

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.:- 6422/Del /2014
Assessment Year: 2007-08

Sushil Gupta H. No. 11, Block-5, Roop Nagar Delhi - 110 007 PAN AGEPG7570K	Vs.	ACIT, Central Circle - 12 New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri S.B. Gupta, CA
Department by :	Shri Kaushlendra Tiwari, Sr. DR
Date of Hearing	24/10/2017
Date of pronouncement	24/10/2017

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the assessee against the impugned order dated 1.9.2014 for the assessment year 2007-08 in relation to the penalty proceedings u/s 271(1)(b).

2. The assessee is aggrieved by levy of penalty of Rs. 10,000/- for non compliance of notice u/s 142(1) issued on 21.9.2012 fixing the case of hearing on 9.10.2012, on which date as per the AO none appeared nor any written reply was filed. Accordingly, penalty

proceedings u/s 271(1)(b) was initiated and a sum of Rs. 10,000/- was levied again on the ground that in response to the show cause notice for levy of penalty no reply was submitted. Ld. CIT (A) too has confirmed the said penalty.

3. Before us Ld. Counsel submitted that similar penalty was levied in the other group cases, wherein the Hon'ble Tribunal has deleted the said penalty before us. In support he filed the following decisions of the Tribunal :-

<u>Name:</u>	<u>ITA Nos.</u>
M/s. Macadam Road Makers P. Ltd. vs. ACIT:	6403 & 6404/Del/2014
Shri Ghanshyam Gupta vs. ACIT:	6375 & 6378/Del/2014
Saraswati Resorts Pvt. Ltd. vs. ACIT:	6281 to 6383/Del/2014
Sanjay Gupta vs. ACIT:	6284 & 6385/Del/2014

4. Ld. DR on the other hand relied upon the order of the A.O. and the CIT(A).

5. After considering the relevant finding given in the impugned order as well as the Tribunal order filed before us, we find that the reasons for non compliance of notice u/s 142(1) dated 19.9.2012 was that, the aunt of the assessee, Mrs. Anju Gupta was suffering from severe disease and was hospitalized on 6.10.2012 and thereafter on 9.10.2012, which was the date fixed for hearing, Mr. Satya Prakash

Gupta head of the family and grandfather of the assessee was hospitalized due to heart attack. In this situation the whole family was disturbed and accordingly, no compliance would be made. We find that the Ld. CIT (A) out of penalty proceeding initiated and levied for seven years on similar grounds has deleted the penalty for four assessment years but has confirmed the same for three assessment years. Such an adhocism adopted by Ld. CIT(A) for confirming the penalty cannot be appreciated. Since there was a reasonable cause for not attending the hearing on 9.1.2012, therefore, in view of provision of section 273B, the penalty of Rs. 10,000/- as levied by the A.O. is directed to be deleted.

3. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 24th October, 2017.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 31 /10/2017

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi