

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

Sl. No.	ITA Nos. & Assessment Year	Appellant	Respondent
1.	ITA No. 1115/Bang/2016 AY: 2003-04 ITA No. 1116/Bang/2016 AY: 2004-05 ITA No. 1117/Bang/2016 AY: 2005-06 ITA No. 1118/Bang/2016 AY: 2006-07 ITA No. 1119/Bang/2016 AY: 2007-08 ITA No. 1120/Bang/2016 AY: 2008-09	Shri. G. Venugopal PAN : AHUPV9290J	Deputy Commisisoner of Income Tax, Centre Circle – 1(4), Bangalore.
	ITA No. 1133/Bang/2016 AY: 2003-04 ITA No. 1134/Bang/2016 AY: 2004-05 ITA No. 1135/Bang/2016 AY: 2005-06 ITA No. 1136/Bang/2016 AY: 2006-07 ITA No. 1137/Bang/2016 AY: 2007-08 ITA No. 1138/Bang/2016 AY: 2008-09	Smt. V. Sulakshna Devanahalli PAN : CANPS6553H	

<p>ITA No. 1127/Bang/2016 AY: 2003-04</p> <p>ITA No. 1128/Bang/2016 AY: 2004-05</p> <p>ITA No. 1129/Bang/2016 AY: 2005-06</p> <p>ITA No. 1130/Bang/2016 AY: 2006-07</p> <p>ITA No. 1131/Bang/2016 AY: 2007-08</p> <p>ITA No. 1132/Bang/2016 AY: 2008-09</p>	<p>Smt. A. Muniratnamma, PAN : AXWPM7160Q</p>	
<p>ITA No. 1121/Bang/2016 AY: 2003-04</p> <p>ITA No. 1122/Bang/2016 AY: 2004-05</p> <p>ITA No. 1123/Bang/2016 AY: 2005-06</p> <p>ITA No. 1124/Bang/2016 AY: 2006-07</p> <p>ITA No. 1125/Bang/2016 AY: 2007-08</p> <p>ITA No. 1126/Bang/2016 AY: 2008-09</p>	<p>Smt. Mangala PAN : AWAPM 8493 P</p>	

Assessee by	:	Shri. S. V. Ravishankar, Advocate
Revenue by	:	Shri. M. K. Biju, JCIT

Date of hearing	:	19.01.2017
Date of Pronouncement	:	20.01.2017

ORDER

Per Bench

These are the appeals filed by the assesseees directed against the order of CIT(Appeals), Bangalore-6, Bangalore dated 07-03-2016, confirming the levy of penalty under section 271(1)(b) of the Income Tax Act, 1961. Since the issue involved in all these appeals is common, we dispose off the same vide this common order.

2. Briefly, the appellant raised the following grounds of appeals. The appellant are individuals. A search and seize operations under provisions of section 132 of the Income Tax Act was conducted in the case of Ashwanthnarayana Group of Companies on 26.08.2008. It is the case of the AO that consequent upon the search and seize operations in the said case, certain incriminating material pertaining to the appellant, was found and therefore the AO issued notice under the provisions of section 153C dated 28.07.2010 calling upon the appellant to file the return of income on or before 31.07.2010 for the AY 2003-04 to 2009-10. According to the AO, despite contacting the appellant over telephone several times to file the return of income, there was no response from the appellant to file the return

of income. Therefore, a show cause notice proposing to levy of penalty under the provisions of section 271(1)(b) of the Income Tax dated 06.10.2010, was issued for non-compliance of the notice and the same was serviced on 12.10.2010 and the appellant had not filed any explanation with respect to said show cause notice. Therefore, the AO proceeded with the levy of penalty under the provisions of 271(1)(b) of the Income Tax by levying penalty of Rs.10,000/- for each year vide order dated 20.10.2010.

3. Being aggrieved by the penalty order, the appellant preferred an appeal before the CIT(A), wherein it was contended that the delay in filing the return of income is on account of the fact that the Chartered Accountant who is entrusted with the responsibility of filing the return of income in response to notice under section 153C was busy with the filing of returns of income of his clients due in the month of July and it was further contended that time granted to file the return of income was less than 15 days, which was not sufficient/reasonable time to file the return of income and thus it was contended that the time allowed by the AO was insufficient, and since the notice per se was invalid, no penalty could be levied. However, the CIT(A) rejected the explanation and held that the default on the part of the appellant is deliberate and willful noncompliance and therefore confirmed the levy of penalty.

4. Being aggrieved, the appellant is in appeal before us in the present appeals. It was contended on behalf of the appellant that notice called upon the appellant to file the return of income within the period of less than 15 days is invalid and therefore the question of compliance does not arise. Alternatively, it was also submitted that since the Chartered Accountant who was given the responsibility of filing the returns was busy with the filing of return of income of his clients due in the month of July 2010, the appellant could not comply with the notice well within the time. However, since the returns were subsequently filed on 20.10.2010 and the returns of income were accepted by the AO in the assessment after scrutiny proceedings, there was no prejudice caused to the revenue. It is only technical breach of law and therefore no penalty is exigible and reliance in this regard was placed in the decision of Hindustan Steels Ltd., vs. State of Orissa 83 ITR. On the other hand, learned DR placed reliance on the orders of the lower authorities.

5. We heard the rival submissions and perused the material on record. The only issue that arises for consideration is whether the levy of penalty was justified in the facts of the present case under the provisions of section 271(1)(b) for the delay in filing the returns of income in response to notice under section 153C of the Act. The relevant provisions of Section 271(1)(b) reads as under:

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(a).....

(b) has ⁵⁷[***] failed to comply with a notice ⁵⁸[under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or] under sub-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

.....

⁶⁵[(ii) in the cases referred to in clause (b), ⁶⁶[in addition to tax, if any, payable] by him, ⁶⁷[a sum of ten thousand rupees] for each such failure;]

6. From the bear reading of the above provisions, it is clear that the penalty is leviable only in the cases where any person has failed to comply with the notice issued 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] is liable for penalty in addition to tax if any payable a sum of Rs.10,000/- for each such failure 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. In the present cases, the penalty was obviously levied for delay in filing the return of income in response to notice under section 153. But the provisions of section 271(1)(b) does not empower the AO to impose the penalty in the case of delay or failure to file the returns in response to notice under section 153C of the Act. Though the AO mentioned that the penalty is levied for noncompliance under section 142(1) and Section 153C, there is no whisper as to whether in the penalty order any notice under section 142(1) was issued to the assessee. Therefore the question

of compliance with such notice under 142(1) does not arise. Thus, we find that the penalty orders does not have any legal basis. Therefore, the orders passed by the AO imposing penalty under section 271(1)(b) has no statutory basis and has no legs stand. Therefore, we direct the AO to delete the penalty of Rs.10,000/- each in each case.

7. In the result, all the appeals filed by the appeals are allowed.

Pronounced in the open court on this 20th day of January, 2017.

Sd/-
(GEORGE GEORGE K)
Judicial Member

Sd/-
(INTURI RAMA RAO)
Accountant Member

Bangalore.
Dated: 20th January, 2017.
/NS/

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.