

IN THE INCOME TAX APPELATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA Nos. 7513 to 7515/Del/2017

A.Yrs. : 2008-09 to 2010-11

NEERAJ MITTAL,
C/O VINOD KUMAR BINDAL & CO.,
CHARTERED ACCOUNTANTS,
SHIV SUSHIL BHAWAN,
D-219, VIVEK VIHAR,
PHASE-I,
DELHI -95
PAN: APQPS4647J)
(Appellant)

VS. DCIT, CENTRAL CIRCLE, KARNAL

(Respondent)

Assessee by : Sh. Vinod Kumar Bindal, CA &
Rinky Sharma, ITP
Department by : Ms. Ashima Neb, Sr. DR.

ORDER

These 03 appeals filed by the Assessee are directed against the Order of the Ld. Commissioner of Income Tax (Appeals-2), Gurgaon dated 18.10.2017 pertaining to assessment years 2008-09 to 2010-11. Since the grounds raised in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience by dealing with ITA No. 7513/Del/2017 (AY 2008-09).

2. The Assessee has raised the following common grounds in all the appeals:-

“1. The learned CIT(A) erred in law and on facts in confirming the penalty of Rs. 10,000/- levied u/s 271(l)(b) of the Act ignoring that there was no non-compliance and the appellant was regularly appearing before the assessing officer and complying with the requirements of the assessing officer thereafter.

2. The learned CIT(A) erred in law and on facts by ignoring that necessary photocopies of-the seized material were given to the appellant in January 2016 whereas the alleged non-compliance in July 2015 was only in respect of the information relating to the said seized material and most of which did not pertain / belong-to the appellant.

3. The learned CIT(A) erred in law and on facts in holding that photocopies of the seized material were given to the appellant by the Investigation Unit of the department prior to the same given by the AO, a fact denied by the Investigation Unit in reply dated

05/12/2017 to an RTI application by the assessee group.

4. The CIT(A) erred in law and on facts while confirming the penalty even though there was no addition of any undisclosed income in the assessment order or no incriminating material was found in respect of the addition made but only on the basis of already declared accounts.

5. The CIT(A) erred in law and on facts in confirming the penalty without ascertaining from the assessment records that the appellant never committed any default to attract the impugned penalty as the assessing officer himself granted time to submit the information.

6. That the penalty has been imposed without identifying the date of default for non-compliance by the assessing officer.

7. Thus, the impugned penalty levied should be deleted.

8. The appellant craves the leave to add, substitute, modify, delete or amend all or any

ground of appeal either before or at the time of hearing.”

3. Brief facts are that, a search and seizure operation was carried out on 17.01.2014 on the business/office and residential premises of the assesses group of cases. The residential premise of the assessee was also covered under search. Notice u/s 153A(1) of the I.T. Act, 1961 was issued on 18.09.2014 for filing of return within 30 days of receipt of this notice. But, the assesses failed to comply. Notice u/s 142(1) dated 14.05.2015 was issued for compliance on 26.05.2015, but the assesses again failed to make compliance, but the assesses again failed to make compliance. Later on, notice u/s. 271F of the I. T. Act, 1961 was issued on 10.6.2015 or compliance on 17.06.2015 to show cause as to why an order imposing a penalty may not be passed. On due date neither anybody appeared nor any written reply was filed by the assessee. As the assessee failed to file return of income and make compliance of notices, a penalty u/s. 271F of the I.T. Act, 1961 amounting to Rs. 5,000/- was levied vide order dated 14.9.2015. Questionnaire on the basis of seized documents alongwith notice u/s. 142(1) dated 01.07.2015 were issued and duly served upon the assessee fixing the case for 20.07.15. On the date of hearing, neither assessee attended nor any written submission filed. Subsequently, show cause notice u/s. 271(1)(b) of the I.T. Act, 1961 was issued on 16.09.2015 for compliance on 24.09.2015 for failing to file reply to questionnaire dated 1.7.2015. On

24.9.2015 neither anybody attended nor any written submission were filed. Again show cause notice u/s. 271(1)(b) were issued on 28.9.2015 & 09.10.2015 for compliance on 6.1.2015 and 15.10.2015 respectively. After that the assessee filed his return of income on 19.10.2015. Thereafter, questionnaire alongwith notice u/s. 142(1)/143(2) dated 30.10.2015 were issued and duly served upon the assessee fixing the case for 16.11.2015. On the date of hearing, neither anybody attended nor any written submission was filed by the assessee. Further, show cause notices/letters were issued on different dates as to why penalty u/s. 271(1)(b) may not be levied upon you, the detail of which is mentioned at page no. 2 of the penalty order. AO noted that as per provisions of section 271(1)(b) "If the Assessing Officer in the course of any proceedings under this Act, is satisfied that any person has failed to comply with a notice under sub-Section of section 142 or subsection (2) of section 143 he may direct that such person shall pay by way of penalty a sum of Rs. 10,000/- for each such failure. In the above circumstances, it became crystal clear that the assessee failed to furnish reply in response to notice u/s 142(1)/143(2) & questionnaire dated 01.07.2015 & 30.10.2015, in spite of a number of opportunities afforded by the Department. AO further observed that the assessee failed to adduce any plausible explanation for non-compliance of this office letter/notices. These facts show that the assessee is non-cooperative with assessment proceedings. So, this became a fit case for levy of penalty u/s 271(1)(b) of

the LT. Act, 1961. Therefore, the Deputy Commissioner of Income Tax, Central Circle, Karnal imposed a penalty of Rs. 10,000/- u/s. 271(l)(b) of the I.T. Act, 1961 vide order dated 25.2.2016. Against the penalty order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 18.10.2017 has confirmed the penalty. Aggrieved with the impugned order, the assessee is in appeal before the Tribunal.

4. At the time of hearing, Ld. Counsel of the Assessee has stated no statutory notice u/s. 274(1) of the I.T. Act was ever issued to the assessee to be heard before imposing the penalty and thus, no mandatory reasonable opportunity of being heard was ever given to the assessee before imposing the penalty u/s. 271(1)(b) of the I.T. Act. It was further submitted that from all the show cause notices issued by the AO for submission of the details as is mentioned in the penalty orders, it would be seen that those state that in case of any failure to submit desired details, penalty would be levied but the necessary statutory satisfaction u/s. 271(1) of the I.T. Act that the assessee has failed to comply with the notices and the AO was satisfied to initiate the penalty proceedings has not been recorded anywhere. It was further submitted that a proposal to initiate penalty proceedings is not equivalent to recording a satisfaction which is the post failure and not with the a preposition "if failed to". He further submitted that the order sheets entries do now show issuance of any notice u/s. 274 read with Section 271(1) of the Act or of recording of any such satisfaction. Therefore, he

stated that the penalty imposed is liable to be quashed as the issue is squarely covered by the following decisions.:

- Hon'ble Karnataka High Court decision in the case of CIT & Ors. Vs. M/s Manjunatha Cotton and Ginnig Factory & Ors. (2013) 359 ITR 565
- Apex Court decision in the case of CIT & Anr. Vs. M/s SSA's Emerald Meadows in CC No. 11485/2016 dated 05.8.2016.

6. On the contrary, Ld. DR relied upon the orders of the authorities below.

7. I have heard both the parties and perused the relevant records, especially the orders of the revenue authorities alongwith the provisions of law as well as the case law cited by the Ld. Counsel of the Assessee and the photocopies of the order sheets filed with the Paper Book. I find considerable cogency in the contention of the Ld. Counsel of the Assessee that no statutory notice u/s. 274(1) of the I.T. Act was ever issued to the assessee to be heard before imposing the penalty and thus, no mandatory reasonable opportunity of being heard was ever given to the assessee before imposing the penalty u/s. 271(1)(b) of the I.T. Act, which is very essential. On going through all the show cause notices issued by the AO it was found that for submission of the details as is mentioned in the penalty orders, it would be seen that in case of any failure to submit desired details, penalty would be levied but the necessary statutory satisfaction u/s. 271(1) of the I.T. Act that the assessee has failed to comply with the notices and the AO

was satisfied to initiate the penalty proceedings has not been recorded anywhere. I further note that it was further submitted that a proposal to initiate penalty proceedings is not equivalent to recording a satisfaction which is the post failure and not with the a preposition "if failed to". Also on perusing the order sheets entries do not show issuance of any notice u/s. 274 read with Section 271(1) of the Act or of recording of any such satisfaction. In view of above discussions, the penalty imposed by the AO and confirmed by the Ld. CIT(A) is not sustainable in the eyes of law, hence, the same is deleted and appeal of the Assessee stands allowed.

8. Following the consistent view taken in assessment year 2008-09 as aforesaid, the penalty involved in other appeals in respect of assessment years 2009-10 to 2010-11 also stand deleted and accordingly the other appeals also stand allowed.

9. In the result, all the 03 Appeals filed by the Assessee stand allowed.

Order pronounced 22/06/2018.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 22/06/2018

SRBhatnagar

Copy forwarded to: -

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

Assistant Registrar, ITAT, Delhi Benches