

IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai

Before Shri Jason P. Boaz, Accountant Member  
and Shri Sandeep Gosain, Judicial Member

ITA Nos. 5079 to 5085/Mum/2014  
(Assessment Years: 2006-07 to 2012-13)

M/s. Unity Infraprojects Ltd. 1252, Pushpanjali Apartment Old Prabhadevi Road Prabhadevi, Mumbai 400001 PAN - AAACU4560E	Vs.	ACIT, Central Circle - 45 Mumbai
Appellant		Respondent

Appellant by: Shri Vijay Mehta  
Respondent by: Shri R.A. Dyani

Date of Hearing: 09.05.2016  
Date of Pronouncement: 17.05.2016

O R D E R

Per Jason P. Boaz, A.M.

These appeals by the assessee are directed against the consolidated orders of the CIT(A)-38, Mumbai dated 30.06.2014 for assessment years 2006-07 to 2012-13.

2. The facts of the case, briefly, are as under: -

2.1 A search and seizure action under section 132 of the Income Tax Act, 1961 (in short 'the Act') was conducted by the Department at the premises of the Unity group of concerns on 10.02.2012. In the course of assessment proceedings, the Assessing Officer (AO) had issued notice under section 142(1) of the Act dated 11.10.2013 for assessment years 2006-07 to 2012-13 requiring the assessee to furnish details called for at S.Nos. 1 to 26 of the questionnaire thereto by 10.30 a.m. on 17.10.2013. The assessee vide letter dated 18.10.2013 addressed to the AO submitted that since the said notice was received only on 17.10.2013, the assessee could not attend the hearing, but however enclosed details of purchases for A.Y. 2006-07 and submitted that the balance details are under

preparation and would be filed in due course. The AO then by a further letter dated 10.12.2012 addressed to the assessee observed that even though a month had passed the compliance with to the notice under section 142(1) dated 11.10.2013 is not complete and sought complete compliance thereto by 13.12.2012.

2.2 The AO then issued a notice under section 274 r.w.s. 271(1)(b) of the Act dated 16.12.2013 calling upon the assessee to show cause on or before 18.12.2013 as to why penalty under section 271(1)(b) of the Act should not be levied on it for non-compliance to the notice issued under section 142(1) of the Act on 11.10.2013. In response thereto, the assessee furnished its reply dated 17.12.2013, inter alia, submitting that there were 12 assesseees in the 'Unity Group' who were subjected to search assessments for seven years and therefore in total 84 search assessments were underway (viz. Notices to the other 11 assessee's were issued on 14.10.2013 calling for details by 19.10.2013). Therefore it was difficult to furnish the entire details of 26 items called for within a day or two for all the assessee's of the group for seven years. It was submitted that even in the hearing on 10.12.2013, the AO had raised 30 more queries, the details of which were required to be filed by 13.12.2013. It was also submitted that various details had been filed by the assessee group upto 13.12.2013 and that the assessee was facing hardships due to the festive season, shortage of employees due to leave and heavy work load. These explanations of the assessee were not accepted and the AO proceeded to levy penalty of ₹10,000/- in the case on hand for each of the assessment years 2006-07 to 2012-13 vide orders dated 19.12.2013.

3. Aggrieved by the orders of the AO dated 19.12.2013 levying penalty of the ₹10,000/- under section 271(1)(b) of the Act for each of the assessment years 2006-07 to 2012-13, the assessee preferred appeals before the CIT(A)-38, Mumbai. Before the learned CIT(A), the assessee submitted a chart showing the list of details submitted to the AO for the entire Unity group from 18.10.2013 to 16.12.2013, i.e. the date on which the reply to the penalty notice was issued. Further, a proceeding sheet was

also submitted by the assessee in its own case showing the sequence of events which took place from the date of issuance of notice under section 153A till 17.12.2013, i.e. the date on which the notice under section 271(1)(b) was issued. The learned CIT(A) did not accept the submissions put forth by the assessee and upheld the levy of penalty of ₹10,000/- under section 271(1)(b) of the Act for each of the assessment years 2006-07 to 2012-13, observing as under: -

- (i) that the provisions of section 271(1)(b) of the Act empowers the AO to levy penalty in respect of each of the failures and the only ground on which an assessee can seek exception from levy of penalty is by offering an explanation with regard to any reasonable cause for not complying with the notices;
- (ii) that substantial details were not filed by the assessee over the period of two months;
- (iii) that heavy workload cannot be reasonable cause for not furnishing the information for more than two months;
- (iv) on the assessee's averments that explanations in respect of seized material was submitted to the Investigation of the Department and would be in the possession of the AO, the learned CIT(A) stated that it is the AO who passes the assessment order and not the Investigating Wing of the Department and therefore the assessee ought to have submitted details pertaining to the explanation to seized material.
- (v) It is not the assessee who decides what information should be given first and what information can wait. Rather, it is the jurisdiction of the AO to prioritize such information."

4.1 Aggrieved by the impugned orders of the CIT(A)-38, Mumbai dated 30.06.2014 for assessment years 2006-07 to 2012-2013, the assessee has raised the following common grounds of appeal for all the concerned seven assessment years: -

*"Ground No. 1*

*On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in confirming the penalty levied by the Assessing Officer u/s. 271(1)(b) of the Income Tax Act, 1961 amounting to ₹10,000/-. The appellant prays that the same be deleted."*

4.2.1 The learned A.R. for the assessee was heard in support of the grounds raised. It was submitted that search under section 132 of the Act was conducted on the premises of the Unity group and subsequent thereto

notices under section 153A/153C of the Act were issued in the case of 12 assessee's of this group, of which the assessee is a part; and therefore for the 84 assessments in this group details were to be filed. According to the learned A.R. for the assessee the questionnaire annexed to the notice issued under section 142(1) of the Act dated 11.10.2013 calling for details to be filed by 17.10.2013, consisted of 26 queries for 7 years and certain details were to be furnished as per specific formats as mentioned in the notice (placed at pages 1 to 7 of the assessee's paper book). The said notice was received by the assessee only on 17.10.2013, i.e. the date of hearing and therefore it was not possible to furnish by 17.10.2013, the details called for by the AO which were voluminous. It was argued that even otherwise the said notice was issued during the Diwali festival period when many staff are on vacation, article assistants on leave for examinations, finalizing and filing of returns of income for the assessee group and transfer pricing audits being simultaneously carried out, etc. In any case the assessee had filed partial details vide letter dated 18.10.2013.

4.2.2 The learned A.R. for the assessee drew the attention of the Bench to para 8 of the impugned order when the learned CIT(A) observed that the provisions of section 271(1)(b) of the Act empowers the AO to levy penalty for each of the failures to comply with the notice issued under section 142(1) and the only ground that the assessee can seek exception is by establishing reasonable cause for delay in submitting all the details within the stipulated time. In this regard, the learned A.R. for the assessee contends that the assessee received the notice under section 142(1) of the Act dated 12.10.2013, calling for voluminous details numbering 26 items for assessment years 2006-07 to 2012-13 to be furnished by 17.10.2013, only on 17.10.2013. Thus it was impossible for the assessee to comply by furnishing the details on the due date; since the notice itself was received on 17.10.2013. According to the learned A.R. for the assessee, the assessee brought this fact to the notice of the AO vide letter dated 18.10.2013 (placed at page 8 of the paper book). It is further submitted that such show cause notices were also issued in the cases of individuals of the Unity group, but no penalty was levied in those cases inspite of

entire details not being filed. It is submitted that in the case on hand, all details and explanations called for were completely filed for all the assesseees of the group subsequently in the course of assessment proceedings that culminated in the finalization of the orders of assessment under section 143(3) of the Act and not exparte.

4.2.3 According to the learned A.R. for the assessee, the assessee had submitted many details to the AO before the issue of show cause notice under section 274 r.w.s. 271(1)(b) of the Act on 16.12.2013. In this regard, the learned A.R. for the assessee drew the attention of the Bench to the reply dated 17.12.2013 filed by the assessee in response to the aforesaid show cause notice (placed at pages 10 to 18 of the assessee's paper book) which enclosed the list of various details filed from time to time before the AO between 18.10.2013; when the notice under section 142(1) of the Act was issued upto 16.12.2013; after which the show cause notice was issued. It is submitted that the assessee submitted major purchase details for the period relevant to assessment years 2006-07 to 2012-13 in order to enable smooth functioning of assessment proceedings, as it was understood that the main reason for the search was on account of the purchases made by the assessee's group. It was, therefore, contended that it cannot be said that the assessee had not filed any details called for before the period 18.10.2013 to 16.12.2013. The learned A.R. for the assessee contends that this was a bona fide case wherein the assessee tried to submit as many details as early as possible; that the assessee had no intention to not comply with the notice issued under section 142(1) of the Act. In sum and substance it is a case of part compliance and not non-compliance to the notice under section 142(1) of the Act and since the facts of the case clearly demonstrate this, it is prayed that the penalty levied under section 271(1)(b) of the Act for assessment years 2006-07 to 2012-13 be deleted.

4.3 Per contra, the learned D.R. for Revenue vehemently supported the orders of the authorities below.

4.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. The facts of the matter as emanate from the record are that in the course of assessment proceedings, the AO issued a notice under section 142(1) of the Act dated 11.10.2013 for assessment years 2006-07 to 2012-13, calling upon the assessee to furnish the details, mentioned in the questionnaire annexed thereto, to be filed on 17.10.2013 at the hearing scheduled for 10.30 a.m. (copy of the same is placed at pages 2 to 7 of the assessee's paper book). It is apparent that the penalty under section 271(1)(b) of the Act was levied on the assessee for the said seven assessment years, for failure on its part to comply with filing the requirements called in the questionnaire annexed to the notice under section 142(1) of the Act dated 11.10.2013. In our view, it is relevant to extract hereunder the questionnaire appended to the notice under section 142(1) of the Act dated 11.10.2013: -

“QUESTIONNAIRE/A.Y.2006-07 TO 2012-13/UNITY INFRAPROJECTS LTD

*Please furnish the following details/documents as indicated with respect to hearings for A.Y. 2007-07 TO 2012-13*

1. *If you wish to be represented by an authorized representative, please furnish a letter of Authority in prescribed form. Without letter of authority no cognizance of his/her attendance shall be taken.*
2. *Kindly narrate brief history of assessment for A.Y. 2007-07 to 2012-13 along with all supporting documents including assessment orders, appellate orders, copies of returns, audit report, balance sheet, P&L a/c, computation of income etc.*
3. *Please provide details of earlier search assessments.*
4. *Please specify whether any claim u/s. 80IA/IB is made in return this time & in earlier search assessment proceedings.*
5. *Please submit challans for the payment of taxes in following manner for A.Y. 2006-07 TO 2012-13:*

<i>Disclosure made</i>	<i>Description of issue</i>	<i>Date &amp; amount of payment of taxes wrt disclosure made</i>	<i>Manner of earning income earned on which disclosure is made</i>	<i>Date of notice issued u/s. 153A</i>	<i>Date of return filed</i>

6. Explain in details the business undertaken by the company during A.Y. 2006-07 TO 2012-13, including the details of project in following format.

	On going projects	New projects undertaken	Projects in pipeline
Name of the project			
Description			
Address of site			
Client name			
Date of start			
Date of completion			
Current Status			
Contract Value			

7. Please submit purchase list including name, PAN, contact no., Address of all purchase parties with amount and date of purchase. Submit details of all the purchases in case of the following concerns:

- (a) Dev Steel
- (b) Karma Ispat
- (c) Param Commercial Co.
- (d) Steelcon Infratrade Pvt. Ltd.
- (e) Magnum Infraprojects Ltd.
- (f) Mahendra Brothers
- (g) Dhani Products Pvt. Ltd.

Please submit the information for these parties in the following format in different sheet for each concern for the period A.Y. 2006-07 to A.Y. 2012-13:

A.Y.	Name of the company	Bill No. and date of purchase	Quantity	Name of the material	Purchase Amount	Corresponding sell amount	Name, Address and PAN of the sell party	Sale bill/ Invoice No.

Also furnish corresponding delivery challan, Octroi receipt/challan, Weigh Bill, Material Receipt Note, Stock Book Entry at site/project office in case of each purchase. Submit evidence in support of claim.

8. Details of scrap sale made by the assessee.
9. Provide details of Fixed assets, Fixed Deposits and Shares and securities held by the assessee in the captioned assessment years.
10. Produce foreign Travels details alongwith reason for the period A.Y. 2006-07 to A.Y. 2012-13 in case of all the members of Unity Group with supporting bills & documents.
11. Please submit the details with documentary evidences of all the items inventorized during the course of search conducted in the premises of Unity group.

12. During the course of search/Survey action at the premises, certain loose papers/documents, along with digital data were found and seized/impounded. Page wise explanation of the papers impounded during the course of the search/survey for the period A.Y. wise in format as per annexure.
13. During the course of search/Survey action at the premises, cash of Rs.11,74,030/- was found, of which Rs.10,00,000/- was seized. Please furnish explanation for the same.
14. In respect of all the loans & advances given during the A.Y. 2006-07 to 2012-13.
15. Furnish details of advance & amount included in sundry debtors which are not for business purpose during the A.Y. 2006-07 to 2012-13.

Sr. No.	Name, PAN, Address and contact no. of the party	Purpose	Opening Balance	Addition during the year	Reduction during the year	Closing balance as on PY ending	Purpose

16. In case of Sundry Debtors which are in the nature of regular business, the details in the format as below, during the A.Y. 2006-07 to 2012-13.

Sr. No.	Name, PAN, Address and contact no. of the party	Purpose	Opening Balance	Addition during the P.Y	Reduction during the P.Y.	Closing balance as on P.Y. ending

17. Furnish comparative chart of Gross Profit and Net profit ratio for the period from A.Y. 2006-07 to 2012-13 and also indicate the reasons for variations, if any.
18. Furnish comparative chart of figures of Profit and Loss account and Balance Sheet for all the years from A.Y. 2006-07 to 2012-13 and also indicate the reasons for variations, if any.
19. A detailed list of taxable wealth along with computation of net wealth as per provisions of W.T. Act, 1957 from A.Y. 2006-07 to 2-12-13. Please also explain whether the return of net wealth is being filed by you or not. If the return is filed, a copy of the acknowledgment along with computation may be filed.
20. Kindly furnish details of T.D.S. claimed in the following format for A.Y. 2006-07 to 2012-13.

Sr. No.	Name, PAN, Address and contact no. of the party	Nature of business transaction	Gross Income credited as per books of account	Income as per TDS certificate	TDS deducted	Deduction u/s.

21. Kindly furnish the details of sundry creditors as appearing in the books of accounts of the assessee for A.Y.s 2006-07 to 2012-13.

22. In case of sale or purchase of shares of group companies (Listed or unlisted), the following additional information for A.Y. 2006-07 to 2012-13.

Name of the company/Address/PAN/whether listed/purchased from primary or secondary market/price at which transaction took place/Nominal value of shares/Premium/Fate of investment/Whether shares were originally issued at premium/discount.

23. Identify expenditure not paid in time as per the provisions of section 43B and to be disallowed, a separate list thereof for the period A.Y. 2006-07 to A.Y. 2012-13.

24. Submit list of equity shareholders holding shares more than 10 percent individually along with address/PAN for A.Y. 2006-07 to A.Y. 2012-13.

Sr. No.	Name, PAN, Address and contact no. of the party	No. of shares held	% shareholding	Any sum credited to equity shareholder	Specify head & amount & date

25. Submit hard copy of Auditors Report in form 3cd along with audited Financial Statements and Company's Annual Report.

26. Details of all the investment (A.Y. wise) made during the concerned period.

You are requested to furnish the above details on or before the specified date as per notice u/s 142(1). All the details should be submitted in the order in which they appear above preferably in both the hard copy as well as soft copy. The details submitted shall be verified and signed by the Managing director/Director in the following format:

*"I declare to the best of my knowledge and belief, the information furnished in the statements is correct and complete and other particulars shown therein are truly stated."*

*Details filed without verification shall not be accepted.*

Sd/-

Seema Dhankhar, IRS  
Asst. Commissioner of Income Tax,  
Central Circle-45, Mumbai"

4.4.2 The provisions of section 271(1)(b) of the Act read as under:

"Failure to furnish returns, comply with notices, etc.

271(1) If the [Assessing] Officer or the [Commissioner (Appeals)] [or the Principal Commissioner or Commissioner] in the course of any proceedings under this Act, is satisfied that any person—

(a) [-----]

*(b) has [\* \* \*] failed to comply with a notice [under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or] under sub-section (1) of section 142 or sub-section (2) of section 143 [or fails to comply with a direction issued under sub-section (2A) of section 142], or*

*(c) has concealed the particulars of his income or [\* \* \*] furnished inaccurate particulars of [such income, or]*

*[(d) has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits,]*

*he may direct that such person shall pay by way of penalty,—*

*(i) [\* \* \*]*

*[(ii) in the cases referred to in clause (b), [in addition to tax, if any, payable] by him, [a sum of ten thousand rupees] for each such failure ;]”*

The provisions of section 273B of the Act read as under: -

*“273B. Penalty not to be imposed in certain cases Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271B section 271BB,] section 271C, section 271D, section 271E, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA] or sub-section (1) of section 272BB or] clause (b) of subsection (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the pet-son or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.]”*

On a conjoint reading of the provisions of section 271(1)(b) and section 273B of the Act, it is clear that no penalty shall be imposed on the assessee for failure referred to in section under section 271(1)(b) of the Act if the assessee were to establish that there was reasonable cause for the said failure; in the case on hand, the alleged failure to comply with the notice issues under section 142(1) of the Act dated 11.10.2013.

4.4.3 According to the assessee and as per the material on record, the said notice issued under section 142(1) of the Act enclosing the questionnaire calling for 26 details (supra) was received by the assessee only on 17.10.2013. The assessee vide letter dated 18.10.2013 brought the fact of having received the said notice/questionnaire only on 17.10.2013 to the notice of the AO; which fact has not been controverted by either the authorities below or the learned D.R. in the proceedings before us. It is not

comprehensible to us as to how the assessee could have complied with the notice under section 142(1) of the Act and the questionnaire enclosed thereto (supra) by filing such voluminous data called for on 26 items, some in prescribed format etc. by 10.30 a.m. on 17.10.2013 when the said notice/questionnaire had been received by the assessee only on 17.10.2013. In our view, in the factual matrix of the matter as laid out above, it was impossible for the assessee to have complied with the requirements of filing the aforesaid details by 10.30 a.m. on 17.10.2013 required by the notice under section 142(1) of the Act, as there was no time available to the assessee to do so. We find that, inspite of this, the assessee vide letter dated 18.10.2013 has filed part details of purchases for A.Y. 2006-07 before the AO. In this factual matrix of the case, we are of the considered opinion that since compliance with the requirements of the notice under section 142(1) of the Act dated 11.10.2013/ questionnaire annexed thereto was not humanly possible, this constituted and established that the assessee had reasonable cause, as envisaged in section 273B r.w.s. 271(1)(b) of the Act for failure to comply with the requirements called for by the notice under section 142(1) dated 11.10.2013 and the questionnaire attached thereto. In this view of the matter, we delete the penalty levied on the assessee under section 271(1)(b) of the Act @ ₹10,000/- for each of the assessment years 2006-07 to 2012-13. It is accordingly ordered.

4. In the result, the assessee's appeals for assessment years 2006-07 to 2012-13 are allowed.

Order pronounced in the open court on 17<sup>th</sup> May, 2016.

Sd/-  
(Sandeep Gosain)  
Judicial Member

Sd/-  
(Jason P. Boaz)  
Accountant Member

Mumbai, Dated: 17<sup>th</sup> May, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -38, Mumbai*
4. *The CIT , Central - IV, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.