

**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 No. 589, 590 & 591/Del./2015
Assessment Years: 2005-06, 2006-07 & 2007-08**

Glenasia Commodities Pvt. Ltd., 6-B, Jor Bagh Lane, New Delhi PAN – AABCG5682J (Appellant)	vs.	A.C.I.T., Central Circle-05 New Delhi. (Respondent)
--	-----	--

Appellant by	Sh. Rahul Khare, C.A.
Respondent by	Sh. Naveen Chandra, CIT/DR

Date of Hearing	13.09.2017
Date of Pronouncement	03.10.2017

ORDER

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

These three appeals filed by the assessee are directed against the common order dated 31.10.2014 passed by Id. CIT(A)-XXXI, New Delhi for the assessment years 2005-06, 2006-07 and 2007-08 respectively on the following common ground :

“The learned CIT(A) erred in fact and in law in confirming the penalty of Rs.10,000/- u/s 271(1)(b) of the Income Tax Act, 1961 which is not only illegal but also against the facts and circumstances of the case.”

2. Since common question of law and facts are involved in all these appeals and common ground is raised therein, hence, for the sake of convenience and

brevity, the same are being disposed of by this consolidated order. For the sake of convenience, we take up appeal No. 589/Del./2015 first.

3. The brief facts of the case are that a search and seizure operation was carried out u/s. 132(1) of the Act at the business premises of the company M/s. Asia Sugar Industries Pvt. Ltd., Samir Thukral Group of Companies and residential premises of the directors on 28.03.2011. Notice u/s. 153A was issued to assessee and notice u/s. 142(1) alongwith a questionnaire was issued on 06.12.2012 fixing the hearing for compliance on 20.12.2012. On this date the AR of the assessee attended and submitted partial details required by the AO. The case was adjourned to 28.12.2012, which stood un-complied. In response to penalty notice, the assessee, inter alia, submitted that penalty proceedings were initiated in 12 cases of assessee group and detailed notices and questionnaires in 12 cases were received on 15.12.2012; that the requisite information were prepared and filed from time to time before the AO; that on 20.12.2012, the AR of the assessee attended the proceedings and filed partial information; that the assessee was pursuing to seek seized material for filing complete information in the assessment proceedings and there was no willful default on the part of the assessee. The AO did not concur with the reply of assessee and imposed penalty of Rs.10,000/- in each of these

cases, which stood confirmed by the ld. CIT(A) vide impugned order. Aggrieved, the assessee is in present appeal before the Tribunal.

4. The ld. AR of the assessee submitted that the department has searched Samir Thukral Group of companies on 28/03/2011; that the assessee received letter dated 6/12/2012 for the Assessment Year 2005-06 on 15/12/2012 containing list of 31 information /details/ documents and assessee was required to attend the office on 20/12/2012 & submit requisite information/details/documents u/s 142(1); that the authorized person attended the hearing on 20/12/2012 and submitted part information; and also sought time for submission of remaining information. Assessee was asked to furnish information in phases as and when ready for which next date was fixed for 28/12/2012; that the authorized person attended the hearing on 28/12/2012 also with part information ready for submission, however no hearing was allowed, as the Assistant commissioner advised him that he was busy in some time barring cases and unable to attend and allowed next date on 31/12/2012, that this fact is not mentioned in penalty order, being delay on part of Assessing Officer; that the A/R of the assessee further attended on 31.12.2012 and reply in some of the group cases was submitted; that the assessee was also handicapped due to non-availability of seized records, copy

of statements recorded on search despite the assessee made requests vide letter dated 06.04.2011 and 24.05.2012; that the assessee filed complete information in 11 cases out of 12 questionnaires issued to the assessee before the receipt of show cause notice of penalty on 31.01.2013 and for A.Y. 2005-06 to A.Y. 2010-11, all the details were filed and are available on record of the department; and that in view of huge quantum of work involved in 12 cases of six years, from the date 15/12/2012 the assessee had been preparing and filing information before A.O. in phases from time to time as required. Based on these arguments, the assessee contended there was no intention for non-compliance on 28.12.12 and no penalty u/s. 271(1)(b) could be imposed there for.

5. The Id. DR, on the other hand, relied on the impugned order and submitted that the assessee has not complied with the notice fixing the date of hearing in assessment proceedings on 28.12.2012 and therefore, has rightly been saddled with penalty.

6. We have heard the rival submissions and have perused the entire material available on record. A perusal of the penalty order reveals that the Id. Assessing Officer has rejected the explanation of the assessee on the premise

that after issuance of notice dated 06.12.2012, the assessee sought the copies of seized material vide letter submitted on 18.01.2013, i.e., about one and half months and nothing prevented the appellant to seek the copies of seized material at earlier stage. We do not agree with this observation of the AO in view of the contention of the assessee that the assessee had already made requests for the same vide letters dated 06.04.2011 and 24.05.2012, which fact appears to have been ignored by the authorities below. The contention of huge quantum of work with respect to same cause of action in other group of cases, in the attending facts and circumstances can also not be ruled out. Moreover, the assessment orders in the present cases have been passed by the AO u/s. 153A read with section 143(3) and therefore, in view of the decision relied by assessee in case of Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust, 115 TTJ 419, no penalty u/s. 271(1)(b) can be sustained. The relevant findings read as under :

“We also find that the finally the order was passed under s. 143(3) and not under s. 144 of the Act. This means that subsequent compliances in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO. Therefore, in such circumstances, there could have been no reason to come to the conclusion that the default was willful.”

7. In the instant case the notice issued for hearing on 20.12.2012 stood complied with, as the AR of the assessee attended the proceedings on this date

and submitted reply/details which he had in possession. The ld. DR also could not refute the contention of the assessee that all the information/details stood filed with the department before receipt of show cause notice of penalty on 31.01.2013.

8. It is also pertinent to mention here that in the cases of assessee the AO appears to have levied the penalty for seven assessment years , i.e., from 2005-06 to 2011-12 and the ld. 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 our opinion, the stand taken by the ld. 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.

9. In view of above discussion, we do not find cogent reason to observe any willful default on the part of the assessee or non-cooperative attitude with the department. Therefore, we find no justification to sustain the penalty

imposed u/s. 271(1)(c) of the Act. Accordingly, the appeal of the assessee deserves to be allowed.

10. Since similar facts are permeating through in all the remaining two appeals, our findings reached in ITA No. 589/Del./2015 in earlier part of this order, shall apply *mutatis mutandis* in rest two appeals of the assessee, which also deserve to be allowed.

11. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open court on 03.10.2017.

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

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

Dated: 03.10.2017

aks

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