

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITAs No.145, 146, 147, 153, 154, 155, 156, 157, 158, 159 & 365/Del/2024  
Assessment Years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16,  
2016-17, 2017-18 & 2018-19

M/s. Sri Prem Properties Pvt. Ltd. A-99, Near Bajghera Chowk Neaw Palam Vihar Phase-I Section 110, Gurugaon Haryana-122017	Vs.	<b>DCIT, Central Circle-4 New Delhi</b>
TAN/PAN: AAACS2554E		
(Appellant)		(Respondent)

Applicant by:	Dr. Rakesh Gupta, Advocate Sh. Somil Agarwal, Advocate Sh. Deepesh Garg, Advocat		
Respondent by:	Shri P.N. Barnwal, CIT-DR		
Date of hearing:	02	05	2024
Date of pronouncement:	15	05	2024

**ORDER**

**PER PRADIP KUMAR KEDIA - A.M.:**

The captioned Appeals have been preferred by the assessee against the respective orders passed by the CIT(A) for captioned assessment years as tabulated below:

<b>Sr. No.</b>	<b>ITA/CO Nos.</b>	<b>Appeal by</b>	<b>A.Y.</b>	<b>Pr.CIT Order dated</b>	<b>Assessment Order dated</b>	<b>Remarks</b>
1.	ITA No.145/Del/2024	Assessee	2009-10	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 271(1)(b) of the Income Tax Act, 1961.
2	ITA No.146/Del/2024	Assessee	2010-11	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 271(1)(b) of the Income Tax Act, 1961.
3.	ITA No.147/Del/2024	Assessee	2011-12	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 271(1)(b) of the Income Tax Act,

						1961.
4.	ITA No.153/Del/2024	Assessee	2012-13	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 271(1)(b) of the Income Tax Act, 1961.
5.	ITA No.154/Del/2024	Assessee	2013-14	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 271(1)(b) of the Income Tax Act, 1961.
6.	ITA No.155/Del/2024	Assessee	2014-15	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 271(1)(b) of the Income Tax Act, 1961.
7.	ITA No.156/Del/2024	Assessee	2015-16	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 271(1)(b) of the Income Tax Act, 1961.
8.	ITA No.157/Del/2024	Assessee	2016-17	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 271(1)(b) of the Income Tax Act, 1961.
9.	ITA No.158/Del/2024	Assessee	2017-18	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 272A(1)(d) of the Income Tax Act, 1961.
10.	ITA No.159/Del/2024	Assessee	2019-20	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 272A(1)(d) of the Income Tax Act, 1961.
11.	ITA No.365/Del/2024	Assessee	2018-19	CIT(A)-23, New Delhi order dated 13.12.2023	Penalty order dated 27.07.2023	Penalty Order under section 272A(1)(d) of the Income Tax Act, 1961.

2. When the matter was called for hearing, the Id. counsel for the assessee contested the imposition of penalty of Rs.10,000/- each under Section 271(1)(b) of the Act towards purported non-compliance of notice issued by AO under Section 142(1) of the Act. In this regard, the Id. counsel made three fold submissions.

2.1 Firstly, notice under Section 142(1) dated 25.08.2022 was signed by the AO on 26.08.2022 at IST 18:02:31 in the evening. Next dates 27<sup>th</sup> & 28<sup>th</sup> August, 2022 were non working days being Saturday and

Sunday. The compliance date for impugned notice under Section 142(1) was fixed on 31.08.2022. Thus only two working days were given for compliance of notice in respect of 11 old cases going on simultaneously. The non-compliance of the aforesaid notice under Section 142(1) has resulted in imposition of penalty of Rs.10,000/- for each assessment year in question without giving any effective opportunity.

(b) Secondly, the notice of demand for Rs. 10,000/- under Section 156 of the Act was issued at IST 15:46:33 whereas the impugned order under Section 271(1)(b) giving rise to such demand was issued on the same day, i.e., 28.07.2023 but at IST 15:57:49. Apparently, the notice of demand has been generated prior to issuance of order under Section 271(1)(b). Such action of the AO is contrary to provisions of Section 156 of the Act which provides for issuance of notice of demand in consequence of an order passed giving rise to such demand. Hence, the notice of demand could have been issued only along with the penalty order in question or later thereto. The notice of demand issued at earlier point of time in breach of phraseology of Section 156 of the Act, thus suffers from legal infirmity.

(c) Thirdly, as per additional grounds raised in different assessment years, the original proceedings under Section 153C itself are vitiated either on the grounds of bar of limitation or owing to lack of any incriminating documents available for framing assessment under Section 153C, as the case may be. The assessment proceedings giving rise to the present penalty proceedings are thus either *non-est* and stood lapsed being such assessment passed beyond the limitation period or the proceedings under Section 153C without any reference to incriminating material found in the case of search person belonging to or pertaining to the assessee herein.

2.2 The Id. counsel also urged for the admission of the additional

grounds of appeal being legal in nature and further urged for quashing the penalty imposed under Section 271(1)(b) of the Act for different assessment years. A reference was made to the judgment rendered in the case of *Pr.CIT vs. Ojjus Medicare Pvt. Ltd., and Ors. in ITA No.52/2024 & Ors., dated 03.04.2024* claiming bar of limitation and invalid assessment in the absence of incriminating material with reference to *CIT vs. Sinhgad Technical Education Society (2017) 84 taxmann.com 290 (SC)*.

2.3 The ld. counsel next pointed out that in relation to A.Y. 2019-20, the penalty has been imposed under Section 272A(1)(d) which provision also provides for imposition of penalty for non-compliance of notices under Section 142(1) of the Act. The ld. counsel submitted that his contention in respect of other assessment years applies *mutatis mutandis* to A.Y. 2019-20 being on similar footing.

3. The ld. DR for the Revenue, on the other hand, referred to the penalty order passed under Section 271(1)(b) of the Act and contended that the assessee was under statutory obligation to respond and answer to the notice issued under Section 142(1) of the Act or in the alternative ought to have sought adjournment. The assessee has neither filed any submission nor any adjournment was sought by it and therefore, reasonable cause for waiver of penalty did not exist in the present case. The ld. DR also contended that the validity of the assessment proceedings is not a subject matter of debate in the present appeals and therefore, the additional grounds raised are of no avail.

4. We have carefully considered the rival submissions.

5. The imposition of penalty under Section 271(1)(b)/272A(1)(d) of Rs.10,000/- each for different assessment years captioned above towards non-compliance of notice issued under Section 142(1) is in controversy. It is the case of the assessee that the time line given for

compliance of notice issued under Section 142(1) in all the assessment years is very scarce and only two working days were made available for arduous compliance. The opportunity given is thus illusory and an empty formality. Non-compliance of notice involving around 11 assessment years in a span of two working days is beyond comprehension and therefore, the presence of reasonable cause does not require any long drawn reasoning.

6. We find ourselves in complete agreement with the aforesaid plea of the assessee. The opportunity given for compliance of statutory notice must be real and effective. Recently, the Hon'ble Bombay High court in the case of *Indian Education Society vs. ACIT(E) (Bom.) order dated 12<sup>th</sup> March, 2024* has *inter alia* observed that weekend cannot be counted for the purpose of days available for compliance. Hon'ble Madras High Court in the case of *S. Velu Palandar vs. Deputy Commercial Tax Officer (1972) 83 ITR 683 (Mad.)* has observed that opportunity given to the assessee must be real, effective and realistic and not merely notional.

7. Ostensibly, the non-compliance of notice issued under Section 142(1) in present circumstances, marred with lack of adequate opportunity, cannot lead to imposition of penalty. Consequently, the penalty imposed under Section 271(1)(b) / 272A(1)(d) in respect of captioned appeals deserves to be quashed on this score alone. We also simultaneously observe that the notice of demand under Section 156 issued prior to issuance of penalty order yet again defies the mandate of Section 156 of the Act. The penalty sought to be recovered by such notice of demand thus also rest on thin ice.

8. In view of the delineations made above, we do not consider it necessary to delve into additional grounds raised on jurisdictional aspect of the assessment proceedings for the purposes of determination of penalty imposed. In view of above discussion, the assessee is

exonerated from clutches of penalty under Section 271(1)(b) / 272A(1)(d) in all captioned appeals.

9. In the result, all the captioned appeals of the assessee are allowed.

**Order pronounced in the open Court on 15 May, 2024.**

Sd/-

**[SUDHIR KUMAR]  
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

DATED: May, 2024  
*Prabhat*