

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI**

**BEFORE MS SUSHMA CHOWLA, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No.5602/Del/2017
Assessment Year: 2014-15

Mamta Malani,
C/o V.P. Vijn & Co., CA,
KK Tower, 1st & 2nd Floor,
Opp. Circuit House,
Jalandhar, Punjab.
PAN: ADGPM0644K

Vs Addl. CIT,
Range-36,
New Delhi.

ITA No.5603/Del/2017
Assessment Year: 2014-15

Ramanand Malani,
C/o V.P. Vijn & Co., CA,
KK Tower, 1st & 2nd Floor,
Opp. Circuit House,
Jalandhar, Punjab.
PAN: ABBPM6542K

Vs. Addl. CIT,
Range-36,
New Delhi.

ITA No.5604/Del/2017
Assessment Year: 2014-15

Parmanand Malani,
C/o V.P. Vijn & Co., CA,
KK Tower, 1st & 2nd Floor,
Opp. Circuit House,
Jalandhar, Punjab.
PAN: AAFPM2920E

Addl. CIT,
Range-36,
New Delhi.

ITA No.5605/Del/2017
Assessment Year: 2014-15

Anjali Malani,
C/o V.P. Vijn & Co., CA,
KK Tower, 1st & 2nd Floor,
Opp. Circuit House,
Jalandhar, Punjab.
PAN: AIZPM6343F

Vs. Addl. CIT,
Range-36,
New Delhi

ITA No.5606/Del/2017
Assessment Year: 2014-15

Vijay Laxmi Malani,
C/o V.P. Vijn & Co., CA,
KK Tower, 1st & 2nd Floor,
Opp. Circuit House,
Jalandhar, Punjab.
PAN: AAFPM2919M

Vs. Addl. CIT,
Range-36,
New Delhi

(Appellant)

(Respondent)

Assessee by	:	None (Written submissions)
Revenue by	:	Shri Surender Pal, Sr. DR
 Date of Hearing	 :	 28.11.2019
Date of Pronouncement	:	29.11.2019

ORDER

PER R.K. PANDA, AM:

The above batch of five appeals filed by the respective assessees are directed against the separate orders dated 29th June, 2017 of the CIT(A)-12, New Delhi, relating to assessment year 2014-15. Levy of penalty of Rs.10,000/- each u/s 272A(1)(c) of the IT Act by the Addl. CIT and upheld by the CIT(A) is the only issue raised by the assessees in their grounds of appeal.

2. For the sake of convenience, these were heard together and are being disposed of by this common order.

3. None appeared on behalf of the assessee. However, written submissions have been filed and it has been requested to consider the same. Therefore, all these

appeals were decided on the basis of the written submissions filed and after hearing the ld. DR.

4. First we take up ITA No.5604/Del/2017 in the case of Parmanand Malani as the lead case.

5. Facts of the case, in brief, are that during the course of assessment proceedings in the case of the assessee, summons u/s 131 of the Act was issued by the ACIT, Circle 36(1) on 10.11.2016 fixing the case of hearing on 17th November, 2016. However, none appeared on behalf of the assessee nor any written reply filed before the Assessing Officer. He, therefore, referred the matter to the Addl.CIT u/s 272A(3) of the Act. The Addl.CIT issued a show cause notice u/s 272A(1)(c) to the assessee on 23.11.2016 to explain as to why penalty should not be levied for non-compliance to the summons u/s 131 of the Act. The assessee submitted before the Addl.CIT that he was prevented by sufficient cause for non-appearance on 17.11.2016 due to the deteriorating health of his grandmother. It was submitted that the counsel had assured him to seek necessary adjournment. However, he was also personally prevented to attend the office of the Assessing Officer due to the death of a near relation, but, he had telephoned the Assessing Officer and took adjournment for next date i.e., 18.11.2016 which was duly complied with. However, the Addl. CIT was not satisfied with the submissions made by the assessee. According to him, the assessee did not comply with the summons issued u/s 131 and did not give any prior intimation to the Assessing

Officer regarding his inability to attend the office on 17.11.2016 which was the date fixed for recording the statements. The assessee informed the Assessing Officer telephonically only after the given time and instead of appearing on 18.11.2016, the assessee appeared only on 24.11.2016. He also disbelieved the illness of the aged grandmother of the assessee on the ground that she was admitted in the hospital on 02.11.2016 which is almost 15 days before the date of hearing as per the summons issued by the assessee and that she was discharged on the very same day. In view of the above, ld. Addl.CIT levied penalty of Rs.10,000/- for non-compliance of the statutory notice u/s 131 of the Act.

6. Similar penalty has been levied by the Addl.CIT in other cases also.

7. Before the CIT(A), the assessee challenged the levy of penalty of Rs.10,000/-. It was submitted that the assessee along with his father Shri Kailash Chand Malani attended the office of the Assessing Officer on 18.11.2016 who informed him that he should appear on 24.11.2016. Evidence of his visit in the shape of visitor's slip was also enclosed. The assessee, along with his counsel again appeared on 24.11.2016 and was directed to visit on 29.11.2016. On 29.11.2016 when he attended his statement was recorded. It was accordingly argued that the levy of penalty is not justified. It was further submitted that when the head of the family was taken to a major hospital who subsequently passed away on 13th February, 2017, it is not justified on the part of the Addl.CIT to levy penalty. The provisions of section 273B was also brought to the notice of the

CIT(A). However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the penalty levied by the Addl.CIT by observing as under:-

“9. Decision

9.1 During the course of assessment proceedings, Assessing Officer has issued Summons for appearance on 17.11.2016, however, nobody attended neither any written reply was filed on that date. Accordingly, Assessing Officer referred the matter to the office of Addl. CIT for issue of show cause notice u/s 272A(l)(c). Addl. CIT on perusal of the reply filed by the Assessee Addl. CIT held that the Appellant did not comply with the Summons issued u/s 131(1). She held that the Appellant was very causal in response to the notices issued by Assessing Officer and he could not justify the non compliance of Summons issued by Assessing Officer. Accordingly, she imposed a penalty of Rs. 10,000/- for non compliance to the statutory notice u/s 131(1). Appellant during appeal has stated that he could not attend due to the illness of his grandmother and the Counsel could not appear because of the death of his relative and, therefore, the penalty u/s 272A(l)(c) may be deleted as he has reasonable cause for non compliance.

9.2 I have considered the observations of the Assessing Officer and submissions of the Appellant. It is seen that Assessing Officer had issued Summons to 6 family members of Appellant family including the Appellant and different timing were given for compliance. However, it is seen that Appellant did not appear on 17.11.2016 at the given time. The Counsel of the Appellant informed the Assessing Officer on 17.11.2016 that due to some urgency, the Assessee cannot appear, in compliance to Summons and he intimated that he will appear on 18.11.2016. Finally, it is seen that on 24.11.2016 Appellant along with his Counsel appeared and requested for exemption on the ground that an aged family members of the family was critically ill. On 29.11.2016 the Appellant attended and his statement was recorded on oath.

9.3 From the perusal of the document submitted it is seen that Appellant's relative late Mrs. Geeta Devi was admitted on 02.11.2016 and she was discharged on the same day. It is apparent that this claim of the Appellant that he could not appear because of sick family member is not substantiated as she was admitted for treatment on 02.11.2016 and on the same day, she was discharged from Hospital. Further, it is seen that Appellant's is a big family and they are residing at the same address in the same residence and therefore, other family members were also available for taking care of the sick person who expired later. It is also not the claim of Appellant that he was the only family member to look after and as such, he was not in a position to appear for

deposition before the Assessing Officer. Therefore. Appellant's claim lacks substance. Appellant has also not given any document in support of his claim that his Counsel could not appear due to death of his relative. The statement of Appellant has been finally recorded on 29.11.2016, however, it is apparent that Appellant was avoiding to appear in compliance to the Summons for recording his statement. This is also apparent from the fact that he has posted the letter on 18.11.2016 stating the reasons for non appearance on 17.11.2016 which was received by Assessing Officer on 22.11.2016. Therefore, Appellant has been casual and non-serious in attending to the Summons issued by the Assessing Officer and he has not been able to justify or substantiate the reasons for his non-compliance on 17.11.2016. I find no infirmity in the order of Addl. CIT. Facts of the case relied on by Appellant are different. Therefore, in view of the facts and circumstances of the case, Penalty u/s 272A(1)(c) of Rs. 10,000/- is sustained.

10. In the result, the appeal is dismissed.”

8. Similar observations have been given in other appeals also.

9. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

10. We have considered the written submissions filed by the assessee and heard the Id. DR. It is an admitted fact that the assessee did not appear before the Assessing Officer on 17.11.2016 at the given time, but, it is also an admitted fact that at 5.30 PM on 17.11.2016, the Assessing Officer was telephonically informed and communicated that he will appear on the very next day i.e., 18.11.2016. A chronology of events stated before the CIT(A) shows that the assessee was asked to appear on 24.11.2016 who, in fact, has appeared and was given time again on 29.11.2016 and his statement was recorded. We further find from the submissions before the CIT(A) that the grandmother of the assessee who was ill and for which the assessee was unable to attend the office of the ACIT has expired on 13th

February, 2017. In the instant case, CIT(A) disbelieved the claim of the assessee that the counsel could not appear due to the death of his relative in absence of any documentary evidence, but, in our opinion, it is very difficult to get documentary evidence for the death of a close relation for submitting before the CIT(A) to seek adjournment. The lower authorities should have at least believed the counsel who is making a statement that there is death of his relation. As per the provisions of section 273B, penalty u/s 272A(1)(c) shall not be imposable on the person or the assessee as the case may be for any failure referred to in the said provision if he proves that there was a reasonable cause for the said failure. In our opinion, the facts in the instant case show that there was a reasonable cause on the part of the assessee for not appearing on the appointed date who has subsequently appeared before the Assessing Officer and his statement was recorded. Under these circumstances, we are of the considered opinion that it is not a fit case for levy of penalty of Rs.10,000/- u/s 272A(1)(c). We, therefore, set aside the order of the CIT(A) and the penalty levied by the Addl.CIT is directed to be deleted. The ground raised by the assessee on this issue is accordingly allowed.

11. In the other cases, although the persons did not appear before the Assessing Officer, however, they are all family members. Therefore, following our reasonings given above that there was a reasonable cause for non-appearance on the appointed day, as per the provisions of section 273B, we set aside the order of the Id.CIT(A) and direct the Addl.CIT to cancel the penalty.

12. In the result, all the five appeals filed by the respective assessee are allowed.

The decision was pronounced in the open court on 29.12.2019.

Sd/-

Sd/-

(SUSHMA CHOWLA)
JUDICIAL MEMBER

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 29th November, 2019

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi

		Date
1.	Draft dictated on	28.11.2019
2.	Draft placed before the author	29.11.2019
3.	Draft placed before the other Member	
4.	Approved Draft comes to the Sr.PS/PS	
5.	Order uploaded on	
6.	File sent to the Bench Clerk	
7.	Date on which file goes to the Head Clerk.	
8.	Date on which file goes to the AR	
9.	Date of dispatch of Order.	