

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
 IN THE INCOME TAX APPELLATE TRIBUNAL,
 INDORE BENCH, INDORE
 श्री डी.टी.गरासिया, न्यायिक सदस्य तथा
 श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
 BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER
 AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

1 to 7	आ.अ.सं./ I.T.A. Nos.1361 to 1367/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
8 to 14	आ.अ.सं./ I.T.A. Nos.1368 to 1374/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
15 to 21	आ.अ.सं./ I.T.A. Nos.1375 to 1381/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
22 to 28	आ.अ.सं./ I.T.A. Nos.1382 to 1388/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
29 to 35	आ.अ.सं./ I.T.A. Nos.1389 to 1395/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
36 to 42	आ.अ.सं./ I.T.A. Nos.1396 to 1402/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
43 to 49	आ.अ.सं./ I.T.A. Nos.1403 to 1409/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
50 to 56	आ.अ.सं./ I.T.A. Nos.1410 to 1416/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
57 to 63	आ.अ.सं./ I.T.A. Nos.1417 to 1423/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
64 to 70	आ.अ.सं./ I.T.A. Nos.1424 to 1430/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
71 to 77	आ.अ.सं./ I.T.A. Nos.1431 to 1437/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
78 to 84	आ.अ.सं./ I.T.A. Nos.1438 to 1444/Ind/16 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
85 to 91	आ.अ.सं./ I.T.A. Nos.1445 to 1451/Ind/2016 निर्धारण वर्ष /A.Y. :2008-09 to 2014-15
92 to 98	1452 to 1458/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
99 to 105	आ.अ.सं./ I.T.A. Nos.1459 to 1465/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15

1 to 7	Shri Hemant Kumar Soni
8 to 14	Shri Purshottam Das Soni
15 to 21	Shri Rajeev Soni
22 to 28	Shri Swayam Soni
29 to 35	Shri Anshul Kumar Soni

36 to 42	Shri Sunil Kumar Soni
43 to 49	Shri Anita Soni
50 to 56	Shri Neeta Soni
57 to 63	Ms.Meera Soni
64 to 70	Shri Ramesh Kumar Sahu
71 to 77	Shri Rahul Sahu
78 to 84	Ruchi Sahu
85 to 91	Yashowardhan Jain
92 to 98	Seema Jain
99 to 105	AG8 Ventures Limited
	(APPELLANTS)
	VS.
	Dy.CIT,CENTRAL I, BHOPAL
	(RESPONDENT)

अपीलार्थी की ओर से/Appellant by	Shri Ashish Goyal and Shri N. D. Patwa, Advocates
प्रत्यर्थी की ओर से/Respondent by	Shri Mohd. Javed, Sr. DR

सुनवाई की तारीख Date of hearing	10.01.2017
उद्घोषणा की तारीख Date of pronouncement	16.01.2017

आदेश / O R D E R

PER BENCH

All these appeals have been filed by different assesseees against different orders of the learned CIT(A)-3, Bhopal dated 07.10.2016 for the above assessment years.

2. In all these appeals, the sole issue involved is that the learned CIT(A) has erred in confirming the levy of penalty u/s 271(1)(b) of the I.T. Act at Rs.10,000/- in each assessment year in the cases of all these assesseees.

3. Briefly stated, the facts of the case are that the search in the case of the assessee and group had taken place on 29.01.2014. After that notices were issued by the AO u/s 142(1) of the Act dated 30.09.2015 fixing the date of hearing for 15.10.2015 to submit the required information/documents as per the questionnaire alongwith the books of accounts. It was specifically mentioned in the notice that failure to comply with the notice would lead to imposition of penalty u/s 271(1)(b) for Rs. 10,000/-. However, it was seen that on the

date fixed for hearing i.e. on 15.10.2015 no submissions were filed with regard to the notice/questionnaire u/s 142(1) of the Act. Therefore, show cause notice for penalty was issued by the AO to the assessee on 07.12.2015 as to why penalty should not be levied u/s 271(1)(b) of the Act for non compliance to notice u/s 142(1) dated 15.10.2015. The date of hearing was fixed for 15.12.2015. However, again no reply/submissions were filed by the assessee on or before the date of hearing, Also, no reason/explanation was given by the assessee for non-compliance on the said date. Therefore, the AO levied penalty u/s 271(1)(b) of the Income-tax Act, 1961, for Rs. 10,000/- on 04.01.2016, for non compliance to notice u/s 142(1) dated 15.10.2015 for each assessment year from 2008-09 to 2014-15

4. The ld. CIT(A) dismissed the appeals holding that the case laws relied upon by the assessee are contradictory in nature and do not support the case of the assessee. In this case, the assessee has not complied with the notice/questionnaire u/s 142(1) of the Act dated 15.10.2015. It

cannot be said that there was reasonable cause with the assessee, which prevented him to comply with the statutory notice. The assessee has deliberately tried to delay the assessment proceedings before the AO in order to create hindrances for the investigation. The AO is the investigator as well as prosecutor and adjudicator in the tax assessment proceedings. It is the duty of the assessee to facilitate the process of verification and investigation to support its credentials. The AO is bound by law to complete assessment proceedings as per the limitations of the Act. Deliberate delaying tactics during the course of assessment proceedings hamper the work of the office. The ld. CIT(A) confirmed the penalty of Rs. 10,000/- imposed by the AO u/s 271(1)(b) of the Income-tax Act, 1961, for each assessment year from assessment year 2008-09 to assessment year 2014-15 in the case of all the assesseees.

5. Before us, the learned Counsel for the assesseees submitted that in all these appeals, the facts and the issue

involved are identical and, therefore, he will be arguing the facts in the case of Shri Hemant Kumar Soni. The AR submitted that notice u/s 142(1) dated 30.9.2015 in all 30 cases & group was received on 09.10.2015, to be complied on 15.10.2015, which was practically impossible to comply with all details in short span of 7 days. However, subsequent notices dated 17.12.2015 to 24.12.2015 were duly complied and assessment was framed u/s 143(3). Further, Shri D.S.Tiwari, AR of the assessee had verbally requested time for filing details. Therefore, there was no delaying tactics to hamper investigation. The learned counsel for the assessee submitted that it is held by the Delhi Bench of the Tribunal in the case of Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust vs. Assistant Director of Income Tax; (2008) 115 TTJ 419(Del) that where the assessee had not complied with notice u/s 142(1) but assessment order was passed u/s 143(3) and not u/s 144, that meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by Assessing Officer and

therefore, levy of penalty u/s 271(1)(b) was not justified. The Learned Counsel further stated that very recently, this Bench of Tribunal in the cases of Vinit Chouhan & others in ITA No. 1061 to 1181 has deleted the penalties on the absolute identical facts. In that case also the notices dated 30.09.2015 were served asking the assessee to file the details and the counsel of the assessee Shri Rajendra Sharma attended and personally requested for the time and the Tribunal deleted the penalty on the ground that the assessments were completed u/s 143(3) after considering all the details submitted by the assessee and as such no penalty u/s 271(1)(b) could be levied. He relied upon the decision in the case of Akhil Bhartiya Shiksha Sangh Bhawan Vs ACIT 115 TTJ 419 and Parmeshwari Textiles Vs ITO 92 TTJ page 764.

6. On the other hand, Ld. DR relied on the orders of the Revenue Authorities and cited some decisions of the Tribunals.

7. We have heard rival contentions of both the parties and perused the material available on record. We find from the

assessment orders in all these group appeals that the assessments have been completed u/ s 143(3) of the IT. Act. We find that the Assessing Officer has levied penalty 271(1)(b) for non-appearance on 15.10.2015. As per ld. Authorized Representative of the assessee, the assessee's counsel appeared and stated categorically that he appeared for seeking time. The counsel regularly attended the proceedings and the assessments have been framed u/ s 143(3) and not u/ s 144. We find that this was the first notice for compliance and since the voluminous records and papers were required to be scrutinized and individually in each case, the appropriate replies were to be filed, the assessee prayed for the time to submit the reply and ultimately submitted all the necessary replies and cooperated with the Department. We are of the view that assessee had reasonable cause for non-appearance on that day. Therefore, there is no justification for levying the

penalty u/s 271(1)(b) of the Act. Secondly, in this matter, the assessments have been completed u/s 143(3) of the Act, therefore, no penalty can be levied if the assessments have been completed u/s 143(3) and there is subsequent compliances in the assessment proceedings was considered as good compliances and default committed earlier were ignored. Therefore, penalty u/s 271(1)(b) was deleted by various Tribunals. In the case of Akhil Bhartiya Parthmik Shmshak Sangh Bhawan Trust vs. ADIT (2008) 115 TTJ 419 (Del), it was held that where the assessee had not complied with notice u/s 142(1) but assessment order was passed u/s 143(3) and not u/s 144, that meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by the Assessing Officer, therefore, levy of penalty u/s 271(1)(b) of the Act was not justified. The case laws cited by Id.

Departmental Representative are distinguishable on facts, hence, inapplicable to this case. We also noted that in the Vinit Chouhan group cases, an order is passed in a group in I.T.A.Nos. 1061 to 1181/Ind/2016 dated 23.11.2016, in which similar set of facts the penalty levied u/s 271(1)(b) was set aside. Therefore, respectfully following the said order and facts, we set aside the orders of the Revenue Authorities and delete the levy of penalty u/s 271(1)(b) of the Act in all these appeals.

8. In result, all the appeals of the assesseees are allowed. The order has been pronounced in open court on the 16th January, 2017.

Sd/-
(डी.टी.गरासिया)
न्यायिक सदस्य
(D.T.GARASIA)
JUDICIAL MEMBER

Sd/-
(ओ.पी.मीना)
लेखा सदस्य
(O.P.MEENA)
ACCOUNTANT MEMBER

दिनांक /Dated : 16 January, 2017.