

**IN THE INCOME-TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**Before: Shri A.D. Jain, Judicial Member And
Shri Dr. Mitha Lal Meena, Accountant Member**

**ITA No.171/Agra/2018
(ASSESSMENT YEAR-2011-12)**

Rahul Garg, Roshan Kunj, MS Road, Morena, ABHPG7670G	Vs	ACIT Circle – II, Gwalior.
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**ITA No.172/Agra/2018
(ASSESSMENT YEAR-2011-12)**

Manish Garg, Roshan Kunj, MS Road, Morena, ACLPG9026B	Vs	ACIT Circle – II, Gwalior.
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**ITA Nos.397-398/Agra/2017
(ASSESSMENT YEAR-2011-12)**

M/s Heritage JVM Builders (P) Ltd. 1, Ashoka Enclave, Dayal Bagh, Agra AAEFH 3236 R (Appellant)	Vs	DCIT, Central Circle, Agra (Respondent)
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Appellant by	Sh. Rajendra Sharma, Adv
Respondent by	Sh. Waseem Arshad, Sr. DR.

Date of Hearing	05.09.2018
Date of Pronouncement	.09.2018

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ORDER**Dr. Mitha Lal Meena, A.M:**

By means of above batches of appeals, as captioned in the title above, various assessees have challenged different common orders of the Id. CIT(A), sustaining the penalties imposed by Assessing Officer u/s 271(l)(b) of the Income-tax Act.

2. Since a common issue is involved in all these appeals, they are being disposed of by this consolidated order for the sake of convenience.
3. The facts are taken from ITA No. 171/Agr/2018 for A.Y. 2011-12 in the case of Shri Rahul Garg. In compliance to notice under Section 142(1) of the Income Tax Act dated 07.11.2013, the assessee partly complied with and the case was fixed for 10.12.2013 by the AO. On the aforesaid date, none attended, consequently for this non compliance of hearing on 10.12.2013, the AO has imposed penalty under Section 271(l)(b) of the Income Tax Act, against which an appeal was preferred before the learned CIT (Appeals) who vide their order dated 26.07.2017 has dismissed the appeal of the assessee.
4. Aggrieved assessee preferred an appeal before us and submitted that as per the assessment order dated 29.03.2014, which was passed u/s 143(3) of the IT Act, the case of the AO himself is that the assessee had made

compliance of various notices issued to him by furnishing the requisite evidences/details. The Id. Counsel for the assessee contended that it was only for this reason, that the assessment was framed u/s 143(3) of the IT Act and not u/s 144 of the Act thereto; and that being so, there was no failure on the part of the assessee.

5. On the other hand, the Id. DR has placed strong reliance on the impugned order.

6. We have heard both the parties and have perused the material on record. The assessment orders dated 29.03.2014 has been passed u/s 143(3) of the IT Act. As such, the compliance by the assessee to the notices issued to him stands accepted.

7. At the outset, Ld. Counsel for the assessee submitted that the department has imposed similar penalties in other group cases on the identical facts and circumstances and the ITAT in one of case, 'Madan Mohan Mishra vs. ITO' in ITA No. 56/Ag/2016 for Assessment Year 2009-10, has cancelled the similar penalty vide order dated 21.12.2017 on the identical contentions of the assessee and similar facts attending to the present cases. He, therefore, contended that the issue involved in all these appeals, being similar, is squarely covered in favour of the assessees by the aforesaid decision of co-ordinate Bench.

8. In 'Mr. Madan Mohan Mishra Vs. ITO' in ITA No. 56/Agr/2016, Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust vs. ADIT', 115 TTJ 419 (Del) and 'Parmeshwari Textiles vs. ITO', 146 Taxmann 38 (Jodhpur), amongst other cases, under similar circumstances, penalties have been deleted.

9. Having considered the rival submissions in the light of material facts 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 'Mr. Madan Mohan Mishra Vs. ITO' (supra), wherein the ITAT, Agra Bench has deleted the penalties on the identical facts and circumstances of the case.

10. Following the decision of co-ordinate Bench, 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 is allowed.

11. Since similar facts are permeating through in all the remaining appeals of various assessees, as noted above, our findings reached in ITA No. 56/Agr/2016 in earlier part of this order, shall apply *mutatis mutandis* in

all other appeals before us. Accordingly, all the remaining appeals also are allowed.

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

Order pronounced in the open court on09.2018.

(A.D. Jain)
Judicial member

(Dr. Mitha Lal Meena)
Accountant Member

Dated:/09/2018
Aks- Doc

Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Agra Bench, Agra

		Date		
1.	Draft dictated / (DNS)	17.09.2018		PS
2.	Draft placed before author	24.09.2018		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			