

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.361 to 367/Ind/2018
Assessment Years 2010-11 to 2016-17

Smt. Pushpa Verma
136, Tansen Nagar,
Gwalior
PAN: AKZPV3755C

V/s

DCIT (Central)-1
Bhopal

(Appellant)

(Respondent)

ITA No.345 to 349/Ind/2018
Assessment Years 2010-11 to 2014-15

M/s. Regent Beers & Wines LtdV/s
509-510, 5th floor,
Princess Business, Sky Park,
Scheme No.54, PU-3 Commercial
Vijay Nagar, Indore
PAN: AAACR7950D

DCIT (Central)-1
Bhopal

(Appellant)

(Respondent)

ITA No.353 to 358/Ind/2018
Assessment Years 2011-12 to 2016-17

Patel Education & Welfare
Society,
33-FF, Scheme No.54,
Vijay Nagar, Indore
PAN: AAAAP7793G

V/s

DCIT (Central)-1
Indore

(Appellant)

(Respondent)

ITA No.368 to 374/Ind/2018
Assessment Years 2010-11 to 2016-17

Arun Kumar Verma
136, Tansen Nagar,
Gwalior
PAN: ADYPV0307L

V/s

DCIT (Central)-1
Bhopal

(Appellant)

(Respondent)

ITA No.375 to 381/Ind/2018
Assessment Years 2010-11 to 2016-17

Mrs.Vaishali Shivhare
47, Durgapuri,
Tansen Road,
Gwalior
PAN: AHMPR8573N

V/s

DCIT (Central)-1
Bhopal

(Appellant)

(Respondent)

ITA No.389 to 395/Ind/2018
Assessment Years 2010-11 to 2016-17

Ram Swaroop Shivhare
47, Durgapuri,
Tansen Road,
Gwalior
PAN: AGHPS8985R

V/s

DCIT (Central)-1
Bhopal

(Appellant)

(Respondent)

ITA No.400/Ind/2018
Assessment Years 2010-11

Harminder Singh Bhatia
306-AD, Scheme No.74-C

V/s

DCIT (Central)-1
Bhopal

Vijay Nagar, Indore
PAN: ACFPB4293H

(Appellant)

(Respondent)

ITA No.338 to 344/Ind/2018
Assessment Years 2010-11 to 2016-17

Sunit Madhok
16 DF, Scheme No.74
Vijay Nagar, Indore
PAN: AFTPM4676E

V/s

DCIT (Central)-1
Bhopal

(Appellant)

(Respondent)

Revenue by	Shri V.J. Borich, Sr. DR
Assessee by	Shri Anil Kamal Garg & Shri Arpit Gaur, CAs
Date of Hearing	22.01.2019
Date of Pronouncement	24.01.2019

ORDER

PER BENCH.

The above captioned bunch of 47 appeals are at the instance of respective assessee(s) which are directed against the orders of Ld. Commissioner of Income Tax (Appeals), Bhopal (In short 'CIT(A)] dated 24.01.2018.

2. As the issue raised in all these appeals are similar, these were heard together and are being disposed off by this common order for the sake of convenience and brevity.

3. It is agreed by both the parties that facts involved in all these appeals are common and the common issue relates to the levy of

penalty u/s 271(1)(b) of the Act at Rs.10,000/- for non-compliance to the notice issued u/s 142(1) of the Act.

4. Brief facts of the case are that a search u/s 132 of the Act was carried out on the premises of the assessee at Gwalior on 07.01.2016. Subsequent to search notice 153A of the Act were issued which was followed by issuance of notice u/s 142(1) of the Act duly served upon the assessee but there was non-compliance to this notice for which Ld. Assessing officer initiated penalty proceedings u/s 271(1)(b) of the Act and thereafter giving proper opportunity to the assessee of being heard decided to levy penalty of Rs.10,000/- in each of the cases under appeal before us.

5. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) but failed to succeed.

6. Now all these assessee(s) are in appeal before the Tribunal raising common issues against levy of penalty u/s 271(1)(b) of the Act.

7. Ld. counsel for all these assessee(s) commonly submitted that all the assessee(s) were prevented for reasonable cause for non-appearance because copies of seized documents was given very late and the time given to furnish the reply was very short for making due compliance and thus it was a reasonable cause preventing the assessee from appearance. He also submitted that only 3 to 4 days of time was given to the assessee(s) for replying the notices running into 24 pages covering almost 31 issues and it was humanly not possible to reply at such short notice.

8. Ld. counsel for the assessee further submitted that except in the case of Sunit Madhok, assessment in the case of all other assessee(s) have been framed *by-party*, under s. 153A r.w.s. 143(3) of the Act and none of the assessments have been framed *ex-parte* under section 144 of the Act. He submitted that all such assessments have been framed after going through the various details and documents furnished by the respective assessees. In such circumstances, it has to be presumed that the earlier default, if any, under s. 142(1) has got waived. In evidence of such fact, copies of the abstract of the relevant assessment orders at page no. 177 to 208 of paper book are referred. He also pleaded that in the similar circumstances, Hon'ble Bench, Indore in the case of *Pramila Ghodhe vs. DCIT (2017) 49 CCH 0401 Indore' Trib* and again, in the case of *Heman Kumar Soni & Ors. vs. DCIT (2017) 49 CCH 0350 Indore Trib* has held that where assessments have been completed under s. 143(3), default committed earlier has to be ignored and accordingly, no penalty under s. 271(1)(b) of the Act can be imposed. Copies of both the judgments are placed at pages no. 220 to 223 and 224 to 227 of the paper book. Reliance is also placed on the following judicial pronouncements:

1.
 - a) *Magnum fnfraprojects Pvt. Ltd vs. Act (2016) 48 CCH 0137 Mum Trib*
 - b) *Ramesh Kumar Jain vs. DDIT (International Taxation) (2015) 45 CCH 0073 Mum Trib*
 - c) *Swarnaben M Khanna & Ors. vs. DCIT (2009) 28 CCH 0773 Ahd Trib*

9. As regards, Mr. Sunit Madhok, Ld. counsel for the assessee submitted that though the assessments have been framed under s. 153A r.w.s. 144 of the Act, in his case too, the copies of loose papers were not available with the appellant on the designated date of making compliance under s. 142(1). Further, in the case of Sunit Madhok, while making the assessments, for all the assessment years, except for A.Y. 2016-17, the returned income has been accepted. Only in respect of A.Y. 2016-17, an addition of *Rs.16,20,000/-* has been made on account of cash found during the course of the search. Thus, in the case of Sunit Madhok too, no adversity could be presumed due to non-compliance of the impugned notice under s.142(1).

10. Per contra. Ld. Departmental Representative(DR) supported the orders of both the lower authorities.

11. We have heard rival contentions, considered the facts, perused the material placed before us and carefully gone through the judgments. The common issue raised in all these 47 appeals are at the instance of assessees being aggrieved with the finding of Ld. CIT(A), confirming the levy of penalty of *Rs.10,000/-* u/s 271(1)(b) of the Act for non-complying to notice issued u/s 142(1) of the Act. We find that subsequent to the search u/s 132 of the Act at the premises of assessee(s) on 07.01.2016 at Gwalior notices u/s 153A of the Act were issued followed by notice u/s 142(1) of the Act duly served upon the assessee to reply to various questions/issues raised by the assessing officer. There was no compliance to this

notice u/s 142(1) of the Act which prompted the assessing officer to invoke the provisions of section 271(1)(b) of the Act and subsequently levied of penalty of Rs.10,000/- in each case.

12. It is brought to our notice that except in the case of Sunit Madhok, assessments in all the other assessee(s) have been framed u/s 153A r.w.s 143(3) of the Act which shows that proper representation was there before the assessing officer by the assessees and assessee(s) participated in the assessment proceedings to the satisfaction of Ld. Assessing Officer. In these facts where the assessment orders have not been framed ex-parte u/s 144 of the Act but have been framed u/s 143(3) of the Act than the penalty levied u/s 271(1)(b) has been held to be unjustified by Coordinate Bench Indore in the case of Pramila Ghodhe vs. DCIT (2017) 49 CCH 0401 dated 20.03.2017 observing as follows:

“We have considered the facts, rival submissions and perused the material available on record. We find that the assessment in this case was made under section 143(3) of the Act, which means that there was subsequent compliance to the notices issued by the authorities. We also noted that Ld. counsel also attended before the AO on 17.12.2015 and filed replies in all the cases including the case of the assessee. The AO verbally agreed but counsel’s presence was not recorded. We are of the view that the assessee has a reasonable cause for non-appearance on that day. Therefore, there is no justification for levying the penalty u/s 271(1)(b) of the Act. Secondly, in this matter, the assessments have been completed u/s 143(3) due to subsequent compliances in the assessment proceedings, which was considered as good compliances and default committed earlier were ignored. We also bolster our view by placing reliance in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust v. ADIT (2008) 115 TTJ 419(Del)/115 ITJ 419

(Del), wherein it was held that where the assessee had not complied with notice u/s 142(1) but assessment order was passed u/s 143(3) and not u/s. 144, that meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by the Assessing Officer, therefore levy of penalty u/s. 271(1)(b) of the Act was not justified. Thus, we set aside the orders of the Revenue Authorities and delete the levy of penalty u/s 271(1)(b) of the Act in these appeals.

13. Under same set of facts relating to penalty u/s 271(1)(b) of the Act, similar view of deleting penalty has been taken by Coordinate Bench Indore in another case of Hemant Kumar Soni & Ors. Vs. DCIT (2017) 49 CCH 0350 dated 16.01.2017 which reads as follows:

“We have heard rival contentions of both the parties and perused the material available on record. We find from the assessment orders in all these group appeals that the assessments have been completed u/ s 143(3) of the IT. Act. We find that the Assessing Officer has levied penalty 271(1)(b) for non-appearance on 15.10.2015. As per ld. Authorized Representative of the assessee, the assessee's counsel appeared and stated categorically that he appeared for seeking time. The counsel regularly attended the proceedings and the assessments have been framed u/ s 143(3) and not u/ s 144. We find that this was the first notice for compliance and since the voluminous records and papers were required to be scrutinized and individually in each case, the appropriate replies were to be filed, the assessee prayed for the time to submit the reply and ultimately submitted all the necessary replies and cooperated with the Department. We are of the view that assessee had reasonable cause for non-appearance on that day. Therefore, there is no justification for levying the penalty u/s 271(1)(b) of the Act. Secondly, in this matter, the assessments have been completed u/s 143(3) of the Act,

therefore, no penalty can be levied if the assessments have been completed u/s 143(3) and there is subsequent compliances in the assessment proceedings was considered as good compliances and default committed earlier were ignored. Therefore, penalty u/s 271(1)(b) was deleted by various Tribunals. In the case of Akhil Bhartiya Parthmik Shmshak Sangh Bhawan Trust vs. ADIT (2008) 115 TTJ 419 (Del), it was held that where the assessee had not complied with notice u/s142(1) but assessment order was passed u/s 143(3) and not u/s 144, that meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by the Assessing Officer, therefore, levy of penalty u/s 271(1)(b) of the Act was not justified. The case laws cited by ld. Departmental Representative are distinguishable on facts, hence, inapplicable to this case. We also noted that in the Vinit Chouhan group cases, an order is passed in a group in I.T.A.Nos. 1061 to 1181/Ind/2016 dated 23.11.2016, in which similar set of facts the penalty levied u/s 271(1)(b) was set aside. Therefore, respectfully following the said order and facts, we set aside the orders of the Revenue Authorities and delete the levy of penalty u/s 271(1)(b) of the Act in all these appeals.”

14. We, therefore, in the given facts and circumstances of the case and respectfully following the decision of the Coordinated Bench, are of the considered opinion that levy of penalty u/s 271(1)(b) of the Act was fair and justified in the case of Smt. Pushpa Verma, M/s. Regent Beers & Wines Ltd., Patel Education & Welfare Society, Arun Kumar Verma, Mrs. Vaishali Shivhare, Ram Swaroop Shivhare & Harminder Singh Bhatia and accordingly all grounds raised by the assesseees in the appeals in ITANo.361 to 367/Ind/2018, ITANo.345 to 349/Ind/2018, ITANo.353 to

358/Ind/2018, ITANo.368 to 374/Ind/2018, ITANo.375 to 381/Ind/2018, ITANO.389 to 395/Ind/2018 & ITANo.400/Ind/2018 are allowed and Revenue is directed to delted the penalty u/s 271(1)(b) of the Act in these cases.

Now we take appeal of the assessee, Sunit Madhok in ITANo. 338 to 344/Ind/2018 in the case of Sunit Madhok

15. It is an undisputed fact that Mr. Sunit Madhok remained non-compliant to the notice u/s 142(1) of the Act and he did not appear during the course of assessment proceedings also and therefore assessments were framed ex-parte u/s 153A r.w.s. 144 of the Act. However, it is pertinent to note that the copies of the loose papers were not available with him on the designated dates for making compliance u/s 142(1) of the Act. Except for A.Y. 2016-17 assessments for A.Y. 2010-11 to A.Y. 2015-16 have been completed by Ld. Assessing officer accepting the returned income which itself shows that the details of income filed by the assessee in return of income filed in pursuance to notice u/s 153A of the Act were sufficient for the assessing officer to frame the assessment and he needed no other explanation/ information/documents to complete the assessment. However, for A.Y. 2016-17 an addition of Rs.16,20,000/- has been made on account of cash found during the course of search. Immunity from paying the penalty in certain cases is provided u/s 273B of the Act which reads as follows:

273B. Notwithstanding anything contained in the provisions of [clause (b) sub section (1) of] [section 271, section 271A, [section of section 271B [section 271BA] [section 271BB] section 271C [section 271CA,] section 271D, section 271E, [section 271F, [section 271FA] [section 271FAB] [section 271FB] [section 271G] [Section 271GA] [Section 271H] [section 271-I] clause (c) or clause (d) of sub-section (2) of section 272A, sub-section (1) of section 272AA] or [section 272B or] [sub-section (1) [or sub-section (1A) of section 272BB or] [sub-section (1) of section 272BBB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, 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 a reasonable cause for the said failure

16. In the light of above facts as well as on perusal of the provisions of section 273B of the Act which provides that 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 a reasonable cause for the said failure, we find that for the A.Y. 2010-11 to A.Y. 2015-16 penalty should not have been levied on Mr. Sunit Madhok as he was having reasonable cause for not appearing before the assessing officer as the information required to be submitted, needed more time than the time granted by the assessing officer. We are thus inclined to hold that penalty of Rs.10,000/- each for u/s 271(1)(b) of the Act for A.Y. 2010-11 to A.Y. 2015-16 needs to be deleted and accordingly, set aside the finding of both lower authorities and direct the revenues authorities to delete the penalty of Rs.10,000/- for A.Y. 2010-11 to A.Y. 2015-

16 and thus allow assessee's appeal in ITANo. 338 to 343/Ind/2018.

17. As regards the penalty u/s 271(1)(b) of the Act for A.Y. 2016-17 levied in the case of assessee, Mr. Sunit Madhok, we are inclined to hold that the penalty of Rs.10,000/- has rightly been levied u/s 271B of the Act as the assessee had continuously defaulted and did not took part in the assessment proceedings. Thus, no interference is called for, in the finding of the Ld. CIT(A) in the case of assessee, Mr. Sunit Madhok for A.Y. 2016-17 and therefore, the appeal of the assessee in ITANo.344/Ind/2018 is dismissed.

18. In the result, appeals of the assessee(s) in ITANo. ITANo.361 to 367/Ind/2018, ITANo.345 to 349/Ind/2018, ITANo.353 to 358/Ind/2018, ITANo.368 to 374/Ind/2018, ITANo.375 to 381/Ind/2018, ITANO.389 to 395/Ind/2018, ITANo.400/Ind/2018 and ITANo.338 to 343/Ind/2018 are allowed and assessee appeal ITANo.344/Ind/2018 is dismissed.

The order pronounced in the open Court on 24.01.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 24th January, 2019

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore