IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A', NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER

ITA No.3151/Del/2015
Assessment Year: 2005-06
With
ITA No.3152/Del/2015
Assessment year: 2006-07
With
ITA No.3153/Del/2015
Assessment year: 2007-08

Auro Sugar Pvt. Ltd., G-8, Maharani Bagh, New Delhi	**Vs.**	ACIT, Cent. Circle-5, New Delhi
PAN :AAACN0192K		
(Appellant)		**(Respondent)**

And
ITA No.3138/Del/2015
Assessment year: 2005-06
With
ITA No.3139/Del/2015
Assessment year: 2006-07
With
ITA No.3140/Del/2015
Assessment year: 2007-08
With
ITA No.3141/Del/2015
Assessment year: 2008-09

Sh. Samir Thukral, G-8, Maharani Bagh, New Delhi	**Vs.**	ACIT, Cent. Circle-5, New Delhi
PAN :AACPT6095J		
(Appellant)		**(Respondent)**

Assessee by	Shri Youdhister Seth, CA
Department by	Shri Ravi Kant Gupta, Sr.DR

Date of hearing	31.07.2018
Date of pronouncement	31.07.2018

ORDER

PER BENCH:

These appeals by the two separate assessees are directed against two common orders dated 31/10/2014 and 16/02/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-XXXI, New Delhi and the Ld. Commissioner of Income-tax (Appeals)-24 respectively, on common ground of appeal related to levy of penalty of Rs.10,000 each for non-compliance of the notices issued by the Assessing Officer. Since in all these appeals, penalty has been levied in identical facts and circumstances and identical ground has been raised, thus, for the sake of convenience and brevity, all these appeals are being disposed of by way of this consolidated order.

2. Briefly stated facts of the cases are that in the case of M/s Aura Sugar private limited, a search and seizure action was carried out under section 132(1) of the Income-tax Act, 1961 (in short 'the Act') and consequently search assessment proceedings were commenced for assessment years from assessment year 2005-06 to 2011-12. During those assessment proceedings, the Assessing Officer issued notice u/s 143(2) of the Act and notice under section 142(1) of the Act calling for certain information. According to the Assessing Officer, the assessee complied those notices partly only and, therefore, he issued show cause notice for penalty u/s 271(1)(b) of the Act of Rs.10,000 each in all the assessment years from 2005-06 to 2011-12. It was contended by the assessee that the copy of the seized material was not provided

to the assessee and therefore there was a delay in submitting the information. The Assessing Officer rejected the contention of the assessee and observed that the issue of not providing copies of the seized material was never raised by the assessee during ongoing assessment proceedings and the assessee was already having copies of the seized material which were given to them during for post search proceedings. The Assessing Officer levied penalty of Rs. 10,000 each in all the assessment years under reference. On further appeal, before the Ld. CIT(A), the assessee submitted that show cause notice was issued for non-compliance on 20/12/2012, whereas the Assessing Officer has levied penalty for non-compliance on 27/12/2012 or 28/12/2012. It was also contended that the inconsistencies and inaccuracies in the order shows that there was no application of the mind by the Assessing Officer and the penalties have been levied in a mechanical way. The Ld. CIT(A) was however of the view that the assessee failed to counter that copies of the seized material was not provided to the assessee. According to the Ld. CIT(A), the request for copies of the seized document during assessment proceeding was not bonafide and the reasons could not justify the non-compliance of the notices issued under section 142(1) and 143(2) of the Act. The Ld. CIT(A) also observed that the Assessing Officer being adjudicator as well as investigator, the assessee was required to file the information to him on time. The Ld. CIT(A) however held that levying of penalty in all the assessment year would be a harsh action and therefore out of the 7 assessment years, he upheld the penalty for assessment year 2005-06, 2006-07 and 2007-08 only. Aggrieved with the above penalties sustained by the Ld. CIT(A), the assessee in appeal before the Tribunal.

3. In case of another assessee Sh. Sameer Thukral also the facts are almost identical. In this case also search and seizure action was carried out at the premises of the assessee on 28/03/2011 and consequently, search assessment proceedings were initiated in respect of assessment year 2005-06 to 2011-12. In this case also penalty of Rs. 10,000 each under section 271(1)(b) of the Act has been levied in all the assessment years for part compliance of the various notices issued under section 142 (1) or 143(2) of the Act by the Assessing Officer. In this case also the Ld. CIT(A) has observed the request of the assessee for copies of the seized documents made during the assessment proceeding as not bonafide . The observation of the Ld. CIT(A) in this case are identical to the observation in the case of M/s Auro Sugar P ltd. In this case, however the Ld. CIT(A) sustained the penalty in four assessment years from 2005-06 to 2008-09 out of the 7 assessment years. Hence, these appeals by the assessee.

4. Before us, it has been submitted on behalf of the assessee that Authorized Representative was present on all the dates of hearing before the Ld. Assessing Officer submitting part of the information as and when it was ready and the assessments have been completed under section 143(3) of the Act and not under section 144 of the Act and therefore no penalty could have been levied in the circumstances of the cases. The Ld. AR also submitted that in the cases of the other group companies i.e. Asia Sugar Industries P. Ltd (ITA No. 595, 596 & 597/Del/2015 for assessment year 2005-06 to 2007-08 and Odimco Technologies Private Limited (ITA No. 601 to 603/Del/2015 for assessment year 2005-06 to 2007-08), the coordinate benches of the Tribunal

have deleted the identical penalties levied of Rs. 10,000 each under section 271(1)(b) of the Act.

5. On the contrary, the Ld. DR submitted that the assessee has not complied with the notices issued fixing the date of hearing on 27/12/208 or 28/12/2012 and therefore the assessee is liable to be saddled with penalty. He placed reliance on the orders of the authorities below.

6. We have heard the rival submission and gone through the material available on record. In the case of Odimco technologies Private Limited in IT No. 601 to 603/Del/2015 and other cases, the coordinate bench of the Tribunal has deleted the penalty observing as under:

> *"6. We have gone through the record in the light of the submissions on either side. In the case of a group company in Glenasia Commodities Pvt. Ltd., vs. A.C.I.T. ITA No. 589, 590 & 591/Del./2015, a coordinate Bench of this Tribunal held as follows:*
>
> > *6. We have heard the rival submissions and have perused the entire material available on record. A perusal of the penalty order reveals that the ld. Assessing Officer has rejected the explanation of the assessee on the premise that after issuance of notice dated 06.12.2012, the assessee sought the copies of seized material vide letter submitted on 18.01.2013, i.e., about one and half months and nothing prevented the appellant to seek the copies of seized material at earlier stage. We do not agree with this observation of the AO in view of the contention of the assessee that the assessee had already made requests for the same vide letters dated 06.04.2011 and 24.05.2012,which fact appears to have been ignored by the authorities below. The contention of huge quantum of work with respect to same cause of action in other group of cases, in the attending facts and circumstances can also not be ruled out. Moreover, the assessment orders in the present cases have been passed by the AO u/s. 153A read with*

section 143(3) and therefore, in view of the decision relied by assessee in case of Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust, 115 TTJ 419, no penalty u/s. 271(1)(b) can be sustained. The relevant findings read as under :

> *"We also find that the finally the order was passed under s. 143(3) and not under s. 144 of the Act. This means that subsequent compliances in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO. Therefore, in such circumstances, there could have been no reason to come to the conclusion that the default was willful."*

7. In the instant case the notice issued for hearing on 20.12.2012 stood complied with, as the AR of the assessee attended the proceedings on this date and submitted reply/details which he had in possession. The ld. DR also could not refute the contention of the assessee that all the information/details stood filed with the department before receipt of show cause notice of penalty on 31.01.2013.

8. It is also pertinent to mention here that in the cases of assessee the AO appears to have levied the penalty for seven assessment years , i.e., 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 years 2005-06 to 2007-08. In our 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 the 4 out of the 7 assessment years for which penalty was levied by the AO u/s 271(l)(b) of the Act.

9. In view of above discussion, we do not find cogent reason to observe any willful default on the part of the assessee or non-cooperative attitude with the department. Therefore, we find no justification to sustain the penalty imposed u/s. 271(1)(c) of the Act."

7. The facts and circumstances in the present cases are identical to the cases decided by the coordinate bench mentioned above. Thus, respectfully following the above decision, we are of the view that plea taken by the assessee of huge work involved in furnishing information in so many cases involving search assessments for 6 years in each case constitute a proper and plausible explanation for part non-compliance of the notices issued. The action of the Ld. CIT(A) is also not justified particularly when he was satisfied by the explanation of the assessee in part of the years involved. Further, we note that the assessments in various years have been completed under section 143(3) read with section 153A of the Act and not under section 144 of the Act as best judgment assessment. We, therefore, hold that the penalty levied under section 271(1)(b) of the Act cannot be sustained. We, accordingly, direct the Ld. Assessing Officer to delete the same.

8. In the result, all the appeals of the assessee(s) are allowed.

The decision is pronounced in the open court on 31st July, 2018.

Sd/-	Sd/-
(AMIT SHUKLA)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 31st July, 2018.
RK/-(D.T.D.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi