

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

**BEFORE SHRI NK SAINI, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

ITA No. 6270/Del/2014

A.Y. 2008-09

ITA No. 6364/Del/2014

A.Y. 2008-09

ITA No. 6365/Del/2014

A.Y. 2009-10

SPB 87 Hotels Pvt.Ltd. A 1, CC Colony Opp. RP Bagh New Delhi PAN: AALCS 7171E	vs.	ACIT, Central Circle 12 New Delhi
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ITA Nos. 6296-6297-6298/Del/2014

A.Y. 2006-07, 2007-08 and 2008-09

Satya Prakash & Bros. P.Ltd. A 1, CC Colony Opp. RP Bagh New Delhi PAN: AAHCS 1210 Q	vs.	ACIT, Central Circle 12 New Delhi
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ITA Nos. 6386-6387-6388-6389/Del/2014

A.Y. 2007-08, 2005-06, 2006-07 and 2008-09

Sh. Sanjay Gupta New Delhi PAN: AELPG6586L	vs.	ACIT, Central Circle 12 New Delhi
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**ITA Nos. 6299-6300/Del/2014
A.Y. 2008-09 and 2009-10**

Karat 87 Hotels P.Ltd. New Delhi PAN: AADCK2600A	vs.	ACIT, Central Circle 12 New Delhi
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**ITA Nos. 6414-6415-6416-6417-6418-6419/Del/2014
A.Y. 2006-07, 2007-08, 2008-09**

Satya Realtors P Ltd. New Delhi PAN: AAJCS1332F	vs.	ACIT, Central Circle 12 New Delhi
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**ITA Nos. 6420 & 6421/Del/2014
A.Y. 2005-06 & 2006-07**

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

(Respondent)

Appellant by	Sh. SB Gupta, C.A.
Respondent by	Sh. Kauslendra Tiwari, Sr.D.R.
Date of Hearing	28/12/2017
Date of Pronouncement	/12/2017

ORDER

PER BENCH

The present penalty appeals have been filed by assessee against order passed by Ld.CIT(A)-XXXI the details of which are as under:

S.no.	ITA No.	Asst Yr	Assessee	Date of Impugned order
1.	6270/14	2008-09	SPB 87 Hotels Pvt.Ltd	29/08/14
2.	6364/14	2008-09	Do	01/09/14
3.	6365/14	2009-12	Do	01/09/14
4.	6296/14	2006-7	Satya Prakash & Brothers	01/09/14
5.	6297/14	2007-08	Do	01/09/14
6.	6298/14	2008-09	Do	01/09/14
7.	6386/14	2007-08	Sanjay Gupta	01/09/14
8.	6387/14	2005-06	do	01/09/14
9.	6388/14	2006-07	do	01/09/14
10.	6389/14	2007-08	do	01/09/14
11.	6299/14	2008-09	Karat 87 Hotels Pvt.Ltd	29/08/14
12.	6300/14	2009-10	Do	29/08/14
13.	6414/14	2006-07	Satya Realtors	01/09/14
14.	6415/14	2007-08	Do	01/09/14
15.	6416/14	2008-09	Do	01/09/14
16.	6417/14	2006-07	Do	01/09/14
17.	6418/14	2007-08	Do	01/09/14

18.	6419/14	2008-09	Do	01/09/14
19.	6420/14	2005-06	Sushil Gupta	01/09/14
20.	6421/14	2006-07	Do	01/09/14

In all the above appeals, assessee has challenged 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) as illegal and unjustified and has prayed for penalty to be deleted which have been confirmed by the Ld.CIT(A).

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 assessment years levying penalty as under:

S.no.	ITA No.	Asst Yr	Date of notice non-complied with	Penalty levied
1.	6270/14	2008-09	25.09.12	10,000/-
2.	6364/14	2008-09	04.01.13	10,000/-
3.	6365/14	2009-12	04.01.13	10,000/-
4.	6296/14	2006-7	17.09.12	10,000/-
5.	6297/14	2007-08	17.09.12	10,000/-
6.	6298/14	2008-09	17.09.12	10,000/-
7.	6386/14	2007-08	18.09.12	10,000/-
8.	6387/14	2005-06	04.01.13	10,000/-
9.	6388/14	2006-07	04.01.13	10,000/-

10	6389/14	2007-08	04.01.13	10,000/-
11	6299/14	2008-09	04.01.13	10,000/-
12.	6300/14	2009-10	04.01.13	10,000/-
13.	6414/14	2006-07	24.09.12	10,000/-
14.	6415/14	2007-08	24.09.12	10,000/-
15.	6416/14	2008-09	24.09.12	10,000/-
16.	6417/14	2006-07	04.01.13	10,000/-
17.	6418/14	2007-08	04.01.13	10,000/-
18.	6419/14	2008-09	04.01.13	10,000/-
19.	6420/14	2005-06	21.09.12	10,000/-
20.	6421/14	2006-07	21.09.12	10,000/-

2.1. It has been submitted by Ld.AR that Mr Satya Prakash Gupta, father of assessee/grand father of assesses/Principal Officer of the Companies was hospitalised due to severe illness. It has been submitted that under the circumstances assessee could not comply with notices issued by Ld. AO. It has been submitted by Ld.AR that on the identical facts penalty levied for non-compliance of notices issued by Ld. AO in the case of other family members of assessee and companies/partnerships where Shri Satya Prakash is the Principal Officer has been cancelled by various orders of this Tribunal.

2.2. He placed reliance upon the decision passed by this Tribunal in the case of family members and business concerns of Shree Satya Prakash Gupta the details of which are as under:

S.No.	ITA Nos.	Asst.Yr.	Date of ITAT Order
1.	ITA No. 6248 to 6286/Del/14; ITA No. 6287 to 6289/Del/14; ITA	2005-06 to 2007-08	04/11/15

	No. 6272 to 6274/Del/14		
2.	ITA No. 6403 & 06/04/04/del/2014	2009-10	01/09/17
3.	6375 & 6378/del/2014	2005-06	07/09/17
4.	6569, 6570 and 6571/del/2014	2005-06 to 2007- 08	15/09/2017
5.	ITANo.6422/del/14	2007-08	24/10/17
6.	ITA No. 6423- 6428/del/2014	2005-06 TO 2008-09	29/11/17

Ld. AR submitted that in all these above referred appeals on similar facts and circumstances, various Benches of the ITAT Delhi have deleted penalty levied under section 271 (1) (b) of the Act. He further submitted that all these assesseees belong to same group and family concern and therefore the circumstances that prevailed during these assessment years were similar.

2.3. On the contrary Ld. DR placed reliance upon the orders of the authorities below.

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 all the above referred to orders passed by this Tribunal, it is observed that Mr Satya Prakash Gupta, grand father of assesses and Principal Officer of the Companies was hospitalised for treatment of heart attack, during the relevant period and he was the principal officer for all the companies/partnership firms. This Tribunal consistently held as under in all appeals tabulated above. We think it

appropriate to reproduce the relevant finding given in Para 8 of the order dated 4.11.2015 in ITA no.6284 to 6289 & 6272 to 6274/Del/2014 for the Assessment Years 2005 -06 to 2007-08 in the cases of Smt. Chandrawati Gupta, Smt. Abha Gupta & Smt. Rajani Gupta, Delhi vs. ACIT, Central Circle-12, New Delhi which reads as under.

“8. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the facts are identical to the facts involved in the case of Smt. Usha Gupta vs. ACIT(supra) and even the rival contentions are also on the same footing as were in the said case in ITA 6368/Del/2014 for the A.Y. 2007-08. I have already disposed off the above said referred to case of Smt. Usha Gupta vide the order of even date and the relevant findings have been given in para 9 of the said order which read as under.

‘9. 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 ld.CIT(A) was that her sister-in-law Mrs. Anju Gupta was suffering from severe disease and had to be hospitalised on 6.10.2012. Thereafter on the date of hearing i.e. 9.10.2012, Sh. Satya Prakash Gupta ‘head of the family’ and ‘father-in-law’ of the assessee became ill and had to be hospitalised due to heart attack. In my opinion there was a reasonable cause for non-appearance for the hearing fixed on 9.10.2012, as such the confirmation of penalty levied by the AO u/s 271(1)(b) of the Act was not justified. In the present case, it appears that the AO levied penalty for 7 assessment years running 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 Year 2005-06 to 2007-08. In my 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 4 out of 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 AO and sustained by the Ld.CIT(A).'

3.1. So, respectfully following the aforesaid referred to order, we are of the considered opinion that Ld. CIT (A) was not justified in confirming the penalties for other assessment years under consideration. Accordingly we are inclined to delete the penalty levied by Ld.AO under section 271(1)(b) of the Act and confirmed by the Ld.CIT(A).

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

Order pronounced in the open court on 28/12/2017.

Sd/-
(NK SAINI)
Accountant Member

Sd/-
(BEENA A PILLAI)
Judicial Member

Dated: the 28th December, 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

		Date	
1.	Dragon dictation	28.12.2017	
2.	Draft placed before author	28.12.2017	
3.	Draft proposed & placed before the second Member		
4.	Approved Draft comes to SrPS/PS		
5.	Kept for pronouncement on	28.12.17	
6.	File sent to Bench Clerk		
7.	Order uploaded		