

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC” NEW DELHI**

BEFORE SHRI RAMA KANT PANDA, ACCOUNTANT MEMBER

I.T.As. No.3143 to 3146/DEL/2015
Assessment Years: 2005-2006 to 2008-09

Ms. Shibani Malhotra, G-8, Maharani Bagh, New Delhi.	vs.	ACIT, Central Circle-5, New Delhi.
TAN/PAN: AASPM7492G		
(Appellant)		(Respondent)

Appellant by:	Shri Tanpreet Kohli, CA		
Respondent by:	Shri Om Prakash, Sr.DR		
Date of hearing:	13	01	2022
Date of pronouncement:		01	2022

ORDER

The above four appeals filed by the assessee are directed against the common order dated 16th February, 2015 of Id. Commissioner of Income Tax (Appeals)-XXIV, New Delhi [for short “CIT(A)"] relating to Assessment Years 2005-06, 2006-07, 2007-08 and 2008-09, respectively.

2. For the sake of convenience these appeals were heard together and are being disposed of by way of this consolidated order.

2.1 These appeals were earlier dismissed by the Tribunal for non prosecution. Subsequently, the Tribunal vide order dated 27th

October, 2021 in MAs No.544/Del/2018 to 547/Del/2018 recalled its earlier order. Hence these are recalled matters.

3. In all these appeals, the assessee has challenged the order of the CIT(A) in confirming the levy of penalty of Rs.10,000/- each u/s.271(1)(b) of the IT Act.

3.1 First we take up ITA No.3143/Del/2015 for Assessment Year 2005-06 as lead case. The facts of the case in brief are that the assessee is an individual. A search and seizure operation u/s.132(1) of the Act was carried out at the business premises of company M/s. Asia Sugar Industries Pvt. Ltd. (Samir Thukral) group of companies and residential premises of the directors of the company on 28th March, 2011. In response to notice u/s.153A, the assessee filed her return of income on 20th July, 2005 declaring total income of Rs.1,50,720/-. The Assessing Officer completed the assessment u/s.153A/143(3) at Rs.1,50,720/-. However, since the assessee during the course of assessment proceedings only filed the details of the bank account and thereafter failed to appear on 27th December, 2012 and did not comply to notice u/s.142(1) and 143(2), the Assessing Officer initiated the proceedings u/s.271(1)(b) of the IT Act. Rejecting the various explanations given by the assessee, the Assessing Officer levied penalty of Rs.10,000/- for Assessment Years 2005-06. Similar penalty has been levied for Assessment Years 2006-07 to 2008-09.

4. In appeal, the ld. CIT(A) confirmed the penalty levied by the Assessing Officer.

5. Aggrieved with such order of the ld. CIT(A), the assessee is in appeal before the Tribunal challenging the penalty sustained by the ld. CIT(A).

6. Ld. counsel for the assessee filed the order of the Tribunal in the case of Glenasia Commodities Pvt. Ltd. vs. ACIT in ITA No. 589, 590 and 591/Del/2015 order dated 3rd October, 2017 and the decision in the case of Odimco Technologies P. Ltd. and batch of other appeals vide order dated 2nd May, 2018 and submitted that under identical circumstances, where the assessments were completed u/s.143(3) the penalty levied u/s.271(1)(b) of the Act was deleted. He submitted that since in the instant case also the assessments are completed u/s.143(3), therefore, the penalty levied by the Assessing Officer and sustained by the ld. CIT(A) should be deleted.

7. On the other hand, ld. DR heavily relied upon the order of the ld. CIT(A).

8. I have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before us. I find the Assessing Officer levied penalty of Rs.10,000/- u/s. 271(1)(b) of the IT Act 1961 on the ground that the assessee did not comply to the notice u/s.142(1) and 143(2) and apart from filing the bank details did not appear. I find that ld. CIT(A) sustained the penalty so levied by the Assessing Officer. I find the assessment in the instant case was completed u/s.143(3)/153A. I find an identical issue had

come up before the Tribunal in the case of Odimco Technologies Pvt. Ltd. and batch of other appeals including that of Ms. Sajni Thukral. I find the Tribunal deleted the penalty levied u/s.271(1)(b) of the Act by observing as under:

“6. We have gone through the record in the light of the submissions on either side. In the case of a group company in Glenasia Commodities Pvt. Ltd., vs. A.C.I.T. ITA No. 589, 590 & 591/Del./2015, a coordinate Bench of this Tribunal held as follows:

6. We have heard the rival submissions and have perused the entire material available on record. A perusal of the penalty order reveals that the Id. Assessing Officer has rejected the explanation of the assessee on the premise that after issuance of notice dated 06.12.2012, the assessee sought the copies of seized material vide letter submitted on 18.01.2013, i.e., about one and half months and nothing prevented the appellant to seek the copies of seized material at earlier stage. We do not agree with this observation of the AO in view of the contention of the assessee that the assessee had already made requests for the same vide letters dated 06.04.2011 and 24.05.2012, which fact appears to have been ignored by the authorities below. The contention of huge quantum of work with respect to same cause of action in other group of cases, in the attending facts and circumstances can also not be ruled out. Moreover, the assessment orders in the present cases have been passed by the AO u/s. 153A read with section 143(3) and therefore, in view of the decision relied by assessee in case of Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust, 115 TTJ 419, no penalty u/s. 271(l)(b) can be sustained. The relevant findings read as under:

"We also find that the finally the order was passed under s. 143(3) and not under s. 144 of the Act. This means that subsequent compliances in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO. Therefore, in such circumstances, there could have been no reason to come to the conclusion that the default was willful."

7. In the instant case the notice issued for hearing on 20.12.2012 stood complied with, as the AR of the assessee attended the proceedings on this date and submitted reply/details which he had in possession. The Id. DR also could not refute the contention of the assessee that all the information/details stood filed with the department before receipt of show cause notice of penalty on 31.01.2013.

8. It is also pertinent to mention here that in the cases of assessee the AO appears to have levied the penalty for seven assessment years, i.e., from 2005-06 to 2011-12 and the Id. CIT(A) deleted the penalty for the 4 assessment years i.e. the assessment years 2008-09 to 2011-12, considering the explanation of the assessee as plausible. However, the same explanation was not considered as proper for the remaining assessment years i.e. assessment years 2005-06 to 2007-08. In our opinion, the stand taken by the Id. CIT(A) was not justified particularly when he was satisfied that there was a proper and plausible explanation for the 4 out of the 7 assessment years for which penalty was levied by the AO u/s 271(l)(b) of the Act.

9. In view of above discussion, we do not find cogent reason to observe any willful default on the part of the assessee or non-

cooperative attitude with the department. Therefore, we find no justification to sustain the penalty imposed u/s. 271(l)(c) of the Act.

7. Further, under similar circumstances, in the case of Globus Infocom Limited VS DCIT ITA 738/12/2014, a coordinate bench of this tribunal while following the decision in Akhil Bharatiya Prathamik Shaikshak Sangh Bhawan trust versus ACIT deleted the penalty levied under section 271(l)(b) of the Act. Facts being similar in all these matters, while respectfully following the view taken by the coordinate benches under similar circumstances, we are of the considered opinion that the plea taken by the assessee that because of the huge work involved in furnishing information in 12 cases for 6 years constitutes a proper and plausible explanation. Further, we find that the ratio laid down in Akhil Bharatiya Prathamik Shikshak Sangh Bhawan trust's case squarely applies to the facts of this batch of cases. We, therefore, find that the penalty levied under section 271(l)(b) of the act cannot be sustained. We accordingly direct the Ld. AO to delete the same.

8. In the result all this piece of the assesseees are allowed.

9. Since the facts of the instant case are identical to the facts of the case decided by the Tribunal, therefore, in absence of any contrary material brought to my notice, the penalty levied by Assessing Officer and sustained by the ld. CIT(A) is directed to be deleted. The appeal filed by the assessee is accordingly allowed.

10. Since the facts of the other appeals are identical to the facts of the case for Assessment Year 2005-06, therefore, following

similar reasoning I direct the Assessing Officer to cancel the penalty levied u/s.271(1)(b) of the IT Act, 1961.

11. In the result, all the four appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 27th January, 2022

Sd/-

[RAMA KANT PANDA]

[ACCOUNTANT MEMBER]

DATED: 27/01/2022

Prabhat