

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA Nos.4766, 4767, 4769, 4770, 4771, 4772 & 4773/M/2014
Assessment Years: 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12**

Shri Aditya R. Parikh, 1 st Floor, Yogesh Bhavan, 31, N.S. Patkar Road, Mumbai - 400007 PAN: AHHP2886M	Vs.	DCIT, Central Circle-44, Room No.656, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Nidhi Patel, A.R.

Revenue by : Shri A.B. Koli, D.R.

Date of Hearing : 24.08.2016

Date of Pronouncement : 24.08.2016

ORDER

Per Sanjay Garg, Judicial Member:

In the above titled appeals by the assessee relating to different assessment years common issue relating to levy of penalty under section 271(1)(b) of the Income Tax Act has been raised.

2. The brief facts of the case are that during the course of assessment proceedings, the Assessing Officer (hereinafter referred to as the AO) issued notice to the assessee under section 142(1) of the Income Tax Act, 1961 on 05.09.12 fixing the date of compliance on 18.09.12. The assessee did not comply with the said notice. Hence, the AO levied penalty under section 271(1)(b) of the Act.

3. In appeal, the same has been confirmed by the Ld. CIT(A). The assessee has, thus, come in appeal before us.

4. At the outset, Ms. Nidhi Patel, Ld. A.R. for the assessee has brought our attention to the common order of the Tribunal dated 18.02.16 passed in ITA Nos.4759/M/2014 to 4765/M/2014 in the case of “M/s. JIK Industries Ltd.” to state that in the identical circumstances in the group companies of the assessee, the penalty levied under section 271(1)(b) has been deleted. She, in this respect, has also relied upon another decision of the Tribunal dated 20.06.16 passed in ITA No.6944 to 6950/M/2014 in the case of “Mr. Rajendra G. Parikh” and also the decision of the Tribunal dated 29.07.16 passed in ITA Nos.6472 to 6478/M/2014 in the case of “M/s. I.A & I.C Pvt. Ltd.”. She has further stated that a search and seizure action under section 132 of the Act was conducted in the case of “M/s. JIK Industries Ltd.” (supra) and the premises of the assessee was also covered. She has further brought our attention to the penalty order dated 26.09.13 passed by the AO under section 271(1)(b) to state that it was explained before the AO that there were 8 assesseees in the group and totally 55 search assessments were in progress and hence there was minor delay in submission of the details. Further, that the assessee had neither neglected/defaulted nor willfully delayed in complying with the requirements of the notices. The assessee was regular in filing the income tax returns under section 139(1) in time and had provided required details as and when asked for except this stray incident which was beyond the control of the assessee. That the Chairman/Chief Promoter of group company during the period was unwell/sick and was not in a position to attend day to day business regularly and had hospitalized twice. That in the identical circumstances in the case of other assesseees including that of CMD Shri P.G. Parikh, the penalty levied by the AO has been deleted by the Tribunal. The Ld. A.R. has further stated that the assessment in this case has been completed under section 143(3) read with section 153A and not under section 144 which itself shows that on subsequent occasions the necessary information was provided to the AO and that the assessee never defaulted in complying with the notices of the AO.

5. The Ld. D.R., on the other hand, has relied upon the findings of the lower authorities.

6. We have heard the rival contentions and have also gone through the records. We find force in the contention of the Ld. A.R. that there was reasonable cause which prevented the assessee to comply with the notice dated 05.09.12 and this was only the single instance. It has also been explained that in the case of the assessee along with its group companies, total 55 search assessments were in progress and hence, there was minor delay in submission of details. It has also been explained that there was no such non compliance in subsequent hearings during the assessment proceedings and the assessment was duly completed under the regular provisions and not under section 144 of the Act. It has also been explained that the CMD of the lead company M/s. JIK Industries Ltd. was unwell/sick during the period. Considering the overall facts and circumstances of the case, in our view, the assessee has given a reasonable explanation for non compliance of the notice on a single occasion and we do not think that it is a case of willful default on the part of the assessee. We, therefore, do not find justification on the part of the lower authorities in imposing/confirming the penalty under section 271(1)(b) of the Act and the same is accordingly ordered to be deleted.

7. In the result, all the appeals of the assessee are hereby allowed.

Order pronounced in the open court on 24.08.2016.

Sd/-
(B.R. Baskaran)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 24.08.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.