

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA Nos. 329, 330 & 1131/Del/2018
Assessment Years: 2008-09 to 2010-11**

Nihar Mittal C/o Vinod Kumar Bindal & Co.,CA, Shiv Sushil Bhawan, D-219, Vivek Vihar, Phase-1, New Delhi. PAN No. AJNPM8168P	vs	DCIT Central Circle Karnal
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Assessee by	Sh. Vinod Kumar Bindal, CA Ms. Rinki Sharma
Revenue by	Sh. Atiq Ahmad, Sr. DR

Date of Hearing	27.07.2018
Date of Pronouncement	01.08.2018

ORDER

PER BENCH

All these appeals are filed by the assessee and emanate from the orders of the Ld. Commissioner of Income Tax (Appeals)-II, Gurgaon. Since the parties and the grounds raised in all these appeals are common and identical, we deem it just and convenient to dispose them of by way of this common order, taking the common facts into consideration.

2. Brief facts of the case are that pursuant to the search and seizure operation that was carried out in the business/office and residential premises of the assessee group of cases including the assessee, notice u/s 153(1) of the Income Tax Act, 1961 ("the Act") was issued, but in vain. So also the successive notices u/s 142(1) of the Act were also not complied with resulting

in the order u/s 271F of the Act levying a fine. Further, for non compliance with the notice u/s 142(1)/143(2) of the Act issued for several times, notice u/s 271(1)(b) was also issued more than one time but was ignored by the assessee without entering appearance either in person or through Authorized Representative, and there was no explanation as to why a penalty of Rs. 10,000/- shall not be levied for such failure. In the circumstances, due to the non cooperation of the assessee, deeming it to be a fit case, the Ld. Assessing Officer levied a penalty of Rs. 10,000/- u/s 271(1)(b) of the Act.

3. When the assessee preferred appeals against the levy of penalty, to the Ld. CIT(A), Ld. CIT(A) confirmed the penalty and dismissed the appeals. Hence, the assessee preferred these appeals aggrieved by the orders by the authorities below.

4. The main plank of argument of the Ld. AR is that no statutory notice u/s 274(1) of the Act was issued prior to the levy of penalty and the assessee is denied the opportunity of being heard. He submits that for want of compliance with this statutory requirement and violation of the principles of natural justice also, the levy of penalty is bad. Taking further this argument Ld. AR further submitted that the proposal to initiate the penalty proceedings cannot be equated to the recording of satisfaction on the failure of the assessee, as such, the penalty cannot be sustained. For this proposition he placed reliance on the decision of the Karnataka High Court in the case of CIT vs. M/s Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 and the decision of the Hon'ble Apex Court in the case of CIT vs. M/s SSA's Emerald Meadows, dismissing the SLP against the decision of the Hon'ble Karnataka High Court following the Manunatha case (supra).

5. Per contra, Ld. DR placed reliance on the decisions of the authorities below and contended that insofar as the fact of non cooperation from the assessee to proceed with the matter before the Ld. AO stands undisputed and

un-rebutted, it is not opened for the assessee to contend that the levy of penalty is bad under law.

6. We have gone through the record, in the light of the submissions on either side and the case law submitted by the assessee. It is not the case of the Revenue that any notice u/s 274(1) of the Act was ever issued to the assessee or that the assessee was heard before the levy of penalty. Issuance of notice u/s 274(1) of the Act is a jurisdictional issue, and non issuance thereof vitiates the assumption of jurisdiction by the Ld. AO to levy the penalty u/s 271(1)(b) of the Act. We are in agreement with the Ld. AR that mere proposal to initiate penalty proceedings is not equivalent to recording the requisite satisfaction on the failure of the assessee to comply with the notices u/s 143(2)/142(1) of the Act. For non recording of any satisfaction and for not affording any opportunity to the assessee after issuing of notice u/s 274 read with Section 271(1) of the Act vitiates the proceedings and we are unable to agree with the Ld. DR that the orders of the authorities below are justifiable. With this view of the matter, we find merits in the argument of the Ld. AR and hold that the levy of penalty cannot be sustained.

7. For the reasons recorded in the preceding paragraphs, we are of the considered opinion that the penalty proceedings have to be quashed and accordingly, they are quashed. Grounds of appeal are allowed in all these appeals.

8. In the result, all the appeals are allowed.

Order pronounced in the open court on 01st August, 2018

Sd/-
(G.D. AGRAWAL)
PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 01.08.2018

*Kavita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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