

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
I.T.A. No.2944/M/2015 (Assessment Year: **2009-2010**)

Hill Rock Construction Ltd., 11-B, Mittal Towers, B-Wing, Nariman Point, Mumbai-21.	बनाम/ Vs.	DCIT, CC-39, R.No.32(1), Gr. Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AABCH7169M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Kapil Sheth
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Ajay, DR

सुनवाई की तारीख /Date of Hearing : 01.07.2016

घोषणा की तारीख /Date of Pronouncement : 01.07.2016

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 15.5.2016 is against the order of the CIT (A)-52, Mumbai dated 19.2.2015 for the assessment year 2009-2010. In this appeal, assessee raised the following grounds which read as under:-

- "1. *The order passed by the Ld CIT (A) is illegal, bad in law, ultra vires and contrary to the provisions of law and facts of the case and without appreciating the facts of the case in their proper perspective.*
2. *On the facts and circumstances of the case, the Ld CIT (A) erred in confirming the levying of penalty u/s 271(1)(b) amounting to Rs. 20,000/-."*

2. The only common issue involved in these appeals relates to the levy of penalty u/s 271(1)(b) of the Act. The circumstances and factual matrix relating to the penalty are that the present assessee belongs to Jai Crop Group, which comprises of more than 120 companies. There was a search action u/s 132 of the Act on the said Group. It is the allegation of the AO that the assessee did comply with the statutory notices issued u/s 143(2) and 142(1) of the Act during the course of the assessment proceedings. Accordingly, AO initiated the penalty proceedings u/s 271(1)(b) of the Act and levied penalty of Rs. 20,000/- for assessee's default in complying with the above said notices. Aggrieved, assessee carried the matter in appeal before the first appellate authority.

3. During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) dismissed the appeal. Again aggrieved with the said decision of the CIT (A), assessee is in further appeal before the Tribunal.

4. During the proceedings before the Tribunal, Ld Counsel for the assessee reiterated the submissions made before the lower authorities. Further, Ld Counsel for the assessee submitted that certainly, in the mind of the assessee, there is no spirit of non-compliance to the notices issued by the AO. It is basically the pressure of work and the defects relating to the management of time that forced the assessee to not to comply with the said noticed immediately. Further, Ld Counsel for the assessee submitted that this is not the case of non-compliance to the assessment proceedings; but, merely a case of "belated compliance". In any case, assessee complied and cooperated with the AO in computing the assessment u/s 143(3) of the Act. In these circumstances, as per the Ld Counsel, the penalties levied u/s 271(1)(b) of the Act should not be sustained. For this proposition, Ld Counsel for the assessee filed a decision of the ITAT, Mumbai Bench in the case of Shri Ramesh Kumar Jain vs. ACIT in ITA Nos.458 to 464/Mum/2013 (AYs 2004-05 to 2010-11), dated 23.9.2015 and ITAT, Delhi Bench decision in the case of Akhil Bharatiya Prathmik Shmshak Sangh Bhavan Trust vs. ADIT [2008] 115 TTJ 419 (Delhi) and prayed for deciding the present appeals in the lines of the said decisions of the Tribunal.

5. After hearing both the parties and on considering the above detailed factual matrix of each of the case, I am of the opinion, the assessee under consideration is eligible for relief. Further, I 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 u/s 142(1) but the assessment order was passed u/s 143(3) and not u/s 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 decisions of the Tribunal and also following the principle of consistency, we are

of the opinion that this is not a fit case for invoking the provisions of section 271(1)(b) of the Act. Accordingly, grounds raised by the assessee are allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 01st July, 2016.

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 1 .7.2016
व.नि.स./ OKK, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**