

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

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

ITA No. 6423/Del/2014

A.Y. 2005-06

ITA No. 6424/Del/2014

A.Y. 2006-07

ITA No. 6425/Del/2014

A.Y. 2007-08

ITA No. 6426/Del/2014

A.Y. 2006-07

ITA No. 6427/Del/2014

A.Y. 2007-08

ITA No. 6428/Del/2014

A.Y. 2008-09

Sh. Rajiv Gupta A-1, CC Colony Opp. RP Bagh Delhi PAN: AFEPG3221J	vs.	ACIT Central Circle 12 New Delhi
(Appellant)		(Respondent)
Appellant by		Sh. SB Gupta, FCA
Respondent by		Shri Atiq Ahmad, Sr.D.R
Date of Hearing		23 rd November, 2017
Date of Pronouncement		29 th November, 2017

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present penalty appeals have been filed by assessee against order dated 01/09/14 passed by Ld.CIT(A)-XXXI for

assessment years 2005-06 to 2008-09 on the following grounds of appeal:

ITA No. 6423/Del/2014

1. That on the facts and circumstances of the case, initiation of penalty proceedings against the assessee u/s 274 r.w.s. 271(1)(b) and imposition of penalty of Rs.10,000/- upon the assessee u/s 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.

ITA No. 6424/del/2014

1. That on the facts and circumstances of the case, initiation of penalty proceedings against the assessee u/s 274 r.w.s. 271(1)(b) and imposition of penalty of Rs.10,000/- upon the assessee u/s 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.

ITA No. 6425/del/2014

1. That on the facts and circumstances of the case, initiation of penalty proceedings against the assessee u/s 274 r.w.s. 271(1)(b) and imposition of penalty of Rs.10,000/- upon the assessee u/s 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.

ITA No. 6426/del/2014

1. That on the facts and circumstances of the case, initiation of penalty proceedings against the assessee u/s 274 r.w.s. 271(1)(b) and imposition of penalty of Rs.10,000/- upon the assessee u/s 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.

ITA No. 6427/del/2014

1. That on the facts and circumstances of the case, initiation of penalty proceedings against the assessee u/s 274 r.w.s. 271(1)(b) and imposition of penalty of Rs.10,000/- upon the assessee u/s 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.

ITA No. 6428/del/2014

1. That on the facts and circumstances of the case, initiation of penalty proceedings against the assessee u/s 274 r.w.s. 271(1)(b) and imposition of penalty of Rs.10,000/- upon the

assessee u/s 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. Brief facts of the case are as under:

During the assessment proceedings assessee had failed to comply with notices under section 143(2)/142 1) issued by AO in the result of which Ld. AO passed penalty orders under section 271 (1) (b) of the Act for all the 7 assessment years levying penalty as under:

S.No.	Assessment year	Date of notice non-complied with	Penalty levied
1.	2005-06	19/09/2012	Rs. 10,000
2.	2006-07	19/09/12	Rs. 10,000
3.	2006-07	11/01/13	Rs. 10,000
4.	2007-08	19/09/12	Rs. 10,000
5.	2007-08	11/01/13	Rs. 10,000
6.	2008-09	11/01/13	Rs. 10,000

2.1. It has been submitted by Ld.AR that Mr Satya Prakash Gupta father of assessee and Mrs Anju Gupta sister-in-law of assessee were hospitalised due to severe illness. It has been submitted that under the circumstances assessee could not comply with the notices issued by Ld. AO. It has been submitted by Ld.AR that on identical circumstances penalty levied for non-compliance of notice issued by Ld. AO in the case of family members of assessee has been cancelled by various orders of this Tribunal.

2.2. He placed reliance upon the decision passed by this Tribunal on 07/09/17 in the case of Shree Ghanshyam Gupta in ITA Nos. 6375 and 6378/del/2014 for assessment year 2005-06, Smt. Neeru Gupta in ITA No. 6569, 6570 and 6571/del/2014 for assessment years 2005-06 to 2007-08 vide order dated 15/09/17.

2.3. On the contrary Ld. DR placed reliance upon the order of Ld. AO.

3. We have perused the submissions advanced by both the sides in the light of the records placed before us and the decisions relied upon by the Ld.AR passed by this Tribunal. On perusal of order passed by this Tribunal it is observed that Mr Satya Prakash Gupta, father of assessee was hospitalised for treatment of heart attack, during the relevant period. It is observed that Ld. CIT (A) while confirming the order of Ld. AO for assessment year 2005-06 to 2007-08 has observed as under:

“4.4. Considering the above, there is merit in levying penalty in spite of certain procedural deficiencies pointed out by the ar. However, levying penalty for 7 years in my view, would be harsh on the assessee. Therefore I am of the view that at the given circumstances it would be appropriate if penalties of Rs. 10,000 each only for 3 of the 7 assessment years involved are confirmed and the penalties for other assessment years are deleted. Thus penalty to the extent of Rs. 10,000/-each for assessment year 2005-06, 2006-07 and 2007-08 are confirmed and for assessment year 2008-09, 2009-10, 2010-11 and 2011-12 penalties are hereby deleted.”

3.1. While deciding the case for assessment year 2008-09, Ld. CIT (A) observed as under:

“4.7. Considering the above, there is merit in levying penalty in spite of certain procedural deficiencies pointed out by the ar. However, levying penalty for 6 years in my view, would be harsh on the assessee. Therefore I am of the view that at the given circumstances it would be appropriate if penalties of Rs. 10,000 each only for 3 of the 7 assessment years involved are confirmed and the penalties for other assessment years are deleted. Thus penalty to the extent of Rs. 10,000/-each for assessment year 2006-07, 2007-08 and 2008-09 are confirmed and for assessment year 2009-10, 2010-11 and 2011-12 penalties are hereby deleted.”

3.2. It is observed that the reasons given by assessee before the authorities below for non-compliance have not been disputed which establishes a reasonable cause. Further the explanation offered by assessee for certain notices issued for particular assessment years have been accepted by Ld.CIT(A) while passing a consolidated order for assessment years from 2005-06 to 2011-12. Under such circumstances we are of the considered opinion that Ld. CIT (A) was not justified in confirming the penalties for other assessment years. Accordingly we are inclined to delete the penalty levied by Ld.AO under section 271(1)(b) of the Act and grounds raised by assessee for assessment years under consideration before us stand allowed.

4. In the result appeals filed by the assessee for the years under consideration stand allowed.

Order pronounced in the open court on 29.11.2017.

Sd/-

(R.S. SYAL)
Vice President

Sd/-

(BEENA A PILLAI)
Judicial Member

Dated. 29th November, 2017.

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar
ITAT, Delhi Benches, New Delhi

*mvg

ITA Nos. 6423-6424-6425-6426-6427&6428/Del/14
AY 2005-06 to 2008-09
Sh. Rajiv Gupta, New Delhi

		Date	
1.	Dragon dictation	27.11.2017	
2.	Draft placed before author	28.11.2017	
3.	Draft proposed & placed before the second Member		
4.	Approved Draft comes to SrPS/PS		
5.	Kept for pronouncement on		
6.	File sent to Bench Clerk		
7.	Order uploaded		