

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH SMC NEW DELHI**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER

**ITA No. 4978/Del/2017, ITA 4979/Del/2017, ITA 4980/Del /2017,
ITA 4981/D/2017, ITA 4982/D/2017, ITA No. 4983/Del /2017
& ITA 4984/D/17
Assessment Years: 2009-10, 2010-11, 2011-12, 2012-13,
2013-14, 2014-15, 2015-16**

Shri Brij Mohan Seth, C-1/203, 1 st Floor, Janakpuri, New Delhi-110058 (Appellant)	vs	Asstt. Commissioner of Income Tax, Central Circle-26, New Delhi. (Respondent)
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**Appellant by : Shri Vijay Khatana, Adv. (Proxy Counsel)
Respondent by : Shri N.J. Singh, Sr. DR**

**Date of Hearing : 06.12.2017
Date of Pronouncement: 08.12.2017**

ORDER

PER DIVA SINGH, J.M.

These seven appeals filed by the assessee are being decided by a common order as the sole issue agitated is upholding of the penalty imposed u/s 271(1)(b) by the CIT(A)-29, New Delhi vide his consolidated order dated 26.05.2017 in the respective assessment years.

2. In the present appeals also, as in ITA No.4987/Del/2017 & Others, an adjournment application had been moved on behalf of the assessee on 4.12.2017 on which date it was adjourned to 6th December, 2017. Again, on the said date, adjournment application was moved stating that there are some other appeals which need to be consolidated. However, since the present appeals could be decided on the basis of material available on

record, it was deemed appropriate to reject the adjournment application after taking note of the presence of the proxy counsel Mr. Vijay Khatana on behalf of the ld. AR. Ld. Sr. DR was heard.

3. The facts of the present case are more or less identical to the facts as considered in ITA No.4987/Del/2017 & Others. A search and seizure operation u/s 132 of the IT Act 1961 was carried out in the case of M/s G.D. Foods & Manufacturing Pvt. Ltd. & Others and the case of the assessee was also covered in the said search. By notice u/s 153A, the assessee was required to file its return. Notice u/s 143(2)/142(1) along with questionnaire was issued to the assessee on 13.5.2016 fixing the date of hearing as 22nd June 2016. On the said date, adjournment application was filed. Thereafter, further notices u/s 142(1) were issued leading to the notice for penalty u/s 271(1)(b). Since the assessee filed no reply, penalty u/s 271(1)(b) was imposed on account of the following defaults:-

Sl. No.	Notice issued u/s	Date of Issue	Date of Hearing	Remarks ,
1.	142(1)	23.08.2016	01.09.2016	Adjournment application filed
2.	142(1)	14.10.2016	25.10.2016	No one Appeared
3	142(1)	17.10.2016	27.10.2016	No one Appeared
4.	142(1)	03.11.2016	10.11.2016	On 11.11.2016, part
5	271(1)(b)	11.11.2016	16.11.2016	No one Appeared

4. The assessee carried the issue in appeal before the First Appellate Authority. In the facts of the present case also, the assessee is found to have explained that on two occasions an adjournment was sought and on one of those occasions, part submissions were also filed. On the remaining dates, as in the case of Smt. Chand Seth, it was argued that the assessee was represented through his AR and the Assessing Officer remained

focussed on concluding the issues in the cases of M/s G.D. Foods Manufacturing India P. Ltd. and being of the view that those cases would throw up issues which would impact the present assessee's case also did not go ahead with the hearing. On account of this fact, no hearing took place. Affidavit of Mr. Ajai Kumar Gupta was relied upon in support of the said assertion who affirmed that he had been entrusted to represent and appear in M/s G.D. Foods Manufacturing India P. Ltd. group cases including the case of the present assessee also and thus, in these peculiar facts and circumstances, the occasion for the assessee to remain unrepresented did not arise. For ready reference, relevant extracts from the submissions at page 3 and 4 of the impugned order on facts are extracted hereinunder:-

*"3. At the very outset it is submitted that, on hearing dated 01.09.2016, in response to notice u/s 142(1) admittedly, the AR of the assessee appeared and filed an adjournment which the Id. Assessing Officer has recorded. **Filing of an adjournment application and the same having been accepted by the AO tantamounts to compliance and no penalty can be levied. Unfortunately the Id. AO has levied penalty even when an adjournment application has been filed which was duly explained and accepted. The penalty for this alleged non compliance deserves to be deleted.***

4. In respect of item no. 5 in the penalty order, the Id. AO issued notice u s 271(l)(b) of the Act fixing the hearing on 16.11.2016 when purportedly no one appeared and she levied penalty for non compliance of notice u/s 271(l)(b) of the Act as well.

For ease of reference, Section 271(l)(b) of the Act is reproduced hereinunder:

"271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—

*(a) [***]*

(b) has failed to comply with a notice under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or under sub-section (1) of section 142 or sub-section (2) of section 143 or fails to comply with a direction issued under sub-section (2A) of section 142, or"

From the aforesaid section, it is amply clear that Section 271(l)(b) of the Act talks of levy of penalty for non compliance of notices u/s 143(2),142(1),etc. No penalty u/s 271(l)(b) can be levied for non compliance of notice u/s 271(l)(b) of the Act.

5. As far as the other two notices are concerned i.e. dated 14.10.2016 and 17.10.2016 it is submitted that Sh. Ajai Kumar Gupta, AR appeared and was told that since G. D. Food Manufacturing (I) Pvt. Ltd. being the lead company had the maximum number of issues and the focus should be on completing that assessment.

The Id. AO further stated that the hearing of G. D. Foods Manufacturing (I) Pvt. Ltd. is fixed on subsequent date and on that date the assessee should comply and attend. Accordingly Sh. Ajai Kumar Gupta, AR attended on the next date and the case of G. D. Foods was discussed extensively and numerous details were filed.

At the end of the day, the Id. AO orally stated that she would take up Sh. Brij Mohan Seth's case after the issues related to G.D. Foods Manufacturing (I) Pvt. Ltd. have been examined because she expected that some inputs would come from the assessment of G.D. Foods which could have a bearing of the assessment of Sh. B.M. Seth's cases.

These facts have been stated by way of an affidavit by Sh. Ajai Kumar Gupta who attended the proceedings and the same is enclosed herewith as annexure-II.

6. Your honour will appreciate that, the assessee had attended to more than 30 hearings of G. D. Foods Manufacturing (I) Pvt. Ltd. and there is no allegation as far as compliance is concerned. When the assessee appeared for more than 30 hearings for the assessment of G. D. Foods, one fails to understand why he would not attend to the hearing of Sh. B.M. Seth before the same AO.

As already stated, the circumstantial evidence coupled with the affidavit of Sh. Ajai Kumar Gupta it is abundantly clear that Sh. Ajai Kumar Gupta attended and was orally asked to first get assessment

of G. D. Foods completed and therefore the issue of non compliance cannot be raised against the assessee.”

(Emphasis supplied)

4.1 In the aforementioned peculiar facts and circumstances, following the orders in ITA No. 4987/Del/2017 & Others, the penalty orders are quashed in the respective appeals. The relevant extract of the order followed is reproduced hereunder for ready reference:-

“5. A perusal of the explanation extracted in the impugned order shows that the assessee submitted that admittedly as per record, on two occasions, adjournment applications were filed and on one of these dates, part submissions were also filed. Accordingly, on these two dates, assessee cannot be said to be not represented. On the remaining dates, it had been argued, the Assessing Officer remained focussed on concluding the issues in M/s G.D. Foods Manufacturing India P. Ltd. as the Officer was of the view that the issues which would be thrown up from the said case would have an impact on the case of the assessee also. An affidavit of Mr. Ajai Kumar was relied upon. Mr. Ajai Kumar affirmed that as the assessee’s counsel remained present on that date, and he affirmed that he had been entrusted with the job of assisting the assessment proceedings in the case of M/s G.D. Foods Manufacturing India P. Ltd. including the case of the assessee and he was present on each of these dates. In these peculiar facts and circumstances, I am of the view that as far as the penalty imposed u/s 271(1)(b) is concerned, the default stands explained. In the facts of the present case, it is seen that once on a specific date, an adjournment application is moved, it can, by no stretch of imagination, be said to be a case of non-compliance. Similarly, where part information is placed on record and time is sought, it again cannot be said to be a case of absenting oneself without an explanation. On the remaining dates, the assessee has consistently argued that his counsel remained present. However, the focus of the Assessing Officer remained upon the main appeals in the case of M/s G.D. Foods group in which background, it has been stated that the occasion for the assessee to remain not present through his counsel did not arise. I find that the Commissioner of Income Tax(A) though has taken note of these arguments, facts, submissions and affidavit, however, has refused to accept the explanation in the absence of any justifiable reason for rejection of assessee’s explanation. Considering the submissions of the ld. Sr. DR and the submissions of the assessee as recorded in the impugned order, I find that in the absence of any good reason to the contrary, penalty order in the peculiar facts and circumstances of the case deserves to be quashed. Ordered accordingly.”

5. In the result, all appeals of the assessee are allowed.

The said order was pronounced in the open court on 08 December, 2017.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Dated: 08 DECEMBER, 2017
'GS'

Copy forwarded to:

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

By Order

ASSISTANT REGISTRAR

Draft dictated on	06.12.2017
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	