

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No.5642/Mum/2014
To

ITA No.5648/Mum/2014
(Assessment Years 2006-07 to 2012-13)

M/s. Magnum Infraprojects Pvt. Ltd.
1201-A, Shatrunjaya Darshan Co-op.
Housing Society Ltd.,
Sheth Motisha Cross Lane,
Byculla (E), Mumbai- 400027
PAN:AACCM4472D

..... Appellant

Vs.

The ACIT, Central Cir.45,
Mumbai

.... Respondent

Appellant by : Shri Anuj Kisnadwala
Respondent by : Shri Pradeep Kr. Singh
Date of hearing : 18/10/2016
Date of pronouncement : 21/10/2016

ORDER

PER G.S.PANNU,A.M:

These are seven appeals by the assessee pertaining to assessment years 2006-07 to 2012-13 involving a common issue relating to levy of penalty under section 271(1)(b) of the Act. Since the facts and circumstances in all the appeals stand on similar footing, the appeal for assessment year 2006-07 is taken as the lead case. This appeal is directed against a common order passed

by CIT(A)-38, Mumbai dated 31/07/2014, which in turn, arises out of an order passed by the Assessing Officer under section 271(1)(b) of the Income Tax Act, 1961 (in short 'the Act') dated 20/12/2013. In all the years, penalty of Rs.10,000/- each has been levied under section 271(1)(b) of the Act primarily for the reason of delay on the part of the assessee in complying with the information called for finalizing the assessment.

2. In brief, the relevant facts are that the assessee company is a part of Unity Group of cases, wherein a search and seizure action under section 132(1) of the Act was carried out by the Department on 10/2/2012. A notice under section 142(1) of the Act dated 14/09/2013 was issued by the Assessing Officer for all the seven captioned assessment years fixing the date of hearing on 19/10/2013. Since the notice was received by the assessee only on 17/10/2013, assessee sought adjournment and next date of hearing on 29/10/2013 assessee company furnished only a part of the details called for vide notice under section 142(1) of the Act. The Assessing Officer has noted in her order dated 20/12/2013(supra) that in response to the show cause notice issued under section 271(1)(b) of the Act assessee submitted that due to heavy work load complete details could not be furnished in time. Not being satisfied with the reply of the assessee, the Assessing Officer held that in view of the reluctance of the assessee in filing the details called for, it was a fit case for imposition of penalty under section 271(1)(b) of the Act. Accordingly, penalty of Rs.10,000/- for each of the captioned assessment years have been levied. Such levy has since been affirmed by the CIT(A) also, against which assessee is in further appeal before the Tribunal.

3. Before us, it has been pointed out that the main entity of the Group is M/s. Unity Infraprojects Ltd., in whose case also similar penalties for the

captioned assessment years were levied by the assessing authority, which has been deleted by the Tribunal vide ITA No.5079 to 5085/Mum/2014 dated 17/05/2016. It was pointed out that the penalties in the instant case have also been levied under identical circumstances and, therefore, following the decision of the Tribunal in the case of M/s. Unity Infraprojects Ltd. (supra), such penalties are liable to be deleted.

4. In order to appreciate the case of the assessee, it would be appropriate to note that assessee is part of a group which has multiple entities. As a consequence of search action, assessments were carried out in all the group cases. It has been pointed out that notices under section 142(1) of the Act were issued in the case of all the entities and the date was fixed on 19/10/2013 in many of the cases including in the case of M/s. Unity Infraprojects Ltd. (supra), which was the flagship Company of the group. It has been pointed out that various details has been called for and even the details furnished at the time of levy of penalty under section 271(1)(b) of the Act would show that it is not a case of complete non-compliance, but it is a case where the details/ submissions were made in a piecemeal manner. It has been pointed out that ultimately assessment for all the seven years were completed under section 153A r.w.s. 143(3) of the Act on the basis of the material and submissions put-forth by the assessee. Before CIT(A) assessee also pointed out that since the search was conducted with respect to certain purchase transactions carried out in the case of M/s. Unity Infraprojects Ltd. (supra), the compliance was made in that case on priority basis. Before the CIT(A), assessee also furnished a copy of the proceedings sheet in the case of M/s. Unity Infraprojects Ltd. (supra) to show that it had complied with significant requirement of the Assessing Officer. The Ld. Representative for the assessee

pointed out that the detailed explanation rendered by the assessee has been unjustifiably rejected by the CIT(A) also.

5. On the other hand, Ld. Departmental Representative defended levy of penalty under section 271(1)(b) of the Act for each of the assessment year by pointing out that the explanation rendered by the assessee for non-compliance was a very generalized explanation to the effect that there was heavy work load. It is pointed out that reasons advanced by the assessee for non-compliance do not justify the deletion of penalty imposed under section 271(1)(b) of the Act.

6. We have carefully considered the rival submissions. Ostensibly, assessee is a part of Unity Group of cases, wherein assessment for the captioned assessment years were carried out after search and seizure action on 10/02/2012. In the instant case, penalty has been levied under section 271(1)(b) of the Act for Rs.10,000/- for each of the assessment years from 2006-07 to 2012-13, primarily for the reason that assessee did not comply with the requirements contained in the notice issued under section 142(1) of the Act dated 14/10/2013. In this context, we find that similar action was taken by the assessing authority in the case of M/s. Unity Infraprojects Ltd. (supra). In the case of M/s. *Unity Infraprojects Ltd. (supra)*, the CIT(A) had also upheld the levy of penalty and a copy of his order dated 30/6/2014 shows that the same is almost identically worded as in the present case. The reasons advanced for levy of penalty in each of the assessment years also remain on similar footing. The Tribunal in the case of M/s. *Unity Infraprojects Ltd. (supra)* found it expedient to delete the penalty considering that there was a reasonable cause with the assessee for not complying with the requirement contained in the

notice issued under section 142(1) of the Act . The relevant discussion in the order of the Tribunal in this regard is as under:-

“ 4.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. The facts of the matter as emanate from the record are that in the course of assessment proceedings, the AO issued a notice under section 142(1) of the Act dated 11.10.2013 for assessment years 2006-07 to 2012-13, calling upon the assessee to furnish the details, mentioned in the questionnaire annexed thereto, to be filed on 17.10.2013 at the hearing scheduled for 10.30 a.m. (copy of the same is placed at pages 2 to 7 of the assessee’s paper book). It is apparent that the penalty under section 271(1)(b) of the Act was levied on the assessee for the said seven assessment years, for failure on its part to comply with filing the requirements called in the questionnaire annexed to the notice under section 142(1) of the Act dated 11.10.2013. In our view, it is relevant to extract hereunder the questionnaire appended to the notice under section 142(1) of the Act dated 11.10.2013: -

“QUESTIONNAIRE/A.Y.2006-07 TO 2012-13/UNITY INFRAPROJECTS LTD

Please furnish the following details/documents as indicated with respect to hearings for A.Y. 2007-07 TO 2012-13

- 1. If you wish to be represented by an authorized representative, please furnish a letter of Authority in prescribed form. Without letter of authority no cognizance of his/her attendance shall be taken.*
- 2. Kindly narrate brief history of assessment for A.Y. 2007-07 to 2012-13 along with all supporting documents including assessment orders, appellate orders, copies of returns, audit report, balance sheet, P&L a/c, computation of income etc.*
- 3. Please provide details of earlier search assessments.*
- 4. Please specify whether any claim u/s. 80IA/IB is made in return this time & in earlier search assessment proceedings.*
- 5. Please submit challans for the payment of taxes in following manner for A.Y. 2006-07 TO 2012-13:*

<i>Disclosure made</i>	<i>Description of issue</i>	<i>Date & amount of payment of taxes wrt disclosure made</i>	<i>Manner of earning income earned on which disclosure is made</i>	<i>Date of notice issued u/s. 153A</i>	<i>Date of return filed</i>

- 6. Explain in details the business undertaken by the company during A.Y. 2006-07 TO 2012-13, including the details of project in following format.*

	<i>On going projects</i>	<i>New projects undertaken</i>	<i>Projects in pipeline</i>
<i>Name of the project</i>			
<i>Description</i>			

Address of site			
Client name			
Date of start			
Date of completion			
Current Status			
Contract Value			

7. Please submit purchase list including name, PAN, contact no., Address of all purchase parties with amount and date of purchase. Submit details of all the purchases in case of the following concerns:

- (a) Dev Steel
- (b) Karma Ispat
- (c) Param Commercial Co.
- (d) Steelcon Infratrade Pvt. Ltd.
- (e) Magnum Infraprojects Ltd.
- (f) Mahendra Brothers
- (g) Dhani Products Pvt. Ltd.

Please submit the information for these parties in the following format in different sheet for each concern for the period A.Y. 2006-07 to A.Y. 2012-13:

A.Y.	Name of the company	Bill No. and date of purchase	Quantity	Name of the material	Purchase Amount	Corresponding sell amount	Name, Address and PAN of the sell party	Sale bill/ Invoice No.

Also furnish corresponding delivery challan, Octroi receipt/challan, Weigh Bill, Material Receipt Note, Stock Book Entry at site/project office in case of each purchase. Submit evidence in support of claim.

8. Details of scrap sale made by the assessee.
9. Provide details of Fixed assets, Fixed Deposits and Shares and securities held by the assessee in the captioned assessment years.
10. Produce foreign Travels details alongwith reason for the period A.Y. 2006-07 to A.Y. 2012-13 in case of all the members of Unity Group with supporting bills & documents.
11. Please submit the details with documentary evidences of all the items inventorized during the course of search conducted in the premises of Unity group.
12. During the course of search/Survey action at the premises, certain loose papers/documents, along with digital data were found and seized/impounded. Page wise explanation of the papers impounded during the course of the search/survey for the period A.Y. wise in format as per annexure.

13. During the course of search/Survey action at the premises, cash of Rs.11,74,030/- was found, of which Rs.10,00,000/- was seized. Please furnish explanation for the same.
14. In respect of all the loans & advances given during the A.Y. 2006-07 to 2012-13.
15. Furnish details of advance & amount included in sundry debtors which are not for business purpose during the A.Y. 2006-07 to 2012-13.

Sr. No.	Name, PAN, Address and contact no. of the party	Purpose	Opening Balance	Addition during the year	Reduction during the year	Closing balance as on PY ending	Purpose

16. In case of Sundry Debtors which are in the nature of regular business, the details in the format as below, during the A.Y. 2006-07 to 2012-13.

Sr. No.	Name, PAN, Address and contact no. of the party	Purpose	Opening Balance	Addition during the P.Y.	Reduction during the P.Y.	Closing balance as on P.Y. ending

17. Furnish comparative chart of Gross Profit and Net profit ratio for the period from A.Y. 2006-07 to 2012-13 and also indicate the reasons for variations, if any.
18. Furnish comparative chart of figures of Profit and Loss account and Balance Sheet for all the years from A.Y. 2006-07 to 2012-13 and also indicate the reasons for variations, if any.
19. A detailed list of taxable wealth along with computation of net wealth as per provisions of W.T. Act, 1957 from A.Y. 2006-07 to 2-12-13. Please also explain whether the return of net wealth is being filed by you or not. If the return is filed, a copy of the acknowledgment along with computation may be filed.
20. Kindly furnish details of T.D.S. claimed in the following format for A.Y. 2006-07 to 2012-13.

Sr. No.	Name, PAN, Address and contact no. of the party	Nature of business transaction	Gross Income credited as per books of account	Income as per TDS certificate	TDS deducted	Deduction u/s.

21. Kindly furnish the details of sundry creditors as appearing in the books of accounts of the assessee for A.Y.s 2006-07 to 2012-13.
22. In case of sale or purchase of shares of group companies (Listed or unlisted), the following additional information for A.Y. 2006-07 to 2012-13.
Name of the company/Address/PAN/whether listed/purchased from primary or secondary market/price at which transaction took place/Nominal value of shares/Premium/Fate of investment/ Whether shares were originally issued at premium/discount.
23. Identify expenditure not paid in time as per the provisions of section 43B and to be disallowed, a separate list thereof for the period A.Y. 2006-07 to A.Y. 2012-13.

24. Submit list of equity shareholders holding shares more than 10 percent individually along with add5ress/PAN for A.Y. 2006-07 to A.Y. 2012-13.

Sr. No.	Name, PAN, Address and contact no. of the party	No. of shares held	% shareholding	Any sum credited to equity shareholder	Specify head & amount & date

25. Submit hard copy of Auditors Report in form 3cd along with audited Financial Statements and Company's Annual Report.
26. Details of all the investment (A.Y. wise) made during the concerned period. You are requested to furnish the above details on or before the specified date as per notice u/s 142(1). All the details should be submitted in the order in which they appear above preferably in both the hard copy as well as soft copy. The details submitted shall be verified and signed by the Managing director/Director in the following format:

"I declare to the best of my knowledge and belief, the information furnished in the statements is correct and complete and other particulars shown therein are truly stated."

Details filed without verification shall not be accepted.

Sd/-
Seema Dhankhar, IRS
Asst. Commissioner of Income Tax,
Central Circle-45, Mumbai"

- 4.4.2 The provisions of section 271(1)(b) of the Act read as under:

"Failure to furnish returns, comply with notices, etc.

271(1) If the [Assessing] Officer or the [Commissioner (Appeals)] [or the Principal Commissioner or Commissioner] in the course of any proceedings under this Act, is satisfied that any person—

(a) [-----]

(b) has [* * *] failed to comply with a notice [under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or] under sub-section (1) of section 142 or sub-section (2) of section 143 [or fails to comply with a direction issued under sub-section (2A) of section 142], or

(c) has concealed the particulars of his income or [* * *] furnished inaccurate particulars of [such income, or]

[(d) has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits,]

he may direct that such person shall pay by way of penalty,—

(i) [* * *]

[(ii) in the cases referred to in clause (b), [in addition to tax, if any, payable] by him, [a sum of ten thousand rupees] for each such failure ;]”

The provisions of section 273B of the Act read 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 271B section 271BB,) section 271C, section 271D, section 271E, clause (c) or clause (d) of sub- section (1) or sub- section (2) of section 272A, sub- section (1) of section 272AA] or sub- section (1) of section 272BB or] clause (b) of subsection (1) or clause (b) or clause (c) of sub- section (2) of section 273, no penalty shall be imposable on the pet- son 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.]”

On a conjoint reading of the provisions of section 271(1)(b) and section 273B of the Act, it is clear that no penalty shall be imposed on the assessee for failure referred to in section under section 271(1)(b) of the Act if the assessee were to establish that there was reasonable cause for the said failure; in the case on hand, the alleged failure to comply with the notice issues under section 142(1) of the Act dated 11.10.2013.

4.4.3 According to the assessee and as per the material on record, the said notice issued under section 142(1) of the Act enclosing the questionnaire calling for 26 details (supra) was received by the assessee only on 17.10.2013. The assessee vide letter dated 18.10.2013 brought the fact of having received the said notice/questionnaire only on 17.10.2013 to the notice of the AO; which fact has not been controverted by either the authorities below or the learned D.R. in the proceedings before us. It is not comprehensible to us as to how the assessee could have complied with the notice under section 142(1) of the Act and the questionnaire enclosed thereto (supra) by filing such voluminous data called for on 26 items, some in prescribed format etc. by 10.30 a.m. on 17.10.2013 when the said notice/questionnaire had been received by the assessee only on 17.10.2013. In our view, in the factual matrix of the matter as laid out above, it was impossible for the assessee to have complied with the requirements of filing the aforesaid details by 10.30 a.m. on 17.10.2013 required by the notice under section 142(1) of the Act, as there was no time available to the assessee to do so. We find that, inspite of this, the assessee vide letter dated 18.10.2013 has filed part details of purchases for A.Y. 2006-07 before the AO. In this factual matrix of the case, we are of the considered opinion that since compliance with the requirements of the notice under section 142(1) of the Act dated 11.10.2013/ questionnaire annexed thereto was not humanly possible, this constituted and established that the assessee had reasonable cause, as envisaged in section 273B r.w.s. 271(1)(b) of the Act for failure to comply with the requirements called for by the notice under section 142(1) dated 11.10.2013 and the questionnaire attached thereto. In this view of the matter, we delete the penalty levied on the assessee under section 271(1)(b) of the Act @ Rs.10,000/- for each of the assessment years 2006-07 to 2012-

13. It is accordingly ordered.”

6.1 Apart from the aforesaid, the Ld. Representative for the assessee also relied upon the decision of our Co-ordinate Bench in the case of Kripa Realtors Ltd., & Others in ITA Nos.2950/Mum/2015& others dated 20/7/2016, where it has been held that even if assessee had not complied with the requirements of the notice issued under section 142(1) of the Act at a particular stage but later

the assessment was finalized under section 143(3) of the Act and not as a best judgment assessment under section 144 of the Act, the subsequent compliance mitigates the rigors of penalty contained in section 271(1)(b) of the Act. In this context, the Tribunal relied upon the following decisions:-

1. Shri Ramesh Kumar Jain vs. ACIT, ITA No.464/Mum/2013 dated 23/9/2015
2. Akhil Bharatiya Prathmik Shmshak Sangh Bhavan Trust v. ADIT (2008) 115 TTJ 419 (Del).

and concluded as under:-

“4. After hearing both the parties and on considering the above detailed factual matrix of each of the seven appeals, we are of the opinion, the assessee under consideration are eligible for relief. Further, we have also perused the cited decisions of the Tribunal (supra) which are relevant for the proposition that where the assessee had not complied with the notice under section.142(1) but the assessment order was passed under section 143(3) and not under section. 144 of the Act, that meant the subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO and, therefore, the levy of penalty u/s 271(1)(b) was not justified. Considering the same as well as respectfully following the decision of the Tribunal and also following the principle of consistency, we are of the opinion that these are not the fit case for invoking the provisions of section 271(1)(b) of the Act. Accordingly, grounds raised by the assessee in all the seven appeals are allowed.”

6.2 The aforesaid parity of reasoning is squarely applicable in the instant case also as the assessments for all the captioned assessment years have been completed under section 143(3) r.w.s.153A of the Act and, therefore, the initial non-compliance with the notice issued under section 142(1) of the Act can be understood to be made-up subsequently and, therefore, the levy of penalty under section 271(1)(b) of the Act is not justified. We order accordingly.

7. It was a common point between the parties that facts and circumstances leading to imposition of penalty under section 271(1)(b) of the Act in all other captioned assessment years i.e. assessment years 2007-08 to 2012-13 are *pari-materia* to those considered by us in ITA No.

5642/Mum/2014 for assessment year 2006-07, thus, our decision therein shall apply *mutatis mutandis* in the appeals for assessment years 2007-08 to 2012-13 also.

8. In the result, the penalty levied of Rs.10,000/- under section 271(1)(b) of the Act for all the assessment years is hereby deleted and all the appeals are allowed, as above.

Order pronounced in the open court on 21/10/2016

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 21/10/2016
Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai