

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH. L. P. SAHU, ACCOUNTANT MEMBER
ITA No. 6925 to 6931/Del/2014
(Assessment Year: 2006-07 to 2012-13)**

Mukesh Jain T-15, 2 nd Floor, Green Part Extn., New Delhi.	Vs	ACIT Central Circle-7 New Delhi.
GIR/PAN: AAUPJ3372L		
अपीलाथ/(Appellant)		अडवथ/(Respondent)

Assessee by : None.
Department by : Ms. Ekta Jain, Sr. DR

Date of hearing : 21.09.2017
Date of pronouncement : 22.09.2017

ORDER

PER BHAVNESH SAINI, J.M :

1. All the appeals by the assessee are directed against different orders of Ld. CIT(A)-VI, New Delhi, dated 28.10.2014 for the assessment year 2006-07 to 2012-13 challenging the levy of penalty u/s 271(1)(b) of the Income Tax Act. In all these appeals, issues are same and reproduced as under:

1. *That on the facts and circumstances of the case, the Order of the learned Commissioner of Income Tax, Appeals -VI, New Delhi, is erroneous, both in law and on the facts.*

2. *That on the facts and circumstances of the case and in law, the learned Commissioner of Income Tax, Appeals -VI, New Delhi, erred in sustaining penalty of Rs.20,000/- u/s 271(1)(b) of Income Tax Act, 1961.*

3. *That on the facts and circumstances of the case and in law, the learned Commissioner of Income Tax, Appeals -VI, New Delhi, erred in sustaining penalty of Rs. 20,000/- u/s 271(1)(b) of Income Tax Act, 1961 without appreciating that the defaults were for uncontrollable circumstances and for bona fide reasons beyond control of appellant.*

4. *That on the facts and circumstances of the case and in law, the learned Commissioner of Income Tax, Appeals -VI, New Delhi, erred in sustaining an inference that the appellant has willfully avoided Income Tax proceedings and as such is liable for penalty under section 271(1)(b) of Income Tax Act, 1961.*

5. *That on the facts and circumstances of the case and in law, the learned Commissioner of Income Tax, Appeals -VI, New Delhi, erred in sustaining the penalty order without considering the appellant's submissions (explaining the facts and law involved) filed on 24/06/2014.*

6. *That on the facts and circumstances of the case and in law, the learned Commissioner of Income Tax, Appeals -VI, New Delhi, erred in sustaining penalty of Rs. 20,000/- u/s 271(1)(b) of Income Tax Act, 1961, with a rider that the penalty order passed by the A.O. will not sustain, in case the Settlement is awarded in favour of the appellant for the relevant years.*

7. *That without prejudice and in the alternative the Order passed by the learned Commissioner of Income Tax, Appeals -VI, New Delhi, is bad in law.*

8. *That the grounds of appeal as herein are without prejudice to each other.*

2. The assessee has been notified the date of hearing, however, no authorized representative on behalf of the assessee appeared at the time of hearing of the appeals. Therefore, appeals are heard in the absence of assessee. We have heard Ld. DR and perused the impugned orders.

3. Briefly facts of the case as noted in the penalty orders u/s 271(1)(b) of Income Tax Act, are that during the course of assessment proceedings u/s 153A read with section 143(3) of the Income Tax Act in respect of assessment years under appeals, notice was issued u/s 142(1) of the Act on 26.04.2013 fixing the case for hearing on 13.05.2013 and notice u/s 143(2), dated 12.09.2013, was again issued fixing the case for hearing on 19.09.2013.

4. In response to these notices, none attended nor was any reply filed before the AO. The AO issued show cause notice before levy of penalty and in the absence of any representation from the side of assessee, it was noted that there was a willful non-compliance on the part of the assessee to the notices issued above. The AO accordingly levied the penalty u/s 271(1)(b) of the Act, in the sum of Rs. 10,000/- for each such failure. Since two notices were not complied, therefore, penalty of Rs. 20,000/- each in every year levied.

5. The assessee challenged the penalty orders before CIT(A). In the statement of facts filed before Ld. CIT(A), it is explained that the assessee was not provided complete records and documents seized during the course of search as well as copies of the some of seized material provided were not legible, the assessee for the reasons beyond control was constrained from filing his return u/s 153A of the Act. Therefore, the notice u/s 142(1) dated 26.04.2013 and notice u/s 143(2), dated 12.09.2013, remained uncomplied. However, the assessee over telephone had duly expressed his concern to the

AO on the date of hearing and upon being satisfied, no formal letter was filed. It was, therefore, explained that for the above reasons there was non-compliance to the notices which were beyond control of assessee as well as without affording proper opportunity of being heard to the assessee. Therefore, non-compliance cannot be attributed towards deliberate mala fide intentions or willful non-compliance on the part of the assessee.

6. Ld. CIT(A) noted the above facts explained by the assessee in the impugned orders. Ld. CIT(A) has found that the assessee filed settlement applications for assessment year 2006-07 to 2013-14 on 25.02.2014 and the same have been admitted by the settlement commission vide order dated 07.03.2014. Ld. CIT(A), therefore, noted that since settlement applications were filed on 25.02.2014, there were no reasonable cause for the assessee not to comply the statutory notice, on the earlier dates. Ld. CIT(A) accordingly, dismissed the appeal, of the assessee.

7. Ld. CIT(A) however, directed that if the settlement is awarded in favour of the assessee for the relevant years, then, the penalty orders passed by the AO will not sustain. Accordingly, all the appeals of the assessee were dismissed with above directions.

8. We have heard Ld. DR and perused the impugned orders as well as considered statement of facts filed by assessee before Ld. CIT(A). The AO levied the penalty for non-compliance of the notices issued u/s 142(1) of the Act on

26.04.2013 fixing the case for hearing on 13.05.2013 and notice u/s 143(2) on 12.09.2013 for fixing the case for hearing on 19.09.2013 which have not been responded to by the assessee.

9. The Assessee explained before Ld. CIT(A) that complete seized records and documents seized during the course of search have not been provided to the assessee as well as some of the copies of the seized material provided were not legible. Due to this reason the assessee was constrained from filing his return u/s 153A of the Act. This was the reason for non compliance of both the notices above. The assessee also explained that concern of the assessee was expressed to the A.O over telephone. Assessee, therefore, submitted that this was the reason due to which assessee could not comply with both the notices. Ld. CIT(A) recorded the explanation of the assessee in the impugned orders.

10. Ld. CIT(A) instead of considering the explanation of assessee in proper perspective, proceeded on different reasoning to reject the appeals of the assessee that settlement applications have been subsequently on 25.02.2014 after issue of the above two notices. When complete seized documents have not been provided to assessee and some of the seized documents provided were not legible, the assessee may not be able to file return of income u/s 153A of the Income Tax Act. Therefore, there is no question of assessee making meaningful compliance of notices at the assessment proceedings u/s 153A read with section 143(3) of the Act

Income Tax Act. The explanation of the assessee have not been appreciated by the Ld. CIT(A), therefore, explanation of assessee shall be considered favourable to hold that there appears reasonable cause for the assessee for the non compliance of both the notices.

11. Section 273(B) of the Income Tax Act provides that no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to section 271(1)(b) of the Act, if assessee proves that there was a reasonable cause for the said failure. The explanation of assessee clearly proves that there were a reasonable cause for failure to comply with the notices. Therefore, on such circumstances the penalty u/s 271(1)(b) for all the years cannot be sustained.

12. In view of above discussions, we set aside the orders of authority below and cancel the penalty in all the assessment years under appeals.

In the result all appeals of assessee are allowed.

Order pronounced in the open court on 22nd September, 2017.

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER
Date: 22.09.2017
@m!t

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER