

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SMT. SUCHITRA KAMBLE : JUDICIAL MEMBER

ITA nos. 4265/Del/2013 (AY: 2005-06)
 4266/Del/2013 (AY: 2006-07)
 4267/Del/2013 (AY: 2007-08)
 4268/Del/2013 (AY: 2008-09)
 4269/Del/2013 (AY: 2009-10)
 4270/Del/2013 (AY: 2010-11)
 4271/Del/2013 (AY: 2011-12)

Brahamputra Infrastructure Ltd.,
A-7, Mahipalpur, NH-8,
Mahipalpur Crossing, Mahipalpur,
New Delhi-110037.
PAN: AAACB 8918 K
(Appellant)

Vs. DCIT Cen. Cir. 17,
New Delhi.

(Respondent)

Appellant by : Shri R.S. Ahuja Adv.
Respondent by : Shri Ravi Jain CIT (DR)

Date of hearing : 29/06/2016.
Date of order : 30/06/20126.

ORDER

PER BENCH:

These are assessee's appeals against separate orders of ld. CIT(A) relating to AY 2005-06 to 2011-12. Sole effective ground, raised by the revenue in these appeals, is to challenge the action of ld. CIT(A) in sustaining the imposition of penalty u/s 271(1)(b) for non-compliance of notices u/s 143(2) and 142(1) of I.T. Act, amounting to Rs. 10,000/- for each year.

2. Facts in all the appeals are identical, therefore, we are referring to the facts as obtaining in AY 2005-06.

3. Brief facts of the case are that assessee had filed return declaring loss of Rs. 2,79,03,832/-. Action u/s 132 of the I.T. Act was carried out by the department on 28.9.2010 in Brahamputra group of cases, including the assessee and various books of a/c and documents including those belonging to the assessee were found and seized. Notice u/s 153A was issued on 2.2.2012, requiring the assessee to file the return of its income within 15 days of the service of the said notice. The assessee, vide letter dated 13.3.2012, submitted that the original return filed by the assessee may be treated to have been filed in response to notice u/s 153A of the Act.

4. In course of assessment proceedings the AO had issued notices u/s 143(2) and 142(1) dated 31.08.2012 along with questionnaire fixing the case for 14.09.2012. Since neither anybody attended on the appointed date nor any application for adjournment was filed, a show cause notice u/s 274 read with section 271 of the I.T. Act was issued on 18.9.2012, requiring the assessee to explain as to why penalty u/s 271(1)(b) should not be levied.

5. In the penalty order dated 14.11.2012 the AO has, inter alia, observed as under:

“However, on 25.09.2012 the assessee has filed letter stated that non compliance of these notices is purely unintentional and compliance with the said notice will be done in next 20 days. From the records it is notice that till date i.e. today the 14.11.2012 assessee has not made the compliance.”

6. He, therefore, levied penalty of Rs. 10,000/- u/s 271(1)(b) of the I.T. Act.

7. Before Id. CIT(A) it was submitted that the assessee group, comprising of companies, individuals and joint ventures, had co-operated fully with the department and the records of the entire assessee group, numbering 275 assessment orders, may be examined and a 'holistic view of the compliance in general' may be taken in the matter. Further, assessee had also made reference to the sequence of events and pointed out that the adjournment letter was filed by the assessee on 24.9.2012; that the reply to the show cause, also mentioned finalization of accounts for FY 11-12 and non-availability of account staff till 30.9.2012 as reasons for delay in compliance with the notices; and that these reasons do not find mention in the impugned order; and that the assessment proceedings were in a 'state of limbo' since objections had been filed against the assessment u/s 153A. Copies of letters dated 16.11.2012, 1.3.2013 and 15.3.2013, whereby details were furnished in response to the questionnaire issued by the AO along with the notice u/s 143(2) and 142(1) dated 31.8.2012, and copy of the assessment order dated 28.3..2013 accepting the returned loss were filed. It was further, inter alia, submitted that the provision for penalty was not for 'mere technical non-compliance but for the actual or habitual defaulters'. Assessee had relied on the decision of ITAT Delhi Bench G in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust Vs. ADIT 115 TTJ 419, wherein it was held that subsequent compliance in the assessment proceedings was 'good compliance' and the default committed earlier may be ignored. Ld. CIT(A), however, did not accept the assessee's contention

and confirmed the action of AO. Aggrieved, the assessee is in appeal before the ITAT.

8. Ld. counsel for the assessee submitted that the ITAT Delhi Bench in the case of Managing Director Shri Manoj Kumar Prithani being ITA nos. 4251, 4252 to 4257/el/2013 for AY 2005-06 to 2011-12 vide order dated 28.11.2014 has deleted the penalty. He submitted that the penalty order and Id. CIT(A)'s order is identically worded in the present case and, therefore, the said decision is applicable. Ld. counsel further referred to the assessment order and pointed out that AO has, inter alia, observed as under:

“Notices u/s 143(2), 142(1) along with questionnaire were issued on 31.08.2012 and in response thereto Shri Rajesh Sharma, AR of the assessee company attended the proceedings from time to time, furnished the required details and the case was discussed with him.”

9. He, therefore, submitted that AO has not pointed out any default in the assessment order in regard to the non-compliance of notice u/s 143(2)/142(1) dated 31.08.2012.

10. Ld. CIT(DR) submitted that the proceedings for levy of penalty u/s 271(1)(b) are taken in course of assessment proceedings and in the penalty order passed by the AO, the assessee has clearly admitted that there was non-compliance of these notices, though purely unintentional and compliance was to be made within 20 days. However, no compliance was made till the passing of penalty order. He submitted that it is not necessary for AO to mention each non-compliance of notice in the assessment order.

11. We have considered the submissions of both the parties and have perused the record of the case. Penalty u/s 271(1)(b) is leviable if an assessee fails to comply with a notice, inter alia, u/s 142(1)/143(2). Therefore, merely because no reference has been made in the assessment order regarding non-compliance, would not lead to the conclusion that the penalty u/s 271(1)(b) was not leviable. This penalty has been mandated in order to ensure due compliance of various notices by assessee. Ld. CIT(A) has rightly pointed out that penalty u/s 271(1)(b) is normally levied in course of assessment proceedings. The reasons for default of assessee in complying with the notice have to be considered qua each such notice independent of the fact as to what subsequently transpired through it may be a mitigating factor.

12. Now coming to the merits of the case, we find that as far as reliance placed by ld. counsel for the assessee on the order of the ITAT in the case of Managing Director's case (supra) is concerned, the same is distinguishable on facts because in the present case AO has specifically observed that till date of passing of the penalty order viz. 14.11.2012, assessee had not made the compliance. We find that the penalty has been levied for non-compliance of only one date i.e. 31.08.2012, for which the assessee's explanation had been noticed in ld. CIT(A)'s order. In our opinion, the explanation given by assessee was quite reasonable because in the entire assessee's group 275 assessment orders were passed and we notice from the assessment order, as reproduced earlier, that assessee had made compliance before passing of the assessment order. There was no deliberate attempt on the part of assessee to disregard the notice issued by the department. September being the month for finalization of accounts, the assessee's explanation that there was non-

availability of accounting staff, cannot be doubted. We, therefore, hold that assessee was prevented by reasonable cause from attending the proceedings on 14.09.2012. We, accordingly, delete the penalty.

13. Facts and circumstances in the remaining assessment years being identical we follow the same course of action there also. Accordingly, we delete the penalty levied u/s 271(1)(b) in all the assessment years under consideration.

14. In the result, all the appeals stand allowed.

Order pronouncement in open court on 30/06/2016.

Sd/-
(SUCHITRA KAMBLE
JUDICIAL MEMBER

Dated: 30/06/2016.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER