

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

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

ITA No. 4559/Del/2015
Assessment Year: 2006-07

Nageshwar Builders Pvt. Ltd., Flat No. 4-R.R., Apartment, 3-4, Manglapuri, Mehrauli, New Delhi	Vs.	DCIT, Cent. Circle 15 (Cent. Circle- 14), New Delhi
PAN :AAKCS1698B		
(Appellant)		(Respondent)

Assessee by	Shri Laliet Mohan, CA
Department by	Shri Ravi Kant Gupta, Sr.DR

Date of hearing	01.08.2018
Date of pronouncement	13.08.2018

ORDER

PER O.P. KANT, AM:

This appeal has been preferred by the assessee challenging the confirmation of the penalty levied under Section 271(1)(b) of the Income-tax Act, 1961 (for short 'the Act'), raising following grounds of appeal:

- 1 *That the learned Commissioner of Income Tax (Appeals)-XXVI, New Delhi has erred both in law and on facts in*

upholding the levy of penalty of Rs. 20,000/- u/s 271 (l)(b) of the Act.

2. That while upholding the levy of penalty the learned Commissioner of Income Tax (Appeals) has failed to appreciate that order levying penalty was based on findings contrary to the order of assessment and, overlooking the reply furnished by the appellant during the penalty proceedings and, therefore untenable in law.

2.1 That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that there was reasonable Cause on the part of the appellant and, as such penalty sustained is illegal, invalid and untenable.

2.2 That order of the learned Commissioner of Income Tax (Appeals) is otherwise also based on factual misappreciation of the facts and circumstances of the case and, complete misinterpretation of the provisions contained in section 271(l)(b) of the Act.

3. That the learned Commissioner of Income Tax (Appeals) has otherwise too confirmed the penalty without providing fair, reasonable and meaningful opportunity and as such order passed is contrary to the principles of natural justice and, therefore a nullity.

It is therefore prayed that the penalty-levied u/s 271 (l)(b) of the Act of Rs. 20,000/- and upheld by the learned Commissioner of Income Tax (Appeals) be deleted and, appeal of the appellant company be allowed.

2. The facts in brief of the case are that in the case of assessee a search and seizure action u/s 132 of the Income-tax Act, 1961 (for short 'the Act') was conducted on 31.01.2008. An order under Section 144 of the Act, consequent upon the order under 264 of the Act passed by the learned Commissioner of Income Tax (CIT) setting aside the original assessment, was passed in this case on 21.03.2013. During the course of assessment proceedings, the

assessee failed to attend on few occasions. The Assessing Officer initiated penalty under Section 271(1)(b) of the Act for failure to attend the proceedings on 30.11.2012 and 31.12.2012. The Assessing Officer observed similar non-compliance in assessment years 2005-06 to 2008-09. The learned CIT(A) passed a combined order for assessment years 2005-06 to 2008-09, including the assessment year in consideration. Aggrieved with the confirmation of the penalty, the assessee is in appeal before the Tribunal.

3. At the outset, learned counsel for the assessee submitted that out of the assessment years 2005-06 to 2008-09, the Tribunal has already deleted the penalty levied under Section 271(1)(b) of the Act of Rs.20,000/- each in assessment years from 2005-06 to 2008-09, except the assessment year under consideration. He submitted that the facts and circumstances being identical and the order of the learned CIT(A) being consolidated, following the decision of the Tribunal for other years, the penalty under reference should also be deleted.

4. On the contrary, the learned DR relied on the order of the lower authorities.

5. We have heard the rival submission and perused the relevant material on record. We observed that the Tribunal in order dated 31.08.2017 has decided the appeal against the consolidated order of the learned CIT(A) for assessment year 2005-06 to 2008-09 except for the assessment year under consideration in ITA Nos.4558, 4560 & 4561/Del/2015. The relevant finding of the Tribunal is reproduced as under:

“5. We have heard the rival submissions and have also perused the material on record. From a perusal of Section

273B, we can understand that, notwithstanding anything contained in the provisions of clause (b) of Sub-section (1) of section 271, no penalty shall be imposed on the persons or the assessee as the case may be, for any failure referred to in the said provision, if he proves that there was reasonable cause for the said failure. So it can be understood that penalty cannot be imposed, if the assessee is able to prove that there was reasonable cause for the said failure of not complying with the notice served on them under sub-section (1) of section 142 of the Act.

5.1 The meaning of reasonable cause has been stated in the case of *Woodward Governor India P. Ltd. vs. CIT and Ors.* (2002) reported in 253 ITR 745 (Delhi). Para 5 & 6 of the said judgment is reproduced below:-

"Reasonable cause, as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. The expression "reasonable" is not susceptible of a clear and precise definition; for an attempt to give a specific meaning to the word not space. It can be described as rational according to the dictates of reason and is not excessive or immoderate. The word "reasonable" has in law the prima facie meaning of reasonable with regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know (see In re, A Solicitor (1945) KB 368 (CA)). Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary produce, acting under normal circumstances, without negligence or inaction or want of bona fides."

5.2 In the case of *Azadi Bachao Andolan v. Union of India* reported in 252 ITR 471 (Delhi), Delhi, the Hon'ble High Court held:-

"Section 273B starts with a non obstante clause and provides that notwithstanding anything contained in several provisions enumerated therein including section 271C, no penalty shall be imposable on the person or the assessee, as the case may be, for any

failure referred to in the said provisions, if he proves that there was reasonable cause for the said failure. A clause beginning with "notwithstanding anything" is sometimes appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of Act mentioned in the non obstante clause (see Orient Paper and Industries Ltd v State of Orissa, AIR 1991 SC 672) A non obstante clause may be used as a legislative device, to modify the ambit of the provision of law mentioned in the non obstante clause, or to override it in specified circumstances (see T R Thandur v Union of India, AIR 1996 SC 1643) The true effect of the non obstante clause is that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment (see Smt Parayankandiyal Eravath Kanapraavan Kalliani Amma v K Devi, AIR 1996 SC 1963) Therefore, in order to bring in application of section 271C in the backdrop of section 273B, absence of reasonable cause, existence of which has to be established by the assessee, is the sine qua non. Levy of penalty under section 271C is not automatic. Before levying penalty, the concerned officer is required to find out that even if there was any failure referred to in the concerned provision the same was without a reasonable cause The initial burden is on the assessee to show that there existed reasonable cause which gave the reason for the failure referred to in the concerned provision. Thereafter the officer dealing with the matter has to consider whether the explanation offered by the assessee or the person, as the case may be, as regards the reason for failure, was on account of reasonable cause. 'Reasonable cause' as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. It can be described as probable cause. It means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed

in the position of the person concerned, to come to the conclusion that the same was the right thing to do. The cause shown has to be considered and only if it is found to be frivolous, without substance or foundation, the prescribed consequences follow. The above being the position, the Commissioner's non-consideration of the plea raised by the assessee about the existence of reasonable cause vitiated the order. On that score, we find the order passed by the Commissioner to be non-maintainable."

5.3 In the appeals before us, the main plea for reasonable cause pleaded by the assessee/s has been that the key person/group head, Shri Gopal Kumar Goyal who was entrusted with the 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. These facts have not been controverted by the AO or the Ld. 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/s not only during the course of the assessment proceedings but also before the Assessing Officer and the Learned CIT(Appeals) in the impugned penalty proceedings and hence penalty cannot be levied in such circumstances.

5.4 Since facts are similar in all the assessment years in the case of all the assessees, our findings given above will apply mutatis mutandis for all the years appealed before us in the case of all the three assesses and accordingly penalty levied u/s 271(1)(b) are directed to be deleted."

6. We find that the facts and circumstances of the year under consideration are identical to the assessment year 2005-06, 2007-08 and 2008-09 and the order of the learned CIT(A) being a

consolidated order for assessment years 2005-06 to 2008-09, respectfully following the finding of the Tribunal (supra), we delete the penalty of Rs.20,000/- being reasonable cause in failure to attend the proceedings before the Assessing Officer. Accordingly, the grounds raised by the assessee are allowed.

7. In the result, the appeal of the assessee is allowed.

The decision is pronounced in the open court on 13th August, 2018.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 13th August, 2018.

RK/-(D.T.D.)

Copy forwarded to:

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

Sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi