

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

Before Shri Kul Bharat, Hon'ble Judicial Member and
Shri Manish Borad, Hon'ble Accountant Member
ITA Nos. 798 to 804/Ind/2016
A.Ys. 2004-05 to & 2010-11

Rambhau Ghanshyam Asai (HUF)
Bhopal :: Appellant
Vs

Income tax Officer 2(1)
Bhopal :: Respondent
ITA Nos. 805 to 811/Ind/2016
A.Ys. 2004-05 to & 2010-11

Deepak Rambhau (HUF)
Bhopal :: Appellant
Vs

Income tax Officer 2(1)
Bhopal :: Respondent
ITA Nos. 812 to 818/Ind/2016
A.Ys. 2004-05 to & 2010-11

Late Rambhau Asai
Through L/R Smt.Urmila Asai
Bhopal :: Appellant
Vs

Income tax Officer 2(1)
Bhopal :: Respondent

ITA Nos. 819 to 825/Ind/2016
A.Ys. 2004-05 to & 2010-11

Smt. Urmila Asai
Bhopal
Vs

::: Appellant

Income tax Officer 2(1)
Bhopal

::: Respondent

Appellants by	Shri Ashish Goyal & Shri N.D. Patwal
Respondent by	Shri K.G. Goyal
Date of hearing	14.5.2018
Date of pronouncement	16.5.2018

O R D E R

PER BENCH

These bunch of 28 appeals in case of four assesseees captioned above relating to the assessment years 2004-05 to 2010-11 are directed against different orders of the Commissioner of Income Tax (Appeals)-I, Bhopal, all dated 27.4.2016 arising out of different orders u/ 271(1)(b) of

Income Tax Act (in short referred as 'Act') Act framed by the ITO 2(1), Bhopal.

2. Since common issue is involved, these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. Earlier these appeals were dismissed by the coordinate Bench of the Tribunal for short appeal fee and non-prosecution with the observation that the *“assesseees are at liberty to pay the short fee after receipt of this order within two months and thereafter to make proper application for restoration of appeals, if so desired, as per law”*. We observe that the assessee had deposited the difference amount of fee on 11.8.2016 but could not appear before the Tribunal on the date of hearing on 16.8.2016. After dismissal of the appeals, the assesseees went in appeal before the Hon'ble High Court of Madhya Pradesh. Hon'ble High Court of

Madhya Pradesh admitted the appeals on the following substantial question of law :-

“Whether on facts and in the circumstances of the case The learned ITAT was justified in law in dismissing the appeals, when the appellants had already rectified the defect by paying the differential challan fees and the relevant challans were on record of learned ITAT ?”

After hearing the parties, the Hon'ble High Court set aside the order of the Tribunal with a direction to verify about the deficit court fees which was paid on 11.8.2016 and thereafter decide the appeals of the assessee on merits in accordance with law.

4. Complying with the directions of the Hon'ble High Court, we have verified the deposit of deficit court fee and find that the assessee has already deposited the difference of appeal fee on 11.8.2016 and accordingly proceed to decide these appeals on merit.

5. In all these appeals, the common ground raised is that the learned Commissioner of Income Tax (Appeals) was not

justified in confirming the penalty levied u/s 271(1)(b) of the Act at Rs. 10,000/- in each appeal for non-compliance with the notices u/s 142(1) of the Act.

6. Since the facts obtaining in all these case are exactly similar to each other, we would like to briefly state the facts of ITA No. 798/Ind/1016 in case of Rambhau Ghanshyam Asai (HUF). In this case, notices u/s 142(1) of the Act was issued but in compliance, none attended nor any written submissions were filed. The Assessing Officer in order to provide one more opportunity, issued another notice/query letter on 18.3.2014 fixing the date of hearing on 21.3.2014. Notices u/s 143(2) of the Act were issued on 20.3.2014 which were duly served on the assessee on 20.3.2014. Vide letter dated 21.3.2014 the assessee submitted that return filed on 20.3.2014 for the assessment year 2010-11 may be considered as return in response to notice u/s 143(2) for assessment year 2010-11. Thereafter a notice u/s 274 read

with section 271 of the Act of the Act was issued on 28.3.2014 fixing the case for hearing on 29.4.2014. The assessee neither appeared nor filed any reply in response thereto. Again a show cause notices were issued on 9.7.2015 and 31.7.2014 but there was no compliance on behalf of the assessee. The Assessing Officer, therefore, inferred that the assessee has nothing to say in the matter. In this view of the matter, the Assessing Officer observing that since the assessee has failed to comply with the provisions of section 142(1) of the Act, imposed penalty of Rs. 10,000/- u/s 271(1)(b) of the Act for default of non-compliance.

7. Felt aggrieved, the assessee preferred appeal before the learned Commissioner of Income Tax (Appeals) but there also the assessee neither appeared on the dates of hearing nor filed any written submissions. The learned Commissioner of Income Tax (Appeals), therefore, observing

that the assessee is not interested in pursuing his appeals, dismissed the appeals of the assessee in limine. Now the assessees are in appeal before the Tribunal.

8. At the outset of hearing, the learned counsel for the assessee contended that it has been consistently held by various judicial pronouncements including the decisions of the coordinate Bench of the Tribunal that in case the assessment is completed u/s 143(3) of the Act, penalty u/s 271(1)(b) of the Act is not justified. He also submitted that in the case of the assessees, assessments have been completed u/s 153C r.w.s. 143(3) of the Act and the assessees gave necessary details before the Assessing Officer for the purpose of completing the assessment and as such the penalty u/s 271(1)(b) of the Act was not exigible. In support of his submission, the learned counsel for the assessee referred to and relied upon the judgments in the cases of Akhil Bhartiya Prathmik Shmshak Sangh;

115 TTJ 419 (Del); Hemant Soni and others; ITA Nos. 361 to 1367/Ind/2016, etc.; (Trib. Indore) and Vineet Chauhan and others ITA Nos. 1061 to 1181/Ind/2016.

9. On the other hand, the learned DR vehemently argued supporting the orders of the authorities below.

10. We have heard both the sides and have gone through the orders of the authorities below and the judgments relied upon by the learned counsel for the assessee. This fact is not disputed that all the assessments were completed u/s 153C r.w.s. 143(3) of the Act and penalty of Rs.10,000/- u/s 271(1)(b) of the Act was levied for non-compliance with notices u/s 142(1) of the Act.

11. We find that on similar issue of levying penalty u/s 271(1)(b) of the Act in the case of the assessee wherein the regular assessments were completed u/s 143(3) of the Act, the Coordinate Bench of the Tribunal has consistently

held that in such situation it is not justified for the Assessing Officer to levy penalty.

12. We find that in the case of Akhil Bhartiya Prathmik Shmshak Sangh (supra), ITAT, Delhi Bench ‘G’ has held as under :-

“Where assessee had not complied with notice under section 142(1) but assessment order was passed under section 143(3) and not under section 144, that meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by Assessing Officer and, therefore levy of penalty under section 271(1)(b) was not justified. “

13. We further find that the coordinate Bench in the case of Shri Hemant Kumar Soni (supra) has held as under :-

“... in this matter, the assessments have been completed u/s. 143(3) of the Act, therefore, no penalty can be levied if the assessments have been completed u/s. 143(3) and there is subsequent compliances in the assessment proceedings was considered as good compliances and default committed earlier were ignored. Therefore, penalty u/s. 271(1)(b) was deleted by various Tribunals. In the case of Akhil Bhartiya Parthmik Shmshak Sangh Bhawan Trust vs ADIT (2008) 115 TTJ 419 (Del.), it was held that where the assessee had not complied with notice u/s. 142(1) but assessment order was passed u/s. 143(3) and not u/s. 144, that meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by the AO, therefore, levy of penalty u/s. 271(1)(b) of the Act was not justified. The case laws cited by Id.

Departmental Representative are distinguishable on facts, hence, inapplicable to this case. We also noted that in the Vinit Chouhan group cases, an order is passed in a group in I.T.A. Nos 1061 to 1181/ Ind/ 2016 dated 23.11.2016, in which similar set of facts the penalty levied u/s. 271(1)(b) was set-aside. Therefore, respectfully following the said order and facts, we set aside the order of the Revenue authorities and delete the levy of penalty u/s. 271(1)(b) of the Act in all these appeals”

14. Similarly, Coordinate Bench of the Tribunal in the case of Vineet Chauhan & Others (supra) has observed as under :-

“... in this matter, the assessments have been completed u/s. 143(3) of the Act, therefore, no penalty can be levied if the assessments have been completed u/s. 143(3) and there is subsequent compliances in the assessment proceedings was considered as good compliances and default committed earlier were ignored. Therefore, penalty u/s. 271(1)(b) was deleted by various Tribunals. In the case of Akhil Bhartiya Parthmik Shmshak Sangh Bhawan Trust vs ADIT (2008) 115 TTJ 419 (Del.), it was held that where the assessee had not complied with notice u/s. 142(1) but assessment order was passed u/s. 143(3) and not u/s. 144, that meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by the AO, therefore, levy of penalty u/s. 271(1)(b) of the Act was not justified.

15. Also ITAT, Indore Bench, in the case of Ahuja Construction & Others; ITA Nos. 655 to 657/Ind/2016 vide its order dated 8.7.2016 categorically observed as under :-

“6. After considering the arguments of both the sides, we find that in the present appeals the assessments have been framed u/s 153A r.w.s. 143(3) of the Act in

all the cases of the assesseees in the present appeals. Therefore, the decision of the Delhi Bench of the Tribunal in the case of Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust vs. Assistant Director of Incometax; (2008) 115 TTJ 419 (Del) squarely applies to the facts of the present appeals. The learned DR could not cite any contrary decision. We, therefore, respectfully following the decision of the Delhi Bench of the Tribunal in the case of Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust vs. Assistant Director of Incometax; (2008) 115 TTJ 419 (Del) wherein it was held that where the assessee had not complied with notice under section 142(1) but assessment order was passed under section 143(3) and not under section 144, that meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by Assessing Officer and, therefore, levy of penalty under section 271(1)(b) was not justified, set aside the orders of the authorities below and delete the levy of penalty u/s 271(1)(b) of the Act in these appeals. This ground of the assesseees is allowed in all these appeals.

15. Respectfully following the above decisions of the corodinate Benches of the Tribunal as well as in the given facts and circumstances of the case wherein it is clearly emanating from record that no search and seizure operation was conducted on the assessee and proceedings

u/s 153C of the Act were initiated and the assessee filed the return in compliance with the notice u/s 153C of the Act and also furnished the reply to various queries raised by the Assessing Officer as appearing at pages 9 to 11 of the paper book. It is also evident that the assessee was given very little time to furnish long list of requirements and there was reasonable cause on the part of the assessee for being unable to file the details on the given data in the notice. However, the assessee duly complied with the requirements on the subsequent dates because of which the assessment was completed u/s 153C r.w.s. 143(3) of the Act. We are, therefore, of the view that both the lower authorities were not justified in levying and confirming the penalty u/s 271 (1) (b) of the Act at Rs. 10,000/- in each case. We accordingly set aside the orders of the authorities below and delete the penalty of Rs. 10,000/- in each of these cases. Consequently, we

allow the grounds raised by four assesseees in these 28 appeals.

16. In the result, all the 28 appeals of the assessee stand allowed.

Order pronounced in open Court on 16.5.2018.

Sd/-

sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

16th May, 2018

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By order

Private Secretary/DDO, Indore

1. Date of dictation : .2018
2. Date on which the typed draft is placed before the Dictating Member : .2018
3. Date on which approved draft comes to the Sr.P.S./P.S:
4. Date on which the fair order is placed before the dictating Member for pronouncement:

5. Date on which the fair order comes back to the Sr.P.S./P.S.:
6. Date on which the file goes to the Bench Clerk:
7. Date on which the file goes to the Head Clerk:
8. The date on which the file goes to the Assistant Registrar for signature of the order.
9. Date of Despatch of the Order: