

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA Nos. 6375 & 6378/Del./2014
Assessment Year: 2005-06**

Shri Ghanshyam Gupta, A-1, CC- Colony, Opp. R.P. Bagh, Delhi PAN- AELPG1090H (Appellant)	vs.	A.C.I.T., Central Circle 12 New Delhi (Respondent)
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Appellant by	Sh. S.B. Gupta, F.C.A
Respondent by	Sh. Arun Kumar Yadav, Sr. DR

Date of Hearing	06.09.2017
Date of Pronouncement	07.09.2017

ORDER

Per L.P. Sahu, A.M.:

Both these appeals are filed by the assessee against the order of Id. CIT(A)-XXXI, New Delhi dated 01.09.2014, sustaining the penalties imposed by the Assessing Officer u/s. 271(1)(b) of the IT Act. The common ground raised in both the appeals, reads as under :

"1. That on the facts and circumstances of the case, initiation of penalty proceedings against the assessee under section 274 read with section 271(1)(b) and imposition of penalty of Rs.10000/- upon the assessee under section 271(1)(b) is illegal and unjustified and, therefore, penalty imposed should be deleted."

2. We have heard the submissions of both the sides and have gone through the entire material available on record.

3. It has been submitted by the ld. AR at the outset that the ld. CIT(A) vide impugned order had sustained similar penalty of Rs.10,000/- each in the cases of assessee for the assessment years 2005-06, 2006-07 and 2007-08. The impugned order was challenged before the Tribunal in appeals, out of which the appeals for assessment years 2006-07 and 2007-08 stood allowed by the Tribunal vide order dated 04.11.2015 on the identical facts and circumstances and similar arguments made by the assessee. Therefore, there being reasonable cause which prevented the assessee to comply with the impugned notices, the penalty sustained in the instant cases should be deleted.

4. On the other hand, the ld. DR relied on the impugned order.

5. Having considered the rival submissions in the light of relevant records available before us, we find that the matter involved in these appeals is covered in favour of the assessee by the order dated 04.11.2015) of SMC Bench of Tribunal in assessee's own cases (ITA Nos. 6376 & 6377/Del./2014) for A.Yrs. 2006-07 & 2007-08, wherein, the SMC Bench of Tribunal after

considering the identical submissions of the assessee, deleted the penalty observing as under :

"I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the AO levied the penalty for non-appearance of the assessee on 09.10.2012, for the said date notices were issued u/s 143(2)7142(1) of the Act. The explanation of the assessee before the Id. CIT(A) was that her sister-in-law Mrs. Anju Gupta was suffering from severe disease and had to be hospitalized on 06.10.2012. Thereafter on the date of hearing i.e. 09.10.2012, Sh. Satya Prakash Gupta "head of the family" and "father-in-law" of the assessee became ill and had to be hospitalized due to heart attack. In my opinion there was a reasonable cause for non-appearance for the hearing fixed on 09.10.2012, as such the confirmation of penalty levied by the AO u/s 271(l)(b) of the Act was not justified. In the present case, it appears that the AO levied the penalty for 7 assessment years running from 2005-06 to 2011-12 and the Id. CIT(A) deleted the penalty for the 4 assessment years i.e. the assessment years 2008-09 to 2011-12, considering the explanation of the assessee as plausible. However, the same explanation was not considered as proper for the remaining assessment years i.e. assessment years 2005-06 to 2007-08. In my opinion, the stand taken by the Id, CIT(A) was not justified particularly when he was satisfied that there was a proper and plausible explanation for the 4 out of the 7 assessment years for which penalty was levied by the AO u/s 271(l)(b) of the Act. I, therefore, considering the totality of the facts delete the penalty levied by the AO and sustained by the Id. CIT(A).

10. The other appeal of the assessee i.e. ITA No. 6371/Del/2014 for the assessment year 2007-08 is defective and duplicate so it is dismissed. In the case of the other assessee i.e. Sh. Satya Prakash Gupta in ITA Nos. 6372 to 6374/Del/2014 for the assessment years 2005-06 to 2007-08, the cases are on more strong footing because. the said assessee himself was admitted in the hospital on 09.10.2012 due to heart attack, so it was not possible for him to be present on the said date. In the case of Sh. Ghanshyam Gupta, the facts are similar as were involved in the case of Smt. Usha Gupta, the only difference is that the assessee filed duplicate appeals for the assessment years 2006-07 & 2007-08, therefore, the duplicate appeals in ITA No. 6379 & 6380/Del/2014 are infructuous. In view of the aforesaid discussion, it is held that the finding given in the case

of Smt. Usha Gupta in ITA No. 6368/Del/2014 for the assessment year 2007-08 are applicable with the same force in the case of other assesseees. In that view of the matter the penalties levied by the AO u/s. 271(1)(b) of the Act and sustained by the ld. CIT(A) are deleted."

6. The facts of the present case being identical as also the contentions of the parties, following the decision of this Tribunal, as reproduced above, we delete the penalties sustained by the ld. CIT(A) in the present cases. Accordingly, both the appeals of the assessee deserve to be allowed.

7. In the result, the appeals are allowed.

Order pronounced in the open court on 07.09.2017.

Sd/-
(H.S. Sidhu)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 07.09.2017

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Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*