

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

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT,  
&  
SHRI JOGINDER SINGH, JUDICIAL MEMBER**

**ITA No.4697/Del/2015  
(Assessment Year: 2006-07)**

Rajeev Kumar Parashar, A-175, second Floor, Blossoms-1, Mayfeild Gardens, Gurgaon. (PAN-AMNPP6084A)	vs	DCIT, Central Circle-14, New Delhi
<b>Assessee by</b>		<b>Shri Lalit Mohan</b>
<b>Revenue by</b>		<b>Shri Arun Kr. Yadav</b>

<b>Date of Hearing</b>	<b>01/08/2018</b>
<b>Date of Pronouncement</b>	<b>01/08/2018</b>

**ORDER**

**PER JOGINDER SINGH, J.M.**

The assessee is aggrieved by the impugned order dated 07/05/2015 of the Ld. First Appellate Authority, New Delhi, upholding the imposition of penalty amounting to Rs. 20,000/-, imposed u/s 271(1)(b), of the Income Tax Act, 1961 (hereinafter the 'Act') .

2. During hearing the ld. Counsel for the assessee, Shri Lalit Mohan, contended that for other assessment years,

on identical facts/issues, the Tribunal has decided in favour of the assessee. The ld. Counsel produced the copy of the order of the Tribunal dated 22/01/2018 (ITA No.4693 to 4696 & 4698/Del/2015). The Ld. DR, Shri Arun Kumar Yadav though defended the imposition of penalty but did not controvert the factual matrix that for assessment year 2002-03, 2005-06 and 2007-08, the Tribunal has decided the issue in hand.

2.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion from the aforesaid order of the Tribunal dated 22/01/2018 for ready reference and analysis:-

“The above batches of appeals at the instance of different assesseees arise out of respective orders of the ld. CIT(A)-XXVI, New Delhi for the captioned assessment years. In all these appeals, the assesseees have challenged the sustenance of penalties imposed against the assesseees to the tune of Rs.20,000/- each u/s. 271(1)(b) of the IT Act, 1961 for non-compliance of statutory notices as mentioned in the respective penalty orders as well as in the impugned orders.

2. Referring to the earlier decisions of ITAT, Delhi Benches in other cases of the assesseees' group of concerns, the ld. AR submitted that the penalties imposed u/s. 271(1)(b) of the Act in the identical facts and circumstances of the cases have been deleted and therefore, the sustenance of penalties in the instant cases is not justified in view of the decisions of coordinate Benches. On the other hand, the ld. DR relied on the orders of the authorities below.

3. Having considered the rival submissions in the light of relevant material on record, we find that the issue of penalty

u/s. 271(1)(b) of the Act already stood decided in favour of the assessee and against the Revenue in other group cases of assesseees in M/s. Witness Builders Pvt. Ltd. vs. DCIT & Others (ITA No. 4610/Del./2015 & Others) vide common order dated 31.08.2017 in the identical facts and circumstances of the cases. For the sake of convenience and completeness, the facts narrated and findings given in the aforesaid decision are reproduced as under :

*3. The assessee is mainly aggrieved by the levy of penalty of Rs. 20,000/- u/s 271(l)(b) for all the impugned assessment year which was on account of failure to comply with the statutory notices, fixing the date of hearing on 30.11.2012.*

*4. The brief facts qua the levy of impugned penalty are that the assessee was working with the MDLR group of companies and were also director and share holder in some of the group companies. A search and seizure action u/s 132(1) was conducted at various premises of MDLR group and also at the residential premises in January, 2008. In pursuance of search and seizure operation, proceedings u/s 153A were initiated in cases of the assessee and assessment was for the impugned assessment year passed under section 144 read with section 153A. During the course of the assessment proceedings the Assessing Officer initiated penalty proceedings u/s 271(1)(b) for non-compliance of certain statutory notices by the assessee and accordingly, show cause notices was issued. In response to the show cause notice, the assessee filed very detail explanation, challenging the validity of initiation of penalty proceedings and explaining the reasonable cause for noncompliance on the appointed date. The AO, however, disregarding the explanation of the assessee, imposed penalty u/s. 271(1)(b) of the Act. The ld. CIT(A) affirmed the penalty order passed by the Assessing Officer.*

*5. During the course of hearing, the ld. Counsel for the assessee, at the outset, submitted that the department has imposed similar penalties in other group cases on the identical facts and circumstances and the ITAT in one of such group cases, viz., Jwala Prasad Aggarwal vs. DCIT in appeals in ITA Nos. 4392 to 4398/Del./2015 for assessment years 2002-03 to 2008-09, has cancelled the similar penalties vide order dated 25.08.2015 on the identical contentions of the assessee and similar facts attending to the present cases. He, therefore, contended that the issue involved in all nthese appeals, being similar, is squarely covered in favour of the assesseees by the aforesaid decision of co-ordinate Bench.*

*6. The ld. DR, on the other hand, relied on the orders of the authorities below.*

7. Having considered the rival submissions in the light of material available on record, we find that the issue involved in the present appeals is squarely covered in favour of the assessee by the decision of Co-ordinate Bench in the case of assessee's group case, *Jawala Prasad Aggarwal vs. DCIT(supra)*, wherein the ITAT, Delhi Bench has deleted the penalties on the identical facts and circumstances of the case. In that case also, the assessee had made similar arguments as made in the present appeals. The relevant portion of the said order is reproduced herein below for ready reference :

*"The sum and substance of assessee's explanation is that-*

*> firstly, penalty notice u/s 271(1)(b) itself is vague because it does not specify about any notice or date of compliance for which there was failure on part of the assessee, that is, it does not mention about any notice or any date of non-compliance for which such penalty proceedings has been initiated;*

*> secondly, the assessee has ultimately made compliances of all the notices by submitting it's reply on the details and query asked by the AO on the dak counter or through registered/speed post;*

*> thirdly, it was submitted that more than 303 group assessments were conducted during the short span of five months, hence it was very difficult to comply with all the notices in all the cases at the appointed dates, but the assessee though belatedly on some occasion duly submitted all the replies before the Assessing Officer during the course of the assessment proceedings of the assessee.*

*> lastly, it was submitted that the main controlling person, Shri Gopal Kumar Goyal who was looking after the entire matter was detained in judicial custody since August, 2012 and was there for more than 2 years. Since, Shri Gopal Kumar Goyal was entrusted with all the decisions and was aware of the tax matters and documents; therefore, there was delay in collecting information and consequently making certain compliances. Thus, it was pleaded that there was a reasonable cause for delay in submitting the replies or non-compliance on the appointed date.*

5. However, the Id. Assessing Officer levied the penalty of Rs.20,000/- on the ground that the assessee did not attend offices in response to the various notices issued or date fixed on two of the occasions.

6. The Learned CIT(Appeals) too has confirmed the said penalty after observing and holding as under-

*"8.3. None of the reasons given in the written submission, namely, search operations on the MDLR group in January 2008, detention of Shri Gopal Goyal, poor turn-out of employees at work place, large number of pendency of assessments u/s 153A, and preparation of voluminous details, constitute 'reasonable cause' that prevented the appellant from complying with the aforementioned notices or filing letters to seek adjournment. Search had taken place in January 2008, following which 153A proceedings were inevitable. The*

revision petitions u/s 264 were moved by the appellant and the subsequent assessments were required to be completed by the AO before the limitation date, in respect of which also, as per the AO, the requisite details were not being filed. In considering the matter of penalty u/s 271(1)(b), that relates to noncompliance to a statutory notice, issued in the case of a specific assessee for a particular AY requiring attendance on the stated date, the pendency of a large number of other cases of the group is an irrelevant fact. Moreover, the burden of pendency of assessments was larger for the AO, who was required to examine each case, examine the seized materials, obtain the explanation of each assessee, carry out necessary verifications, afford opportunity to each of them in terms of the principle of natural justice, and thereafter pass the assessment order before the time barring date. Thus, the reasons cited in the written submission are rejected.

8.4. Filing of several writ petitions before the Hon'ble High Court, which in turn required substantial paper work was a personal and private decision of the assessee of the group and can hardly constitute a justification for noncompliance of the statutory notices in the case of the appellant. Moreover, if the 'circumstances', cited as 'reasonable cause' for non-compliance of statutory notices, did not come in the way of filing the writ petitions, these could not possibly have hindered the presence of the assessee/A/R before the AO on 30.11.2012 and 28.12.2012.

8.5. As per section 271(1)(b) read with section 273B, penalty u/s 271(1)(b) is visited upon the taxpayer who has failed to comply with the notices mentioned therein, for each default unless reasonable cause for such failure is proven. In the case at hand, the appellant has made assertions and claims that are not valid for non-compliance of statutory notices. No compelling and reasonable cause for failure to comply with the statutory notices has been advanced.

8.6. While examining the matter of penalty u/s 271(1) (b) read with section 274, the only aspect that has to be examined is whether there was any reasonable cause that prevented the appellant from complying with the statutory notices issued by the AO. Here, the appellant did not comply with the statutory notices on 2 different occasions spread over a period of 3 months. The appellant could have escaped from the rigors of penalty, had the statutory notice been acknowledged and adjournment requested timely. However, the appellant chose to completely ignore the statutory notices, and therefore in the absence of a reasonable cause, became liable for penalty u/s 271(1)(b)."

7. Before us, the Id. Counsel submitted that in response to the show cause notice u/s 271(1)(b), the assessee has filed very-exhaustive reply before the Assessing Officer. The copy of which are appearing at pages 7 to 13 of the paper book and also pointed out that during the course of the assessment proceedings various submissions were filed which have not been properly considered. The detail of replies filed on various cases including that of assessee sent through registered post or dak has been illustrated at pages 14 to 16 of the paper hook. Apart from that, he submitted that in the first appeal the

*relief has already been granted to the assessee and income has been computed at "nil" and such appellate orders have attained finality. The copy of the assessment orders giving effect to the first appellate order computing the income at 'nil' income right from assessment years 2002-03 to 2008-09 has been placed in the paper book. Thus, he submitted that no penalty can be levied u/s 271(1)(b) under these facts and circumstances of the case as there was a reasonable cause for delay in filing of the replies.*

*8. On the other hand, the Ld, DR strongly relied upon the observation and findings of the Learned CIT(Appeals).*

*9. We have heard the rival submissions and also perused the relevant finding given in the impugned order. Here in this case, first of all, on perusal of the penalty notice as appearing at page no. 6 of the paper book, it is seen that nowhere the Assessing Officer has mentioned about any particulars of statutory notice/s for which there was any default on part of the assessee. Show cause notices issued for initiating penalty proceedings should be specific and without any ambiguity, because the assessee while giving the explanation should be aware of the charge for which penalty is being initiated and can give his specific rebuttal. Such vague notice is fatal to the initiation of the proceedings itself. Further from the perusal of the assessment order, it is gathered that the assessee did not attend the proceedings on 20.11.2012 and 30.11.2012. The assessing officer further mentions that on 5.12.2012, Shri Vishal Mehta, AR along with other authorized persons appeared before him and submitted that non-compliance on the part of the assessee on the said date were due to the fact that group head, Shri Gopal Kumar Goyal was currently not available and the whole family members and the group heads were engaged in ongoing court proceedings to get early release of Shri Gopal Kumar Goyal who was in judicial custody. This contention raised by the assessee before the Ld. Assessing Officer, in the course of the assessment proceedings have not been accepted and he proceeded to make the assessment u/s 144 read with section 153A. However on perusal of various replies filed by the assessee before the Assessing Officer during the assessment proceedings, it is seen that most of the compliances have been made through replies/letters sent to the Assessing Officer either by filing in the dak or through registered/speed post. This is further corroborated by details of replies filed in various group cases as referred to by Ld. Counsel before us. Ostensibly there may be a case of delay in compliance or filing of replies before AO and not personally appearing before the Assessing Officer on a particular date, but compliances in form of replies do have been filed in the course of assessment proceedings and all the necessary details] required for the purpose of assessment has been provided. What are required to be seen while levying penalty for non-compliance of statutory notices, is the facts and circumstances for non-appearance on the specified date, that is, whether there was any reasonable cause and the overall conduct of the assessee. The main planks for reasonable cause pleaded by the assessee has been that, firstly, the key person/group head, Shri Gopal Kumar Goyal who was entrusted with income tax matters and was looking after the entire working of the group was in judicial custody in some criminal proceedings and the entire group and family members were engaged in ongoing court*

*proceedings for his early release and various employees were leaving the group further accentuating the problems; secondly, more than 300 group assessments were initiated in the wake of search proceedings which were simultaneously going on, therefore, it was difficult to comply to the various notices on short dates; lastly, it has been strongly pleaded before us, that the compliances had been made through replies filed through dak or registered post though belatedly. These facts have not been controverted by the AO or CIT (Appeals). All these facts and circumstances under any prudence do constitute reasonable cause falling within the scope and ambit of section 273B and accordingly, we are of the considered opinion that failure to comply with certain notices on a particular date was due to reasonable cause as highlighted by the assessee not only during the course of the assessment proceedings but also before the Assessing Officer and Learned CIT(Appeals) in the impugned penalty proceedings and hence penalty cannot be levied in such circumstances.*

*10. Apart from that, one important fact brought on record is that, the demand in the quantum proceedings has been reduced to "nil", after giving effect to the first appellate order and there has been no substantive non-compliance either during the course of the assessment proceedings or during the appellate proceedings. In such circumstances such an alleged breach or non-compliance is mere technical and venial in nature and therefore, penalty should not be levied for such venial breach. Accordingly, the levy of penalty of Rs. 20,000/- u/s 271(1)(b) for all the assessment years is unsustainable for the reasons given above and is directed to be deleted. Thus, grounds raised by the assessee are allowed."*

8. Respectfully following the decision of co-ordinate Bench in the aforesaid case, and keeping in view the attending facts, circumstances and contentions of both the parties in the present appeal, being identical, we are inclined to cancel the penalty imposed against the assessee u/s. 271(1)(b) of the Act. Accordingly, the appeal of the assessee deserves to be allowed.

9. Since similar facts are permeating through in all the remaining appeals of various assessees, as noted above, our findings reached in ITA No. 4610/Del./2015 in earlier part of this order, shall apply *mutatis mutandis* in all other appeals before us. Accordingly, all the remaining appeals also deserve to be allowed."

Similar view has been taken by the ITAT, Delhi Benches in following group

cases of the assessee:

(i) M/s. King Buildcon (P) Ltd. (A.Yrs. 2005-06 to 2008-09- order dated 13.11.2017)

(ii) M/s. Kairav Non-woven (P) Ltd.(A.Yrs. 2006-07 to 2008-09 – order dated 31.08.2017)

(iii) Gobind Kumar Goyal (A.Yrs. 2002-03 to 2008-09 – order dated 30.08.2017)

4. There being no change in the facts and circumstances of the cases, we find no reason to deviate from the decisions reached by Co-ordinate Benches in the aforesaid decisions. We, therefore, respectfully following the above decisions, find no justification to sustain the impugned penalties imposed in the instant cases. Accordingly, the impugned orders deserve to be set aside and the penalties sustained in the instant cases deserve to be deleted.

5. In the result, all the above appeals of the assesseees are allowed.”

2.2. From the above, we find that the Tribunal in the case of the assessee for AY 2002-03 to 2005-06 and 2007-08, on identical facts/issue, deliberated upon and also considered the submissions from both sides including decision of the Tribunal in the case of M/s King Buildcon Pvt. Ltd. (order dated 13/11/2017), M/s Kairav Non-woven (p) Ltd. Order dated 31/07/2017 and Govind Kumar Goyal, order dated 30/07/2017 and held that there was no justification to sustain the impugned penalties. Identical view was taken by the Tribunal in the cases of Gopla Gauba vs DCIT (ITA No.4263 to 4268/Del/2015) and GEE Gee Buildtech Pvt. Ltd. (ITA Nos.4269 to 4272/Del/2015), order dated 13/12/2017. Thus, considering the facts in the present appeal, which has already been discussed/deliberated upon by the Tribunal that too in

the case of the assessee for earlier assessment years, therefore, following the aforesaid decision of the Tribunal, we delete the penalty, resulting into allowing the appeal of the assessee.

Finally, the appeal of the assessee is allowed.

This order was pronounced in the open court, in the present of Ld. Representatives from both sides at the conclusion of the hearing, in the presence of Ld. DR on 01/08/2018.

**Sd/-**

**(R.S. SYAL)**  
**VICE PRESIDENT**

Delhi Dated : 01/08/2018

*Shekhar, Private Secretary*

**Sd/-**

**(JOGINDER SINGH)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant (Respective assessee)
2. The Respondent.
3. The CIT,
4. CIT(A)-
5. DR, ITAT,
6. Guard file.

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Delhi**