

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 3510 and 3511/Del/2012
(Assessment Year: 2005-06)**

Sahara India Financial Corpn. Ltd., 1-Kapoorthala Complex, Aliganj, Lucknow.	Vs.	The Addl. Commissioner of Income Tax, Central Range-I, New Delhi.
PAN No: AADCS8698C		
APPELLANT		RESPONDENT

Assessee by : Shri Satyen Sethi, Adv. and
Shri A.T. Panda, Adv.
Revenue by : Shri Sanjog Kapoor, Sr. DR,

ORDER

PER: ANADEE NATH MISSHRA, AM

(A) For the sake of convenience and brevity, these two appeals are being disposed off by this consolidated order; as similar / interlinked issues are involved. Both These appeals are filed against separate orders each dated 02.04.2012 of the Ld. Commissioner of Income Tax (Appeals-I), New Delhi, ["Ld. CIT(A)", for short] pertaining to Assessment Year 2005-06, on the following grounds:

ITA No.- 3510/Del/2012

"1. That on the facts and circumstances of the case as well as in law the Ld. CIT(A) is not justified in confirming the penalty of Rs. 10,000/- levied under section 272A(l)(c) of the Income Tax Act.

2. That the Ld. CIT(A) has failed to appreciate that there was no deliberate default on the part of the appellant in making compliance to the requirements of summon under section 131 of the Income Tax Act dated 12.09.2007 when each and every date of hearing was attended by the Authorised Representative and thereafter another modified summon was issued on 12.10.2007 in respect of same requirements thereby merging summon dated 12.09.2007 which had automatically become in-fructuous in light of the issuance of new summon dated 12.10.2007.

3. That without prejudice in any view of the matter the Ld. CIT(A) should have appreciated that the appellant was prevented by a reasonable cause within the meaning of section 273B of the Income Tax Act in alleged non-compliance of summon issued under section 131 of the Income Tax Act and, therefore, there was no justification in the levy of penalty under section 272A(l)(c) of the Income Tax Act.

4. That the appellant craves leave to add, alter, amend or withdraw any or all the grounds of appeal on or before the date of hearing."

ITA No.- 3511/Del/2012

"1. That on the facts and circumstances of the case as well as in law the Ld. CIT(A) is not justified in confirming the penalty of Rs. 10,000/- levied under section 272A(l)(c) of the Income Tax Act.

2. That the Ld. CIT(A) has failed to appreciate that substantial information called for by the Ld. Assessing Officer in the summon under section 131 of the Income Tax Act was submitted by the appellant and, therefore, there was no non-compliance as the appellant was prevented by constraint of time in submitting the entire information called for in the summon issued under section 131 dated 12.10.2007.

3. That without prejudice in any view of the matter the Ld. CIT(A) should have appreciated that the appellant was prevented by a reasonable cause within the meaning of section 273B of the Income Tax Act in alleged non-compliance of summon issued under section 131 of the Income Tax Act and, therefore, there was no justification in the levy of penalty under section 272A(l)(c) of the Income Tax Act.

4. That the appellant craves leave to add, alter, amend or withdraw any or all the grounds of appeal on or before the date of hearing."

(A.1) The Ld. Commissioner of Income Tax (Appeals-I), confirmed penalty levied by learned Additional Commissioner of Income Tax, Central Range-I, New Delhi ("Addl.CIT", for short) vide two separate orders each dated 22.04.2009, under Section 272A(1)(c) of Income Tax Act, 1961 ("IT Act", for short). In each of the aforesaid two orders dated 22.04.2009 of Ld. Addl.CIT levied penalty, amounting to Rs. 10,000/- under Section 272A(1)(c) of I.T. Act; on the ground that the assessee had failed to comply with summons dated 12.09.2007 and 12.10.2007. The relevant portions from the aforesaid orders, each dated 22.04.2009 are reproduced as under; in the following paragraphs (A.1.1) and (A.1.2), corresponding to the two appeals separately:

(A.1.1) Corresponding to **ITA- 3510/Del/2012**

2.1 The brief facts of the case as reported by the Assessing Officer are as under:-

"Summons u/s.131 of the Income Tax Act,1961 dated 12/09/2007 was issued to the assessee company and thereby assessee company M/s.Sahara India Financial Corporation Ltd. was asked to furnish the details as per Annexure-A attached with the summon before the undersigned on 25/09/2007.

Sh. Sanjeev Singh appeared on behalf of the assessee on 25/09/2007 in response to Summon dated 12/09/2007 and filed an adjournment application. Considering the assessee's request, the hearing of the case is fixed for 3/10/2007.

On 4/10/2007, the authorized representative of the assessee, Sh.D.R. Rajan appeared and filed an adjournment application. Vide note sheet dated 4/10/2007, the case was fixed for 12.10.2007 and during the course of hearing on 04.10.2007, the following note sheet entry was noted by the AR of the assessee:-

"...in this connection, already adjournment has been given to assessee. Assessee is requested to furnish the required details as asked for (vide notice u/s. 131 dated 12/09/2007) on the next date of hearing (12/10/2007). Assessee is again requested to co-operate and submit the details. Case is fixed for 12/10/2007. It may be noted that no further adjournment will be granted in this matter."

On 12.10.2007, the assessee just filed a letter dated 12.10.2007 and the gist of the letter says as:

".....calling for the deposit ledger on CD form which contains details which have been called by your honour is beyond jurisdiction and 131 cannot be invoked for production of the same in a CD format."

Following note sheet entry details were noted by the Authorized representative of the assessee company, Sh. Dinesh Aggarwal, during the course of hearing on 12/10/2007.

"Sh. Dinesh Agarwal AR of the assessee appeared and filed a letter in response to proceedings u/s.131 of the I.T.Act, 1961 in A.Y. 2005-06. Notice u/s.131 of the I.T.Act,1961 was issued on 12/09/2007 wherein assessee was requested to furnish the complete details of depositors on CD. In addition to this, certain other details(as per Annexure-A enclosed with notice u/s.131) were called for (in print out form). Assessee is once again requested to comply the summon and furnish the details in print out form as requested in Annexure-A enclosed with the notice. Case is fixed for 22/10/2007."

Again summon u/s.131 of the I.T.Act,1961 dated 12.10.2007 was issued and served on the same date on 12.10.2007. Vide this summon, the assessee was asked to furnish the requisite details as per Annexure-A attached to the summon before the undersigned on 22.10.2007.

On 23.10.2007, the A.R. of the assessee, Sh. Sanjeev Singh appeared and filed adjournment application dated 22.10.2007.

During the course of hearing on 23.10.2007, the following note sheet details was noted by the A.R. of the assessee:-

"Notice u/s.131 of the I.T.Act was issued on 12.10.2007 wherein assessee was asked to produce certain details but after 10 days assessee came up with adjournment application. This clearly shows that assessee does not want to furnish the details as required vide notice u/s.131 dated 12.10.2007. Meaning thereby that assessee is not cooperative with the Department. Assessee is once again requested to furnish the following details as desired by this office vide notice u/s.131 dated 12.10.2007, on or before 2.11.2007 failing which adverse inference will be drawn and coercive action will be taken as per I.T.Act,1961."

On the appointed date 02-11-2007, Assessee has failed to furnish the details as required vide summon dated 12-09-2007 & 12-10-2007."

2.2 In response to the notice dated 30.01.2009, the assessee vide its reply dated 06.04.2009 has submitted as under:-

"In this case penalty proceedings under section 272A(1)(c) have been initiated by your honour on the basis of information received from the Assistant Commissioner of Income Tax, Central Circle-6, New Delhi according to which the assessee has without reasonable cause failed to furnish the details as required vide summons u/s.131 dated 12.09.2007 and accordingly you have asked the assessee to show cause as to why penalty under section 272A(1)(c) of the Income Tax Act may not be levied on the assessee."

*In this connection, your honour's attention is drawn to the summons dated 12.09.2007 which was served on the assessee company on 15.09.2007 and the date fixed for compliance thereof was 25.09.2007. The details called for in the aforesaid summons are being enclosed herewith as **Annexure-"A"**.*

On 25.09.2007 the representative of the assessee attended the office of the Assistant Commissioner of Income Tax and explained to him that the information which has been called for by him was very extensive in nature and required substantial time for assimilation as the same was not readily available in the format in which the information was called for. Three weeks time was requested from the Assessing officer and the Assessing Officer extended the time to 03.10.2007.

On 03.10.2007 again the representative of the assessee company attended the office of the Assistant Commissioner of Income Tax and requested him that since in the original application dated 25.09.2007 three weeks time was sought for while the adjournment was allowed for one week further time may be allowed to the assessee so as to enable the assessee to comply with the requirements of the summons. The date was extended to 12.10.2007.

On 12.10.2007 the assessee attended the office of the Assessing Officer and informed him that the information which has been called for by him in the "CD format" was beyond jurisdiction and a detailed reply was submitted to the Assessing Officer in this respect wherein it was categorically stated that the assessee was prepared to submit the information in print-out form.

Your honour will appreciate that the deposit ledgers are part of books of account of the assessee and calling for the entire deposit ledgers on CD format by the Assessing Officer was beyond jurisdiction.

On the said date, i.e., 12.10.2007 the Assessing Officer clarified to the assessee vide order sheet entry dated 12.10.2007 as follows:-

Shri Dinesh Agarwal, Authorised Representative of the assessee appeared and filed a letter in response to proceedings u/s.131 of the Income Tax Act, 1961 in A.Y. 2005-06. Notice u/s.131 of the Income Tax Act, 1961 was issued on 12.09.2007 wherein assessee was requested to furnish the complete details of depositors on CD. In addition to this certain other details (as per Annexure-A enclosed with notice u/s.131) were called for (in print out form). Assessee is once again requested to comply the summon and furnish the details in print out form as required in Annexure-A enclosed with the notice. Case is fixed for 22.10.2007.

On the very said date, i.e. 12.10.2007 another summon u/s.131 of the Income Tax Act was issued by the Assessing Officer in which similar information was called for once again by the Assessing Officer as was called for in the summon dated 12.09.2007 and it was clarified that the information is being called for by him in print-out form. The said summon also included certain more information which was further requisitioned from the assessee by the Assessing Officer.

Your honour will appreciate that there is no non-compliance on the part of the assessee to the summon issued on 12.09.2007. Once, summons were again issued on 12.10.2007 by the Assessing Officer with certain modification, the summon issued on 12.09.2007 stands merged with the summon issued on 12.10.2007 and, therefore, it cannot be said that there is any separate non-

compliance of the summon dated 12.09.2007 issued under section 131 of the Income Tax Act more particularly on the facts and circumstances of the case as mentioned herein above.

Without prejudice to the above, it may further be added that prima facie the notice issued by your honour u/s.272A(1)(C) of the Income Tax Act for the first time on 30.01.2009 is without jurisdiction and also is barred by limitation in the light of the provisions of section 275 of the Income Tax Act.

In light of the above facts and circumstances of the case, it is prayed that the penalty proceedings may kindly be filed and oblige."

3.1 I have considered the explanation furnished by the assessee. As regards the issue of limitations raised by the assessee, the same is not acceptable as the penalty proceedings u/s.272A(1)(c) being for failure to comply with Summons u/s.131 stands on an independent footing, vis-à-vis, the assessment proceedings. Therefore, u/s.275, the limitation would be six months from the date of issue of notice. In this case, the notice was issued on 30.01.2009 and, therefore, the order is passed within the limitation.

3.2 The assessee has submitted that the Assessing Officer called for voluminous details as regards the depositors vide its Summons dated 12.09.2007. The assessee has further submitted that the summons dated 12.09.2007 which was received by it on 15.09.2007, required that the details as mentioned in Annexure-A to the summons should have been submitted on 25.09.2007. Since the details were voluminous, its representative met the A.O. on 25.09.2007 and explained to him that "..... the information which has been called for by him was very extensive in nature and required substantial time for assimilation as the same was not readily available in the format in which the was called for." Accordingly, the A.R. requested for 3 weeks but the A.O. adjourned the matter till 03.10.2007, thus giving only a week's time. Hence, on 03.10.2007, the assessee requested for more time. On this, the A.O. extended the time till 12.10.2007. But, on this day, the assessee represented that it was beyond the jurisdiction of the A.O. to call for the information in CD format and he would submit the information in print format. On this, the A.O. again issued summons u/s.131 on 12.10.2007 wherein the requirement of furnishing the information on CD format was not required but the other details called for were the same as on 12.09.2007 besides some more .


3.3 The assessee has taken the plea that there was no non-compliance on 12.09.2007 as the A.O. issued a fresh summons on 12.10.2007 with certain modification and therefore, the summons dated 12.09.2007 stood merged with the summon dated 12.10.2007. Thus, the main plea of the assessee is that the summons dated 12.09.2007 stood merged with the summons dated 12.10.2007 and, hence, there can be no penalty for non-compliance of the summons dated 12.09.2007.

3.4 The stand taken by the assessee is not acceptable. It is a fact that the assessee failed to furnish the on the stipulated date of 25.09.2007 as required under the summons u/s.131 dated 12.09.2007. The assessee requested for

adjournment of three weeks on 25.09.2007. The A.O. has granted an adjournment of one week in the first instance upto 3.10.2007 and another one week or slightly more upto 12.10.2007. On this day, the assessee took the stand that calling for information on CD format was beyond the jurisdiction of the A.O. Thereupon, the A.O. asked for the information in print format. Now does this mean that the A.O. modified and relaxed the earlier condition of submission of information in CD-format. The answer to this can be found if the assessment order for A.Y. 2005-06 is perused. In this order, the A.O. has dealt extensively on this issue and after coming to the conclusion that the assessee was under a legal obligation to submit the information in CD-format, made addition on account of unexplained deposits as the assessee failed to furnish the information to the satisfaction of the Assessing Officer in support of its claim regarding the genuineness of these depositors. Thus the modification of the summons on 12.10.2007 was only to get the information in print out form as there was non-compliance by the assessee to furnish the information in CD-format.

3.5 The Assessing Officer was well within his jurisdiction when he called for the information in the CD-format. U/s.131, the A.O. can insist on the production of books of accounts and documents -Accounting data in CD-format is included in the definition of "books of accounts and documents" as given in section 2(12A) of the I.T.Act,1961. Hence, the assessee has committed a definite non-compliance by declining to furnish the information in CD-format in the very first place. As regards the time, the A.O. has given time from 25.09.2007 to 12.10.2007 for compliance on which date the assessee declared its intention not to comply with the summons dated 12.09.2007. Therefore, the failure to comply with the summons dated 12.09.2007 was without any reasonable cause. There was no legal justification to refuse giving of information in CD-format. As regards the voluminous nature of information in a specific format, it may be seen that AO has given sufficient time to the assessee. The sufficiency should be tested not only by the time granted but also by the nature of compliance required. The assessee maintains its books of accounts on the Computer. Hence, extracting the information in the desired format should not take more that a couple of days what to speak of weeks.

3.6 On a totality of facts and circumstances of the case, I am satisfied that there was a failure on the part of the assessee without any reasonable cause and the assessee's claim that there was reasonable cause for failure to comply with the summons u/s.131 is rejected and penalty of Rs.10,000- for the default of 12.09.2007 is hereby imposed.



(A.1.2) Corresponding to ITA No. 3511/Del/2012

2.1 The brief facts of the case as reported by the Assessing Officer are as under:-

"Summons u/s.131 of the Income Tax Act,1961 dated 12/09/2007 was issued to the assessee company and thereby assessee company M/s.Sahara India Financial Corporation Ltd. was asked to furnish the details as per Annexure-A attached with the summon before the undersigned on 25/09/2007.

Sh. Sanjeev Singh appeared on behalf of the assessee on 25/09/2007 in response to Summon dated 12/09/2007 and filed an adjournment application. Considering the assessee's request, the hearing of the case is fixed for 3/10/2007.

On 4/10/2007, the authorized representative of the assessee, Sh.D.R. Rajan appeared and filed an adjournment application. Vide note sheet dated 4/10/2007, the case was fixed for 12.10.2007 and during the course of hearing on 04.10.2007, the following note sheet entry was noted by the AR of the assessee:-

"...in this connection, already adjournment has been given to assessee. Assessee is requested to furnish the required details as asked for (vide notice u/s.131 dated 12/09/2007) on the next date of hearing (12/10/2007). Assessee is again requested to co-operate and submit the details. Case is fixed for 12/10/2007. It may be noted that no further adjournment will be granted in this matter."

On 12.10.2007, the assessee just filed a letter dated 12.10.2007 and the gist of the letter says as:

".....calling for the deposit ledger on CD form which contains details which have been called by your honour is beyond jurisdiction and 131 cannot be invoked for production of the same in a CD format."

Following note sheet entry details were noted by the Authorized representative of the assessee company, Sh. Dinesh Aggarwal, during the course of hearing on 12/10/2007.

"Sh. Dinesh Aggarwal AR of the assessee appeared and filed a letter in response to proceedings u/s.131 of the I.T.Act, 1961 in A.Y. 2005-06. Notice u/s.131 of the I.T.Act, 1961 was issued on 12/09/2007 wherein assessee was requested to furnish the complete details of depositors on CD. In addition to this, certain other details(as per Annexure-A enclosed with notice u/s.131) were called for (in print out form). Assessee is once again requested to comply the summon and furnish the details in print out form as requested in Annexure-A enclosed with the notice. Case is fixed for 22/10/2007."

Again summon u/s.131 of the I.T.Act, 1961 dated 12.10.2007 was issued and served on the same date on 12.10.2007. Vide this summon, the assessee was asked to furnish the requisite details as per Annexure-A attached to the summon before the undersigned on 22.10.2007.

On 23.10.2007, the A.R. of the assessee, Sh. Sanjeev Singh appeared and filed adjournment application dated 22.10.2007.

During the course of hearing on 23.10.2007, the following note sheet details was noted by the A.R. of the assessee:-

"Notice u/s.131 of the I.T.Act was issued on 12.10.2007 wherein assessee was asked to produce certain details but after 10 days assessee came up with adjournment application. This clearly shows that assessee does not want to furnish the details as required vide notice u/s.131 dated 12.10.2007. Meaning thereby that assessee is not cooperative with the Department. Assessee is once again requested to furnish the following details as desired by this office vide notice u/s.131 dated 12.10.2007, on or before 2.11.2007 failing which adverse inference will be drawn and coercive action will be taken as per I.T.Act, 1961."

On the appointed date 02-11-2007, Assessee has failed to furnish the details as required vide summon dated 12-09-2007 & 12-10-2007."

2.2 In response to the notice dated 30.01.2009, the assessee vide its reply dated 06.04.2009 has submitted as under:-

"In this case penalty proceedings under section 272A(1)(c) have been initiated by your honour on the basis of information received from the Assistant Commissioner of Income Tax, Central Circle-6, New Delhi according to which the assessee has without reasonable cause failed to furnish the details as required vide summons u/s.131 dated 12.10.2007 and accordingly you have asked the assessee to show cause as to why penalty under section 272A(1)(c) of the Income Tax Act may not be levied on the assessee.

In this connection, your honour's attention is drawn to the summons dated 12.10.2007 in which certain details in respect of deposits were called for by the Assessing Officer. The details called for are being enclosed herewith in

Annexure-"A". on a perusal of which it will be appreciated that extensive details were called for from the assessee in respect of collection of deposits. The information which was called for was not such information which was readily available in the accounts of the assessee and, therefore, the information required collation and assimilation

The assessee company, as is well known, was carrying on the business of mobilization of deposits for which it had engaged the services of its agent M/s.Sahara India who were, in fact, mobilizing the deposits through its various branches about 1500 in number spread all over the country and the total deposit which was mobilized during the year was to the tune of Rs.63,91,64,57,889/- crores. The Assessing Officer had required the assessee to furnish branch-wise details of collections sorting out the payments made in cash and by cheques and similar details were called for in respect of branch-wise repayments of deposit giving the break-up of repayment made in cash and by cheques.

Similarly, the Assessing Officer required the assessee to give details of 400 top depositors from each branch setting out the following particulars:-

- 1) Name and address of depositor
- 2) Number of accounts in his name
- 3) Opening balance as on 01.04.2005
- 4) Deposit received during the year:
 - a) in cash
 - b) by cheque
- 5) Repayment made to depositor during the year
 - a) in cash
 - b) by cheque
- 6) Closing balance as on 31.03.2006.

On going through the above, your honour will appreciate that looking to the magnitude of the deposit which was mobilized by the assessee and the fact that there were about 3 crores deposit accounts, collation and assimilation of the information called for by the Assessing Officer required substantial time and as result, in compliance to his requirements, details were submitted in the format as required by him by the assessee on 20.12.2007 and 26.12.2007 in respect of seventy branches.

Details of other branches was in compilation but since no further time was allowed by the Assessing Officer the same could not be submitted.

In the intervening period, i.e., 12.10.2007 to 26.12.2007 various other notices under section 131 were issued by the Assessing Officer on 23.10.2007 and 4.12.2007 and other information in respect of assessment proceedings was called for by him and the assessee was also busy in the preparation thereof so as to comply with the requirements of other summons issued by the Assessing Officer.

Further due date of filing of the return for the Assessment Year 2007-08 also fell which was 31.10.2007 which also consumed some time of the representative of the assessee.

Looking to all these factors, considering the magnitude of the details called for and the fact that the assessee has complied with the details although in part, it will be appreciated that there is no non-compliance on the part of the assessee as has been alleged in the report submitted before your honour by the

Assessing Officer for initiating the proceedings u/s. 272A(1)(c) of the Income Tax Act.

Without prejudice to the above, it may further be added that prima facie the notice issued by your honour u/s.272A(1)(C) of the Income Tax Act for the first time on 30.01.2009 is without jurisdiction and also is barred by limitation in the light of the provisions of section 275 of the Income Tax Act.

In light of the above facts and circumstances of the case, it is prayed that the penalty proceedings may kindly be filed and oblige."

3.1 I have considered the explanation furnished by the assessee. As regards the issue of limitations raised by the assessee, the same is not acceptable as the penalty proceedings u/s.272A(1)(c) being for failure to comply with Summons u/s.131 stands on an independent footing, vis-à-vis, the assessment proceedings. Therefore, u/s.275, the limitation would be six months from the date of issue of notice. In this case, the notice was issued on 30.01.2009 and, therefore, the order is passed within the limitation.

3.2 The assessee has submitted that the Assessing Officer called for voluminous details as regards the depositors vide its Summons dated 12.10.2007. The assessee has further submitted that collation and assimilation of information from 3 crores depositors required substantial time and, therefore, details could be submitted only on 20th September, 2007 & 26th December,2007 in respect of only some of the branches. The assessee has also stated that he was busy in collecting other information required by the Assessing Officer. He has also stated that lot of time was consumed for filing of returns for asstt. year 2007-08 for which the due date was 31st December,2007. The assessee has submitted that considering the magnitude of details called for and the fact that the assessee has complied with details although in part, there was no non-compliance on its part.

3.3 The explanation given by the assessee is not at all satisfactory. No reasons have been given that could justify that there was a reasonable cause for the failure in complying with the Summons u/s.131. The plea that the details called for were voluminous and substantial time was required for collation and assimilation, does not hold water as the assessee maintains its accounts on the computer and, therefore, culling out data to prepare a report in a desired format should not take a great deal of time. As regards the assessee's plea that it was busy in filing of returns and preparing other information called for by the Assessing Officer, it can only be said that the assessee is under a legal obligation to comply with the procedures in tax proceedings. Therefore, a plea of failure to comply with one proceedings on account of another future legal compliance shall not be normally admissible. The Assessing Officer seems to have given multiple adjournments to the assessee in the course of the assessment proceedings. The summons u/s.131 was issued dated 12.09.2007. The assessee took adjournments on 25.09.2007, 4.10.2007, 12.10.2007. The Assessing Officer again issued a summon on 12.10.2007 because of the continued non-compliance and ask for the details to be furnished by 22.10.2007. But the assessee again filed an adjournment application on 23.10.2007. The assessee was given a final

opportunity to furnish the details on 02.11.2007 on which date again no details were furnished. Therefore, the non-compliance of the assessee is visible on record. As per the assessee's own version, after taking all this time, it only furnished partial details. Therefore, there is complete failure on the part of the assessee to discharge its legal obligation to the summons u/s.131 dated 12.10.2007 issued by the Assessing Officer. Under these circumstances, the assessee's claim that there was reasonable cause for failure to comply with the summons u/s.131 is rejected and penalty of Rs.10,000- for the default of 12.10.2007 is hereby imposed.

(B) The assessee filed appeals against the aforesaid two orders each dated 22.04.2009 passed by Addl. CIT, before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee holding as under in the following paragraphs (B.1) and (B.2) corresponding to the two appeals separately:

(B.1) Corresponding to ITA No.- 3510/Del/2012

"4. The appellant has taken 7 grounds of appeal all of which except ground no. 2 are objecting to levy of penalty under section 272A(l)(c) of the Income Tax Act on the facts and circumstances of the case and also without prejudice relying on the provisions of section 273B of the Income Tax Act for reasonable cause for the delay in complying with the requirements made by summon issued under section 131 of the Income Tax Act.

In para 2.1 of the penalty order the Addl. Commissioner of Income Tax has set out the brief facts of the case as reported to him by the Assessing Officer. Thereafter in para 2.2 he has extracted the reply of the appellant submitted to him in response to his show cause notice dated 30.01.2009.

Thereafter the para 3.1 to para 3.5, the Addl. Commissioner of Income Tax has reached to the conclusion that the appellant has failed to discharge his legal obligations and the non compliance of the assessee is visible on the record itself and thereafter he has proceeded to levy penalty of Rs. 10,000/- on the appellant for failure to comply with the requirements called for vide summon under section 131 of the Income Tax Act.

5. The appellant filed a written submissions. The relevant portion, setting out the facts of the case reads as follow:-

The brief facts of the case are that in this case during the course of the assessment proceedings summon under section 131 of the Income Tax Act was issued by the L'd Assessing Officer on 12.09.2007 calling for certain information with reference to deposits on CD format. The appellant objected to the calling for information on the CD format and, therefore, on 12.10.2007 another summon was issued calling for the same information in respect of collections and repayments of deposit in print out form.

The appellant company is a Residuary Non Banking Company. During the year it has mobilized deposits to tune of Rs 6,391.65 crores through the services of its agent M/s Sahara India spread over 1500 branches and this amount represented collections made from about 3 crores depositors.

The L'd Assessing Officer required the appellant to furnish branch-wise details of collections sorting out payments received in cash and by cheque: and similar details in respect of branch-wise repayment of deposits giving repayment by cheques and cash.

The appellant, as already stated herein above, is operating through its Agent M/s Sahara India which, in turn is operating from 1500 branches spread all over the country.

As far as the appellant is concerned, a consolidated statement is being submitted by the Agent on fortnightly basis in respect of deposits and maturities on the basis of which accounting entry in the books of account as well as deposit ledgers is passed by the appellant company. The information which was called for by the L'd Assessing Officer was available in the books of account of agent M/s Sahara India which was summoned from them.

Similarly the L'd Assessing Officer called for details of 400 top depositors from each branch setting out the following particulars in respect of each depositors

- 1) *Name and address of depositer*
- 2) *Number of accounts in his name*
- 3) *Opening balance as on 1.4.2005*
- 4) *Deposit received during the year ;*
 - (a) *in cash*
 - (b) *in cheque*
- 5) *Repayment made to depositor during the year ;*
 - (a) *in cash*
 - (b) *in cheque*
- 6) *Closing balance as on 31.03.2006.*

6. *The above mentioned details had to be collected collated and summoned through the services of the Agent as the particulars of acceptance and repayment of deposit viz. their break-up in cash or cheque was available with the Agent only and, therefore, in all the accounts the information which was called for had to be collected and assimilated which was not a easy task.*

Here it is necessary to bring on record that the assessment proceedings of the appellant were also in progress and in the intervening period between 12.10.2007 to 26.12.2007, i.e. the last date of hearing of the case various notices were issued by the L'd Assessing Officer including summon under section 131 of the Income Tax Act on 23.10.2007 and again on 04.12.2007 calling for further information required for the purposes of assessment and it will very well be appreciated that the preparation of details which were called for through summon of the L'd Assessing Officer on 12.10.2007, for non-compliance of which penalty has been levied, was not only the job which was entrusted with the appellant company and he had to look after all the aspects of the assessment and furnishing of the details which were called for from time to time, (copies of the notices and summon are enclosed herewith).

Further, as regards calling for the information on print out mode, all along since the issue of the summon the appellant had asked the L'd Assessing Officer as whether he was prepared to accept the details in the print out for but he kept on insisting the same to be on CD format only. Because of the: reservations the appellant submitted the details which were called for by the L'd Assessing Officer in respect of 70 branches.

The L'd Assessing Officer thereafter treated the appellant to be in default i: respect of non-submission of details of the balance branches and has levied penalty under section 272A(l)(c) of the Income Tax Act.

Another factor which has to be taken in to consideration is that par compliance of the same has been made by the appellant and, therefore, the same cannot be equated with non-compliance and the appellant should not have been visited with the penalty under section 272A(l)(c) of the Income Tax Act on the facts and circumstances of the case.

In any view of the matter because of the circumstances narrated herein above, it will further be appreciated that there was a reasonable cause within the meaning of section 273B of the Income Tax Act with the appellant for not being able to make full compliance of the detail called for vide summon under section 131 of the Income Tax Act and, therefore, also the penalty deserves to be cancelled. In this connection, reliance is placed on the following cases :-

Hindustan Steel Ltd. v. State of Orissa 83 ITR 26 C.I.T. v. Eli Lilly &

Co. (India) (P) Ltd. 178 Taxman 505 (SC)
`C.I.T. v. Superintending Engineer, P.W.D. 260 ITR 641 (Raj.)
C.I.T. v. Jagdish Prasad Choudhary 211 ITR 472 (Pat.) (F.B.)
Azadi Bachao Andolan v. Union of India 252 ITR 471

In all the above mentioned judgment, it has been held that the penalty is not automatic if there are good and sufficient reasons for any failure.

There is no justification in levying penalty. The appellant would also like to place reliance on the decision of the Delhi High Court in the case of:

C.I.T. v. Mitsui And Co. Ltd. And Another 272 ITR 545 (Del.)

C.I.T. v. Raunaq & Co. (P.) Ltd. 140 ITR 407 pp 411 (Del.)

8. *The L'd Counsel of the appellant stressed on the fact that in response to summon dated 12.10.2007 substantial information was furnished by the appellant but the entire information could not be furnished due to paucity of time. It was further stressed that post issue of summon dated 12.10.2007 further more summons were issued by the Assessing Officer in the course of the assessment proceedings for compliance of various further details and the concerned staff was practically engaged in the preparation of the details which were called for by the Assessing Officer relating to the assessment proceedings which were getting barred by limitation on 31.12.2007 and also some time was required for preparation of the return for the A.Y. 2007-08 which was to be filed by 31st October and since the information which was called for by the Assessing Officer vide summon issued on 12.10.2007 was at a very late stage, assimilation of the information called for vide summon could not be made by the appellant due to paucity of time and, therefore, there was a reasonable cause within the meaning of section 273B of the Income Tax Act with the appellant in making only part compliance in respect of the information called for vide summon issued by the Assessing Officer.*

9. *In light of the above facts and circumstances, it was prayed by the appellant that this was not a fit case for levy of penalty under section 272A(l)(c) of the Income Tax Act and, therefore, the penalty should be cancelled.*

10. *I have considered the submission given by the appellant as well as the observation of the Assessing Officer. The contention of the appellant that the details asked by the Assessing Officer was voluminous and had to be collected and assimilated may be true but this does not absolve the appellant of the fact that it did not comply with the requirements made by the Assessing Office. When the accounts are maintained on computer then the contention that the information was voluminous cannot be taken as an alibi for not furnishing the same. It hardly takes a few minutes to print the information and even if it is to be collected from various branches the same can be retrieved in few minutes by receiving it through Emails. The Assessing Officer in the penalty order has mentioned the various dates on which the appellant was required to furnish the information. Yet the appellant did not comply with the notices. It is further observed that the appellant did not submit the entire details in hard copy which would have exhibited its sincerity in complying with the notices if it was not possible to submit in a CD as required by the Assessing*

Officer Considering these facts the penalty of Rs. 10,000/- imposed u/s 272A(l)(c) is upheld.

*11. In result, the appeal is **dismissed.**”*

(B.2) Corresponding to ITA No. – 3511/Del/2012

*“4. The appellant has taken 7 grounds of appeal all of which except **ground no. 2** are objecting to levy of penalty under section 272A(l)(c) of the Income Ta; Act on the facts and circumstances of the case and also without prejudice relying on the provisions of section 273B of the Income Tax Act for reasonable cause for the delay in complying with the requirements made b summon issued under section 131 of the Income Tax Act.*

In para 2.1 of the penalty order the Addl. Commissioner of Income Tax has set out the brief facts of the case as reported to him by the Assessing Office Thereafter in para 2.2 he has extracted the reply of the appellant submitted t him in response to his show cause notice dated 30.01.2009.

Thereafter the para 3.1 to para 3.3, the Addl. Commissioner of Income Ta has reached to the conclusion that the appellant has failed to discharge hi legal obligations and the non compliance of the assessee is visible on the record itself and thereafter he has proceeded to levy penalty of Rs. 10,000/- on the appellant for failure to comply with the requirements called for vide summon under section 131 of the Income Tax Act.

- 5. The appellant filed a written submissions. The relevant portion, setting out the facts of the case reads as follows*

The brief facts of the case are that in this case during the course of the assessment proceedings summon under section 131 of the Income Tax Act was issued by the L'd Assessing Officer on 12.09.2007 calling for certain information with reference to deposits on CD format. The appellant objected to the calling for information on the CD format and, therefore, on 12.10.2007 another summon was issued calling for the same information in respect of collections and repayments of deposit in print out form.

The appellant company is a Residuary Non Banking Company. During the year it has mobilized deposits to tune of Rs 6,391.65 crores through the services of its agent M/s Sahara India spread over 1500 branches and this amount represented collections made from about 3 crore depositors.

The L'd Assessing Officer required the appellant to furnish branch-wise details of collections sorting out payments received in cash and by cheque and similar details in respect of branch-wise repayment of deposits giving repayment by cheques and

cash.

The appellant, as already stated herein above, is operating through its Agent M/s Sahara India which, in turn is operating from 1500 branches spread a over the country.

As far as the appellant is concerned, a consolidated statement is being submitted by the Agent on fortnightly basis in respect of deposits and maturities on the basis of which accounting entry in the books of account a well as deposit ledgers is passed by the appellant company. The information which was called for by the L'd Assessing Officer was available in the book of account of agent M/s Sahara India which was summoned from them.

Similarly the L'd Assessing Officer called for details of 400 top depositor from each branch setting out the following particulars in respect of each depositors:-

- 1) *Name and address of depositor*
 - 2) *Number of accounts in his name*
 - 3) *Opening balance as on 1.4.2005*
 - 4) *Deposit received during the year ;*
 - (a) *in cash*
 - (b) *in cheque*
 - 5) *Repayment made to depositor during the year ;*
 - (a) *in cash*
 - (b) *in cheque*
 - 6) *Closing balance as on 31.03.2006.*
6. *The above mentioned details had to be collected collated and summoned through the services of the Agent as the particulars of acceptance an repayment of deposit viz. their break-up in cash or cheque was available with the Agent only and, therefore, in all the accounts the information which was called for had to be collected and assimilated which was not a easy task.*

Here it is necessary to bring on record that the assessment proceedings of the appellant were also in progress and in the intervening period between

12.10.2007 to 26.12.2007, i.e. the last date of hearing of the case various notices were issued by the L'd Assessing Officer including summon under section 131 of the Income Tax Act on 23.10.2007 and again on 04.12.2007 calling for further information required for the purposes of assessment and it will very well be appreciated that the preparation of details which were called for through summon of the L'd Assessing Officer on 12.10.2007, for non compliance of which penalty has been levied, was not only the job which was entrusted with the appellant company and he had to look after all the aspects of the assessment and furnishing of the details which were called for frontline to time, (copies of the notices and summon are enclosed herewith).

Further, as regards calling for the information on print out mode, all along since the issue of the summon the appellant had asked the L'd Assessing Officer as whether he was prepared to accept the details in the print out form but he kept on insisting the same to be on CD format only. Because of these reservations the appellant submitted the details which were called for by the L'd Assessing Officer in respect of 70

branches.

The L'd Assessing Officer thereafter treated the appellant to be in default in respect of non-submission of details of the balance branches and has levied penalty under section 272A(1)(c) of the Income Tax Act.

Another factor which has to be taken in to consideration is that part compliance of the same has been made by the appellant and, therefore, the same cannot be equated with non-compliance and the appellant should not have been visited with the penalty under section 272A(1)(c) of the Income Tax Act on the facts and circumstances of the case.

7. *In any view of the matter because of the circumstances narrated herein above it will further be appreciated that there was a reasonable cause within the meaning of section 273B of the Income Tax Act with the appellant for no' being able to make full compliance of the detail called for vide summon under section 131 of the Income Tax Act and, therefore, also the penalty deserves to be cancelled. In this connection, reliance is placed on the following cases*

Hindustan Steel Ltd. v. State of Orissa 83 ITR 26
C.I.T. v. Eli Lilly & Co. (India) (P) Ltd. 178 Taxman 505 (SC)
C.I.T. v. Superintending Engineer, P.W.D. 260 ITR 641 (Raj.)
C.I.T. v. Jagdish Prasad Choudhary 211 ITR 472 (Pat.) (F.B.)
Azadi Bachao Andolan v. Union of India 252 ITR 471

In all the above mentioned judgment, it has been held that the penalty is not automatic if there are good and sufficient reasons for any failure.

There is no justification in levying penalty. The appellant would also like to place reliance on the decision of the Delhi High Court in the case of:

C.I.T. v. Mitsui And Co. Ltd. And Another 272 ITR 545 (Del.)

C.I.T. v. Raunaq & Co. (P.) Ltd. 140 ITR 407 pp 411 (Del.)

8. *The L'd Counsel of the appellant stressed on the fact that in response to summon dated 12.10.2007 substantial information was furnished by the appellant but the entire information could not be furnished due to paucity of time. It was further stressed that post issue of summon dated 12.10.200 further more summons were issued by the Assessing Officer in the course of the assessment proceedings for compliance of various further details and the concerned staff was practically engaged in the preparation of the details which were called for by the Assessing Officer relating to the assessment proceedings which were getting barred by limitation on 31.12.2007 and also some time was required for preparation of the return for the A.Y. 2007-0: which was to be filed by 31st October and since the information which was called for by the Assessing Officer vide summon issued on 12.10.2007 was at a very late stage, assimilation of the information called for vide summon could not be made by the appellant due to paucity of time and, therefore,*

then was a reasonable cause within the meaning of section 273B of the Income Tax Act with the appellant in making only part compliance in respect of the information called for vide summon issued by the Assessing Officer.

9. *In light of the above facts and circumstances, it was prayed by the appellant that this was not a fit case for levy of penalty under section 272A(1)(c) of the Income Tax Act and, therefore, the penalty should be cancelled.*

10. *I have considered the submission given by the appellant as well as the observation of the Assessing Officer. The contention of the appellant that the details asked by the Assessing Officer was voluminous and had to be collected and assimilated may be true but this does not absolve the appellant of the fact that it did not comply with the requirements made by the Assessing Officer. When the accounts are maintained on computer then the contention that the information was voluminous cannot be taken as an alibi for not furnishing the same. It hardly takes a few minutes to print the information and even if it is to be collected from various branches the same can be retrieved in few minutes by receiving it through Emails. The Assessing Officer in the penalty order has mentioned the various dates on which the appellant was required to furnish the information. Yet the appellant did not comply with the notices. It is further observed that the appellant did not submit the details in hard copy which would have exhibited its sincerity in complying with the notices if it was not possible to submit in a CD as required by the Assessing Officer. The appellant had submitted the details of only 70 branches as against 1500 maintained by it. Considering these facts the penalty of Rs.10,000/- imposed u/s 272A(1)(c) is upheld.*

11. In result, the appeal is dismissed.”

(C) The present appeals before us have been filed by the assessee against the aforesaid impugned two separate orders dated 02.04.2012 of the Ld. CIT(A). During the appellate proceedings in Income Tax Appellate Tribunal (“ITAT”, for short), the following written submissions were filed from assessee’s side by way of brief synopsis, which are reproduced below in the following paragraphs (C.1) and (C.2) corresponding to the two appeals separately:

(C.1) Corresponding to ITA No.- 3510/Del/2012:

Brief Synopsis

Issue: Levy of penalty u/s 271A(1)(c) for non compliance of summons u/s 131 dated 12.9.2007.

Facts in brief

Date	Particulars
12.9.2007	<p>Summon u/s 131 was issued. Assessee was required inter-alia to file details on CD of top 400 depositors of 1500 branches spread all over India as per Annexure-A (<i>page 12 & 13 of paper book</i>).</p> <p>Summon dated 12.9.2007 was received on 15.9.2007 and details were to be furnished on 25.9.2009.</p>
25.9.2007	<p>Since information sought was extensive and substantial time was required to assimilate the data as above, therefore, the assessee requested for three weeks time but the case was adjourned to 3.10.2007 (<i>page 14 of paper book</i>).</p>
4.10.2007	<p>Since on 25.9.2007, the assessee had requested for three weeks time but only one week time was granted. Therefore, on assessee's request, the case was adjourned to 12.10.2007.</p>
12.10.2007	<p>Assessee submitted that deposit ledgers are part of books of account and section 131 provides for production of books of account / documents. It does not envisage calling of information on CD. It was submitted that summons dated 12.9.2007 are beyond jurisdiction as there is no provision to call information on CD. The assessee volunteered to furnish details in print outs (<i>page 18-22 of paper book</i>).</p> <p>In this background, fresh summon u/s 131 was issued on 12.10.2007 (ITA No.3511/D/2011). Thus, summon dated 12.9.2007 asking for details on CD was substituted by printouts and for compliance, the case was adjourned to 22.10.2007 (<i>page 23 & 24 of paper book</i>).</p>

Propositions

The fact that on assessee's request for time, hearing was adjourned to 25.9.2009 and then to 4.10.2007 shows that the Assessing Officer was of the view that assessee's request for time was reasonable. As such, alleged non compliance on 25.9.2007 and 4.10.2007 cannot be said to be without reasonable cause with-in the meaning of section 273B.

Further, on 4.10.2007, hearing was adjourned to 12.10.2007, whence, summons dated 12.9.2007 was substituted by summon dated 12.10.2007. Thus, in effect first summons dated 12.9.2007 were rendered infructuous. In any case, summons dated 12.9.2007 stand merged in second summons dated 12.10.2007. Therefore, no penalty for non compliance of summons dated 12.9.2007 is warranted, more so because non compliance on 25.9.2007 and 4.10.2007 was not without reasonable cause.

It is submitted accordingly.

(C.2) Corresponding to ITA No.- 3511/Del/2012

Brief Synopsis

Issue: Levy of penalty u/s 271A(1)(c) for non compliance of summons u/s 131 dated 12.10.2007.

Facts in brief

Date	Particulars
12.9.2007	<p>Summon u/s 131 was issued (ITA No.3510/D/2011). Assessee was required inter-alia to file details on CD of top 400 depositors of 1500 branches spread all over India as per Annexure-A (<u>page 12 & 13 of paper book</u>).</p> <p>Summon dated 12.9.2007 was received on 15.9.2007 and details were to be furnished on 25.9.2009.</p>
25.9.2009 And 4.10.2007	<p>Since information sought was extensive and substantial time was required to assimilate the data as above, therefore, the assessee requested for three weeks time (<u>page 14 of paper book</u>) but the case was adjourned to 3.10.2007. On 4.10.2007, the case was adjourned to 12.10.2007(<u>page 15-17 of paper book</u>).</p>
12.10.2007	<p>Assessee submitted that deposit ledgers are part of books of account and section 131 provides for production of books of account / documents. It does not envisage calling of information on CD. It was submitted that summons dated 12.9.2007 are beyond jurisdiction as there is no provision to call information on CD. The assessee volunteered to furnish details in print outs (<u>page 18-22 of paper book</u>).</p> <p>In this background, fresh summon u/s 131 was issued on 12.10.2007 (ITA No.3511/D/2011). Thus, summon dated <u>12.9.2007</u> asking for details on CD was substituted by print outs and for compliance, the case was adjourned to <u>22.10.2007</u> (<u>page 23 & 24 of paper book</u>).</p>
22.10.2007	<p>At assessee's request case was adjourned to 2.11.2007.</p>

2.11.2007	Show-cause notice u/s 142(2A) requiring the assessee why Special Audit to its account be not conducted was issued.
5.11.2007	Another show-cause notice u/s 142(2A) was issued (<u>page 25-31 of paper book</u>).
8.11.2007	Detailed reply to the notices issued u/s 142A was filed (<u>page 32-36 of paper book</u>).
20.12.2007 & 26.12.2007	Details in respect of 70 branches were filed. Details furnished was as required by summons dated 12.9.2007 (<u>page 37-42 of paper book</u>).
28.12.2007	Order u/s 142(2A) directing Special Audit was passed (<u>page 43-46 of paper book</u>).

Findings of the Assessing Officer and the CIT(A)

Both the authorities below have taken the view that since the assessee failed to provide the information as asked for, penalty under section 271A(1)(c) was rightly levied.

Propositions:

(i) Assessee is a RNBC engaged in the business of mobilization of deposits through Sahara India, having 1500 branches spread all over India. Case of the assessee is that information called for was in the books of account its agent - Sahara India. Since details are extensive, therefore, time was required to collect data of all branches. Therefore, on 12.10.2007, on assessee's request time to make compliance was extended to 2.11.2007.

(ii) There was reasonable cause for partial compliance of summon dated 12.10.2007. On 12.10.2007, assessee was allowed to make compliance by 2.11.2007. However, on 2.11.2007 itself show-cause u/s 142(2A) requiring the assessee why Special Audit of its account be not conducted was issued. By show-cause u/s 142(2A), number of issues were raised but less than a week was allowed to respond. In fact, immediately after the show-cause u/s 142(2A) dated 2.11.2007, another show-cause u/s 142(2A) was issued on 5.11.2007. The issue raised in show-cause u/s 142(2A) included the issue of depositors, which was subject matter of summons. On 8.11.2007, the assessee filed detail reply to show-cause u/s 142(2A) dated 2.11.2007.

(iii) Since on 2.11.2007, proceedings u/s 142(2A) were taken up, therefore, the assessee was simultaneously required to comply with (a) show cause u/s 142(2A), (b)

assessment proceedings whereby separate details were being called and (c) summons u/s 131. On account of parallel proceedings of different nature, there was some delay in furnishing details sought by summons dated 12.10.2007. Details of depositors in respect of 70 branches were filed on 20.12.2007/26.12.2007. On account of simultaneous proceedings under different sections, there was reasonable cause for partial compliance of summon dated 12.10.2007. It is not a case that the assessee did not comply with summon issued u/s 131 of the Act. Substantial compliance was made. Keeping in view the simultaneous proceedings under different sections, the partial compliance was not unreasonable.

(iv) Section 273B which starts with a non-obstante clause provides that if reasonable cause is shown no penalty shall be levied. In the present case, there was reasonable cause for part compliance of summon dated 12.10.2007 because the assessee was loaded with simultaneous notices including direction to carry on special audit. It may be noted here that order u/s 142(2A) directing Special Audit was passed on 28.12.2007.

(v) Even the CIT(A) at para 10 of the order has accepted that details as asked by the Assessing officer was voluminous and had to be collected and assimilated.

(vi) On similar facts, penalty levied under section 271A(1)(c) for assessment years 1999-00 to 2002-03, was deleted by this Hon'ble Tribunal by order dated 23.5.2008 in ITA No. 581, 586 to 589/Del/2006 (page 52-56 of paper book).

It is submitted accordingly.

(D) In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), a Paper Book was filed from assessee's side, containing the following particulars:

- 1. Notice u/s 143(2) dated 10.9.2007*
- 2. Notice u/s 142(1) dated 10.9.2007 with questionnaire*
- 3. Summons u/s 131 dated 12.9.2007*
- 4. Letter of the Appellant dated 25.9.2007 filed before AO*
- 5. Submissions dated 4.10.2007 filed before AO*
- 6. Submissions dated 12.10.2007 filed before AO*
- 7. Summons u/s 131 dated 12.10.2007*
- 8. Notice u/s 142(2A) dated 5.11.2007 to conduct special audit*
- 9. Submissions dated 8.11.2007 filed before AO*
- 10. Submission dated 20.12.2007 filed before AO*
- 11. Submissions dated 26.12.2007 filed before AO*
- 12. Order us 142(2A) dated 28.12.2007 directing Special Audit*
- 13. Notice us 272A(1)(c) dated 30.1.2009*
- 14. Submissions dated 6.4.2009 filed before AO*
- 15. Order of ITAT dated 23.5.2008 passed in ITA 581,586 to 589/Del/2006 for AY 1999-00, 2001-02 & 2002-03*

(E) At the time of hearing before us, the Ld. Counsel for assessee submitted that summons U/s 131 dated 12.09.2007 required the assessee to file the details in a Compact Disk ("CD"). However, according to him, there was no statutory obligation on the part of the assessee to submit the information in the form of CD and that filing of the details in the form of printouts is sufficient compliance. However, he fairly admitted

that even in the form of printouts, no details were submitted by the assessee in response to the aforesaid summons dated 12.09.2007. Regarding the summons dated 12.10.2007, the Ld. Counsel for assessee submitted that the same information which was earlier called for by the AO vide summons dated 12.09.2007 in the form of CD were now called for in the form of print outs vide summons dated 12.10.2007. The Ld. Counsel for assessee submitted that partial compliance was made to the aforesaid subsequent summons dated 12.10.2007. The Ld. Counsel for assessee also relied on order dated 23.05.2008 of Co-ordinate Bench of ITAT, Delhi, in ITA No. 581, 586 to 589/Del/2006 for Assessment Years 1999-00, 2001-02 & 2002-03 wherein Coordinate Bench of ITAT, Delhi had deleted penalty levied U/s 272A(1)(c) of I.T. Act. He also took us through the contents of the Paper Book; and contended that the penalties levied U/s 272A(1)(c) of I.T. Act for Assessment Year 2005-06, which are the subject matter of the present appeal before us should also be deleted. However, the Learned Departmental Representative ("Ld. DR", for short) submitted that the aforesaid order dated 23.05.2008 of Co-ordinate Bench of ITAT, Delhi is distinguishable because in the facts and circumstances of the aforesaid order dated 23.05.2008 it was held by ITAT that the assessee had not omitted to produce the books of accounts or documents; whereas in the facts and circumstances of the appeals before us, the assessee had failed to file all the details, and details were only partially submitted in the form of printouts. The Ld. Counsel for assessee also admitted that the assessee had failed to ensure full compliance of the summons dated 12.09.2007 and 12.10.2007; and had in fact submitted only partial details in the form of printouts in response to summons

dated 12.10.2007 whereas no details were submitted (in the CD or in the form of printouts) in response to summons dated 12.09.2007. . He also relied on orders of Ld. Addl. CIT and Ld. CIT(A).

(F) We have heard both sides. We have perused the materials available on records. We have also considered the precedents brought to our attention or referred to in the records. It is not in dispute that the assessee had submitted only partial details in the form of printouts in response to summons dated 12.10.2007 whereas no details were submitted (in the CD or in the form of printouts) in response to summons dated 12.09.2007. Thus, it is not in dispute that the assessee had failed to submit the full details required by the AO vide aforesaid summons dated 12.09.2007 and 12.10.2007 either in the form of CD or in the form of printouts. The perusal of the orders of the Ld. Addl. CIT and the Ld. CIT shows that the assessee had been provided several opportunities and despite that these required details were not submitted in entirety. Even if it is the case of the assessee, that there was no requirement to submit details in CD, and that submission in form of printout was sufficient; even then, the fact remains that there was absence of full compliance even in the form of printouts, and only partial compliance by way of submission in the form of printouts, has been made. In view of the foregoing facts and circumstances; and considering that aforesaid order dated 23.03.2008 of Co-ordinate Bench of ITAT, Delhi is distinguishable, as mentioned in foregoing paragraph (E) of this order; we have find that the aforesaid penalty levied by Ld. Addl. CIT, and confirmed by the Ld. CIT(A); was just and proper in the facts and

circumstances of the appeals before us. Accordingly, penalties levied by the Addl. CIT and confirmed by the Ld. CIT(A) are hereby upheld.

(G) In the result, appeal filed by assessee is dismissed.

Order pronounced in the open court on 07/11/2019.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 07/11/2019
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	