

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

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

ITA NOS. 3035 & 3036/MUM/2015 : (A.Ys : 2008-09 & 2009-10)

Sanjivani Real Estate Pvt. Ltd.
82, Maker Chamber III, Nariman
Point, Mumbai 400 021.

Vs. DCIT, Central Circle-39,
Mumbai (Respondent)

PAN : AAKCS3518A (Appellant)

**Assessee by : Shri Vijay Mehta
Revenue by : Shri Neil Philip**

Date of Hearing : 20/07/2016

Date of Pronouncement : 12/08/2016

ORDER

PER SANDEEP GOSAIN, JM :

The present appeals have been filed by the assessee against separate orders of Commissioner of Income Tax (Appeals)-52, Mumbai (in short 'CIT(A)') dated 19.02.2015 for A.Ys 2008-09 and 2009-10 on the following common grounds of appeal :

"1. The order passed by the learned CIT(A) is illegal, bad in law, ultra vires and contrary to the provisions of law and facts of the case and without appreciating the facts of the case in their right perspective.

2. On the facts and circumstances of the case, the learned CIT(A) erred in confirming the levying of penalty u/s 271(1)(b) amounting to Rs.20,000/-.

3. *It is therefore prayed that the order of the learned CIT(A) be cancelled and direction be issued to allow the appeal on the grounds raised before him."*

2. Both the appeals by the assessee relating to Assessment Years 2008-09 & 2009-10 involve a common issue and therefore they have been clubbed together and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. The brief facts of the case are that a search and seizure action u/s 132 of the Income Tax Act, 1961 (in short 'the Act') was carried out on 5.3.2009 in the case of Jai Corp group of cases and its associate concerns. Penalty proceedings were initiated. The process u/s 271(1)(b) for levy of penalty was initiated against the assessee and after receiving reply from the assessee, the DCIT levied penalty of Rs.20,000/- u/s 271(1)(b) of the Act. Aggrieved by the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A) and the Id. CIT(A) after considering the case of the parties has dismissed the appeal filed by the assessee. Aggrieved by the order of Id. CIT(A), assessee has preferred the present appeal before us on the grounds mentioned above.

4. All the grounds raised by assessee in appeal are interrelated and interconnected; therefore, we decided to dispose of the same by a common order.

5. The Ld. AR submitted that the present case is not of non-compliance, rather it is a case of delayed compliance. In this respect, the Ld. AR submitted that compliance was made in October to December, 2010 on the ground that the assessee did not have a copy of statement recorded u/s 132(4) of the Act and the said copy was provided on 6.9.2010. It was further submitted by the Ld. AR that search was initiated in Jai Corp group and there were 120 companies group entities resulting into huge assessment proceedings being done simultaneously. For each entity, past 7 years assessments were taking place. It was further submitted that the assessee had submitted explanation with necessary supporting/evidences running into 18000 pages in respect of the various seized/impounded materials even prior to 19.11.2010. The Ld. AR submitted that the assessment proceedings were started in August, 2010 which was getting time barred by December, 2010 and due to voluminous nature of explanation, assessee was busy in compiling the same. It was submitted that there was no *mala fide* intention on the part of the assessee to not provide the details necessary for assessment and at each stage, assessee had promised to co-operate with the Department.

6. On the other hand, the Ld. DR relied upon the order passed by Ld. CIT(A).

7. We have heard the counsel for both parties and perused the material on record. The Ld. AR relied upon the decision of the Ahmedabad Bench of the Tribunal in the case of Swarnaben M. Khanna v. DCIT [2010] 37 SOT 25 (Ahd.) wherein it was held as under :-

“Section 271(l)(b) of the income-tax Act, 1961 - Penalty - For non-compliance of notice under section 142 (1) Assessment years 2000-01 to 2006-07 - Whether statutory provision for levy of penalty is not for mere technical non-compliance but for actual or habitual defaulters - Held, yes - Whether before levying penalty under section 271 (1)(b), there must be specific notice to assessee for specific assessment year with specific requirements to be complied with - Held, yes- Whether compliance must have relevance to assessment year in question and it must have apparent nexus with assessment of assessment year to be framed - Held, yes- Whether in addition, adequate time should be given to assessee for making compliance - Held, yes – Pursuant to search and seizure in cases of assessee-group, notices under section 153A were issued to assessees for filing return of income – Thereafter, Assessing Officer issued notice under section 142 (1) to all assessees for assessment year 2006-07 only - In addition to that, Assessing Officer issued letters requiring assessees to furnish detailed information for six assessment years, i.s., 2000-01 to 2005-06 - Except in case of one assessee, letters did not mention that compliance was required to be made under section 142(1) and proper time was not given for making compliance - Later on, show-cause notices were issued to all assessees for all assessment years for showing cause as to why penalty under section 271(1)(b) be not levied for non-compliance of notice under section 142(1) - When no explanation was furnished in response to notice, Assessing Officer levied penalty on each of assessees from assessment years 2000-01 to 2006-07 - Whether when notices were issued for only one assessment year and, moreover, no reasonable opportunity was given to assessees for making compliance of information sought, penalties in all assessment years for all assessees were to be cancelled - Held, yes

In the aforesaid decision, the Hon'ble bench has held that "Statutory provision for levy of penalty u/s. 271 (1)(b) is not for mere technical non-compliance but for actual or habitual defaulters". Thus, this decision is squarely applicable in the case of the appellant.”

After considering the facts of the present case as well as taking into consideration the arguments of both parties and the decisions relied upon by the assessee of the coordinate bench of the Tribunal, we are of the considered view that the present case is not that of non-

compliance, rather it is a case of delayed compliance and from the facts of the present case it has nowhere been pointed out by the Id. DR that the assessee is a habitual defaulter. Therefore, considering the *bona fide* as explained by the assessee in their reply as well as the arguments, we hold that the statutory provision for levy of penalty u/s 271(1)(b) of the Act is not for mere technical non-compliance, but for actual or habitual defaulter. Thus, considering the peculiar facts and circumstances of the case, we delete the penalty and allow the appeals of the assessee.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 12th August, 2016.

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER

Mumbai, Date : 12th August, 2016

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "B" Bench, Mumbai
- 6) Guard file

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai