronouncement:	13.09.2023

ORDER**PER ANUBHAV SHARMA, JM:**

Heard and perused the record.

2. The issues in the appeals have common background in the assessment orders and impugned penalty orders therefore are taken up together for adjudication. The appeals in ITA no. 895 to 897/Del/2023 for A.Y. 2014-15 to 2016-17 and in ITA no. 901 to 906/Del/2023 for A.Y. 2010-11 to 2016-17 arise out of penalty proceedings u/s 271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') while the appeal in ITA no. 895 to 900/Del/2023 for A.Y. 2017-18 to 2019-20 and ITA no. 901 to 910/Del/2023 for A.Y. 2017-18 to 2019-20 arise out of penalty order u/s 272A(1)(d) of the Act.

3. Ld. AR has pointed out that in response to the notice u/s 153(C) of the Act, the returns were filed and the assessments were completed with nil demand in A.Y. 2011-12 in the case of Alankit Associates Pvt. Ltd. and nil demand being in A.Y. 2019-20 in the case of Alankit Imaginations Ltd. It was also pointed out that in case of Alankit Associates Pvt. Ltd. in A.Y. 2010-11 the company was not in existence. The contention of Ld. AR has been that in all the appeals thus, penalty orders have been passed without application of mind as the orders do not disclose as to which notice was not complied with. It was submitted that the assessments are completed u/s 153(C) and not u/s 144 as such there cannot be any penalty for non-compliances and reliance in this regard has been primarily placed on the judgment of this Bench in the case of **Jai Kuwar vs. ITO, ITA no. 7314/Del/2019 order dated 23.03.2023.**

3.1 On the other hand Ld. DR submitted that there is no error in the findings of Ld. Tax Authorities below.

4. The Bench has given thoughtful consideration to the matter on record and what comes up from the impugned orders is that all the orders are verbatim similar except for change of figures relevant to the assessment years. The penalty order does not mention as to which notice and under what provisions of law was issued, how served and which was not responded by the assessee. As the matter of fact, the assessments have been completed u/s 153C of the Act and no adverse inference was drawn against the assessee to pass an order on best judgment basis u/s 144C.

5. The respective assessment orders cited before us in PB also do not show that if at the time of assessment. Ld. AO had made observation as to which specific document or information sought was not supplied. It appears from the penalty orders that the dispute was with regard to some external hard disc which was sought to be produced but was not produced by the assessee on the basis that it was not readable or corrupt and on that basis the AO issued notice at the time of conclusion of assessment.

6. The Bench is of considered opinion that unless it is established in the assessment order or even under the penalty order that at the time of assessment proceedings itself, Ld. AO had formed opinion that there was intentional non-compliance justifying issuing notice u/s 271(1)(d) or u/s 272A(1)(d) of the Act, Ld. AO is not justified to levy penalty. Ld. CIT(A) has also sustained the addition on the basis of 'non-cooperative attitude' of the assessee. To the mind of this Bench, 'non-cooperative attitude' as such in itself cannot be the basis of imposing penalty under the relevant section, as above, without specifically bringing on record the specific notices, their specific non-compliances and the satisfaction of the ld. AO recorded during the assessment proceedings that there

has been failure to comply with the said notice for which imposing penalty is warranted.

7. In the light of aforesaid, the orders of Ld. tax Authorities below cannot be sustained. The grounds are sustained and **all the appeals are allowed**. The impugned penalty orders are set aside.

Order pronounced in the open court on 13th September, 2023.

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Date:- 13.09.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

AR, ITAT
New Delhi