

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. 6366, 6367, 6369 & 6370/ DEL/2014	
	A.Yrs. : 2005-06 & 2006-07	
SMT. USHA GUPTA, A-1, CC COLONY, OPP. RANA PRATAP BAGH, DELHI (PAN: AEIPG6462J)	VS	ACIT, CENTRAL CIRCLE-12, NEW DELHI
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by : Sh. S.B. Gupta, CA  
Department by : Sh. S.N. Bhatia, Sr. DR

**ORDER**

**PER BENCH**

These appeals by the assessee are directed against the common Order dated 01.09.2014 passed by the Ld. CIT(A)-XXXI, New Delhi for asstt. years 2005-06 & 2006-07. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience. In all the appeals the common grounds read 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. 10,000/- upon the assessee under section 271(1)(b)

is illegal and unjustified and, therefore, penalty imposed should be deleted.

2. That the appellant craves to add, delete, amend or modify the grounds at the time of hearing.

2. The brief facts of the case are that assessee was issued notice u/s. 153A/153C of the Income Tax Act, 1961 (hereinafter referred as the Act) and in response to the same the assessee filed the return of income on 13.02.2012. Subsequently, notices u/s. 143(2) of the Act alongwith questionnaire u/s. 142(1) was issued to the assessee on 19.9.2012, fixing the case for hearing on 09.10.2012. On 09.10.2012, none attended, nor any written reply has been received from the assessee which tantamount to the violation of section 271(1)(b) of the Act, 1961. Accordingly, penalty notice under section 271(1)(b) of the I.T. Act, 1961 was issued to the assessee on 29.1.2013 requesting him to explain as to why penalty u/s. 271(1)(b) may not be imposed upon him for the alleged default. The show cause notice was filed for 4.2.2013. On 4.2.2013, again none attended the proceedings nor has any written reply has been received from the assessee. In view of above, AO imposed the penalty of Rs. 10,000/- u/s. 271(1)(b) of the Act for non-compliance vide order dated 13.2.2013.

3. Against the aforesaid penalty order, assessee appealed before the Ld. Commissioner of Income Tax (A), who vide impugned order date 01.9.2014 confirmed the levy of penalty of Rs. 10,000/-. Aggrieved with the impugned order the Assessee is in appeal before us.

4. At the time of hearing, Ld. A.R. of the assessee stated that earlier Ld. CIT(A) had sustained similar penalty of Rs. 10,000/- each in the case of the assessee for the assessment 2007-08 and in the case of assessee's other family members for the assessment year 2005-06 to 2007-08. He further stated that the Ld. CIT(A)'s order was challenged before the Tribunal in appeals, out of which the appeals for assessment years 2005-06, 2006-07 and 2007-08 stood allowed by the Tribunal vide order dated 04.11.2015 & 07.09.2017 on the identical facts and circumstances and similar arguments made by the assessee. Therefore, he requested that following the aforesaid orders of the Tribunal, the penalty in dispute may also be deleted. He also filed the copies of the aforesaid decisions.

5. On the other hand, the Ld. DR relied upon the impugned order.

6. We have heard both the parties and perused the records, especially the Tribunal's order dated 4.11.2015 and 07.9.2017 in assessee's case as well as in Assessee's other family cases, we find that the matter involved in these appeals is covered in favour of the assessee by the order dated 4.11.2015 of SMC Bench of Tribunal in assessee's own cases (ITA Nos. 6368 & 6371/Del/2014) (AY 2007-08) & Ors. and in assessee's family member case i.e. Sh. Ghanshyam Gupta vs. ACIT in ITA Nos. 6375 & 6378/Del/2014 for AY 2005-06 vide order dated 07.9.2017. The Tribunal vide order dated 07.9.2017 by respectfully following its earlier decision dated 04.11.2015 after considering the identical submission of the assessee, deleted the penalty by observing as under:-

"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 Ays. 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)/142(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 AD u/s 271 (1)(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 2007-0B. 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 (1)(b) of the Act. I, therefore, considering the totality of the facts delete the penalty levied by the AD and sustained by the Id. CIT(A).*

*10. The other appeal of the assessee i.e. ITA No. 6371/Delj2014 for the assessment year 2007-0B 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 6374/0el/2014 for the assessment years 2005-06 to 2007-0B, the cases are on more strong footing because. the said assessee himself was admitted in the hospital on 09.10.20.12 due to heart attack, so it was not possible [or him to be*

*present on the said date. In the case of Sh. Ghanshyum 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 [or the assessment years 2006-07 & 2007-08, therefore, the duplicate appeal is 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 assessees. In that view of the matter the penalties levied by the AO u/s. 271 (1) (b) of the Act and sustained by the Id. 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 Id. CITCA) in the present cases. Accordingly, both the appeals of the assessee deserve to be allowed.*

*7. In the result, the appeals are allowed."*

7. In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, we delete the penalty of Rs. 10,000/- in all the Appeals and quash the orders of the authorities below.

8. In the result, all the 04 Appeals filed by the Assessee are allowed.

Order pronounced on 09/10/2017.

**Sd/-**

**[L.P. SAHU]  
ACCOUNTANT MEMBER**

*Date 09/10/2017*

**"SRBHATNAGAR"**

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

By Order,

Assistant Registrar, ITAT, Delhi Benches