

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM**

**ITA No. 6932/Del/2014 : Asstt. Year : 2006-07  
ITA No. 6933/Del/2014 : Asstt. Year : 2007-08  
ITA No. 6934/Del/2014 : Asstt. Year : 2008-09  
ITA No. 6935/Del/2014 : Asstt. Year : 2009-10  
ITA No. 6936/Del/2014 : Asstt. Year : 2010-11  
ITA No. 6937/Del/2014 : Asstt. Year : 2011-12  
ITA No. 6938/Del/2014 : Asstt. Year : 2012-13**

Rajeev Jain, W-126, Greater Kailash, Part-II, New Delhi-110048	Vs	ACIT, Central Circle-7, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AADPJ8015H</b>		

**Assessee by : Sh. Ajay Makkar, CA  
Revenue by : Sh. Deepak Garg, Sr. DR**

<b>Date of Hearing : 27.09.2017</b>	<b>Date of Pronouncement : 29.09.2017</b>
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**ORDER**

**Per N. K. Saini, AM:**

These appeals by the assessee are directed against the separate orders each dated 29.10.2014 of Id. CIT(A)-VI, New Delhi.

2. Since the issue involved is common in all these appeals which were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. Firstly, we will deal with the appeal in ITA No.6932/Del/2014 for the assessment year 2006-07. The only grievance of the assessee in this appeal relates to the sustenance of penalty levied by the AO u/s 271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts of the case in brief are that the AO issued the notice u/s 142(1) of the Act on 26.04.2013 fixing the case for hearing on 13.05.2013 and again issued notice u/s 143(2) of the Act on 12.09.2013 fixing the case for hearing on 19.09.2013. In response to those notices, none attended nor any reply was filed. The AO, therefore, asked the assessee to show cause as to why the penalty u/s 271(1)(b) of the Act for non-compliance of the said notices should not be imposed. The assessee was required to furnish his reply on or before 30.09.2013. Since no reply was filed, the AO levied the penalty of Rs.20,000/- u/s 271(1)(b) of the Act as the assessee failed on two occasions to comply with the notices issued on 26.04.2013 and 12.09.2013.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that a search action was initiated on 23.01.2012 on the premises of the assessee but complete records and documents seized during the course of search were not provided to the assessee and copies of some of the seized material provided were not legible. It was stated that the assessee was constrained from filing his return u/s 153A of the

Act, therefore the notices issued by the AO remained uncomplished. It was further stated that 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 also stated that the AO unilaterally proceeded to levy the penalty u/s 271(1)(b) of the Act without appreciating the facts of the case and circumstances existing beyond the control of the assessee as well as without affording proper opportunity of being heard to the assessee, therefore, the non-compliance could not be attributed towards deliberate malafide intentions or willful non-compliance on the part of the assessee.

6. However, the Id. CIT(A) sustained the penalty by observing that the assessee failed to show any reasonable cause for non-compliance to notices. At the same time, he observed that the assessee had filed settlement application which had been admitted by the Settlement Commission vide order dated 07.03.2014 u/s 245D(1) of the Act. The Id. CIT(A) categorically stated in para 5 of the impugned order that if the settlement is awarded in favour of the assessee for the relevant years then the penalty order passed by the AO will not sustain.

7. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submission made before the authorities below and further submitted that now the Settlement Commission has settled the issue. Therefore, the penalty u/s 271(1)(b) of the Act is not leviable,

particularly when there was a plausible explanation given by the assessee.

8. In his rival submissions, the ld. DR supported the impugned order passed by the ld. CIT(A) and further submitted that since there was non-compliance to the notices by the assessee, the penalty u/s 271(1)(b) of the Act was rightly levied by the AO.

9. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the order passed by the ld. Settlement Commission was not available to the ld. CIT(A) who observed that if the Settlement is awarded in favour of the assessee for the relevant years then the penalty order passed by the AO will not sustain. We, therefore, set aside this issue to the file of the ld. CIT(A) to verify as to whether the application filed by the assessee before the ld. Settlement Commission has been settled and then decide the issue as per his observation given in para 5 of the impugned order. For the aforesaid proposition, both the parties agreed. Accordingly, the case is remanded back to the file of the ld. CIT(A).

10. For the remaining appeals i.e. in ITA Nos. 6933 to 6938/Del/2014, the issue and the relevant facts are identical as were involved in ITA No. 6932/Del/2014. Therefore, our findings given in the former part of this

order for the assessment year 2006-07 shall apply *mutatis mutandis* for the assessment years 2007-08 to 2012-13.

10. In the result, the appeals of the assessee are allowed for statistical purposes.

(Order Pronounced in the Court on 29/09/2017)

**Sd/-**  
**(Kuldip Singh)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 29/09/2017**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**