

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
श्री डी.टी.गरासिया, न्यायिक सदस्य तथा
श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

1 to 7	आ.अ.सं./ I.T.A. Nos.1466 to 1472/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
8 to 14	आ.अ.सं./ I.T.A. Nos.1473 to 1479/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
15 to 21	आ.अ.सं./ I.T.A. Nos.1480 to 1486/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
22 to 28	आ.अ.सं./ I.T.A. Nos.1487 to 1493/Ind/2016 निर्धारण वर्ष /A.Ys. : 2008-09 to 2014-15
29 to 33	आ.अ.सं./ I.T.A. Nos.1494 to 1498/Ind/2016 निर्धारण वर्ष /A.Ys. : 2010-11 to 2014-15
34 to 37	आ.अ.सं./ I.T.A. Nos.1499 to 1502/Ind/2016 निर्धारण वर्ष /A.Ys. : 2011-12 to 2014-15
38 to 43	आ.अ.सं./ I.T.A. Nos.1503 to 1508/Ind/2016 निर्धारण वर्ष /A.Ys. : 2009-10 to 2014-15
44 to 46	आ.अ.सं./ I.T.A. Nos.1509 to 1511/Ind/2016 निर्धारण वर्ष /A.Ys. : 2012-13 to 2014-15
47 to 48	आ.अ.सं./ I.T.A. Nos.1512 to 1513/Ind/2016 निर्धारण वर्ष /A.Ys. : 2013-14 to 2014-15

1 to 7	M/s. Ma Bhagwati Power P. Ltd., Bhopal
8 to 14	Kareli Sugar Mills P. Ltd., Narsinghpur
15 to 21	Ma Bhagwati Sugar Mills Ltd., Bhopal
22 to 28	Reva Kripa Sugar P. Ltd. Bhopal
29 to 33	Satya Prakash Resorts & Hotels P. Ltd. Bhopal
34 to 37	Aakriti Leisure & Pleasure P. Ltd. Bhopal
38 to 43	Aakriti Sugar P. Ltd. Bhopal
44 to 46	Aakriti Educare P. Ltd. Bhopal
47 to 48	Aakriti Sugar Mills P. Ltd. Bhopal
	(APPELLANTS)
	VS.

	Dy.CIT,CENTRAL I, BHOPAL
	(RESPONDENT)

अपीलार्थी की ओर से/Appellant by	Shri N. D. Patwa, Advocate
प्रत्यर्थी की ओर से/Respondent by	Shri Mohd. Javed, Sr. DR

सुनवाई की तारीख Date of hearing	18.01.2017
उद्घोषणा की तारीख Date of pronouncement	18.01.2017

आदेश / O R D E R

PER BENCH

All these appeals have been filed by different assessees against different orders of the learned CIT(A)-3, Bhopal dated 06.10.2016 for the above assessment years.

2. In all these appeals, the sole issue involved is that the learned CIT(A) has erred in confirming the levy of penalty u/s 271(1)(b) of the I.T. Act at Rs.10,000/- in each assessment year in the cases of all these assessees.

3. Briefly stated, the facts of the case are that the search in the case of the assessee and group had taken place on 29.01.2014. After that notices were issued by the AO u/s 142(1) of the Act dated 30.09.2015 fixing the date of hearing for 15.10.2015 to submit the required information/documents as per the

questionnaire alongwith the books of accounts. It was specifically mentioned in the notice that failure to comply with the notice would lead to imposition of penalty u/s 271(1)(b) for Rs. 10,000/-. However, it was seen that on the date fixed for hearing i.e. on 15.10.2015 no submissions were filed with regard to the notice/questionnaire u/s 142(1) of the Act. Therefore, show cause notice for penalty was issued by the AO to the assessee on 07.12.2015 as to why penalty should not be levied u/s 271(1)(b) of the Act for non compliance to notice u/s 142(1) dated 15.10.2015. The date of hearing was fixed for 15.12.2015. However, again no reply/submissions were filed by the assessee on or before the date of hearing, Also, no reason/explanation was given by the assessee for non-compliance on the said date. Therefore, the AO levied penalty u/s 271(1)(b) of the Income-tax Act, 1961, for Rs. 10,000/- on 04.01.2016, for non compliance to notice u/s 142(1) dated 15.10.2015 for each assessment year from 2008-09 to 2014-15

4. The Id. CIT(A) dismissed the appeals holding that the case laws relied upon by the assessee are contradictory in nature and do not support the case of the assessee. In this case, the assessee has not complied with the notice/questionnaire u/s 142(1) of the Act dated 15.10.2015. It cannot be said that there was reasonable cause with the assessee, which prevented him to comply with the statutory notice. The assessee has deliberately tried to delay the assessment

proceedings before the AO in order to create hindrances for the investigation. The AO is the investigator as well as prosecutor and adjudicator in the tax assessment proceedings. It is the duty of the assessee to facilitate the process of verification and investigation to support its credentials. The AO is bound by law to complete assessment proceedings as per the limitations of the Act. Deliberate delaying tactics during the course of assessment proceedings hamper the work of the office. The Id. CIT(A) confirmed the penalty of Rs. 10,000/- imposed by the AO u/s 271(1)(b) of the Income-tax Act, 1961, for all the present assessment years in the case of all the assessees.

5. Before us, the learned Counsel for the assessees submitted that in all these appeals, the facts and the issue involved are identical and, therefore, he will be arguing the facts in the case of M/s. Ma Bhagwati Power P. Ltd. The AR submitted that notice u/s 142(1) dated 30.9.2015 in all group appeals was received on 09.10.2015, to be complied on 15.10.2015, which was practically impossible to comply with all details in short span of 7 days. However, subsequent notices dated 17.12.2015 to 24.12.2015 were duly complied and assessment was framed u/s 143(3). Further, Sheri D.S.Tiwari, AR of the assessee had verbally requested time for filing details. Therefore, there was no delaying tactics to hamper investigation. The learned counsel for the assessee submitted that it is held by the Delhi Bench

of the Tribunal in the case of Akhil Bhartiya Prathmik Shmshak Sangh Bhawan Trust vs. Assistant Director of Income Tax; (2008) 115 TTJ 419(Del) that where the assessee had not complied with notice u/s 142(1) but assessment order was passed u/s 143(3) and not u/s 144, that meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by Assessing Officer and therefore, levy of penalty u/s 271(1)(b) was not justified. The Learned Counsel further stated that very recently, this Bench of Tribunal in the cases of Vinit Chouhan & others in ITA No. 1061 to 1181 has deleted the penalties on the absolute identical facts. In that case also the notices dated 30.09.2015 were served asking the assessee to file the details and the counsel of the assessee Shri Rajendra Sharma attended and personally requested for the time and the Tribunal deleted the penalty on the ground that the assessments were completed u/s 143(3) after considering all the details submitted by the assessee and as such no penalty u/s 271(1)(b) could be levied. He relied upon the decision in the case of Akhil Bhartiya Shiksha Sangh Bhawan Vs ACIT 115 TTJ 419 and Parmeshwari Textiles Vs ITO 92 TTJ page 764.

6. On the other hand, Ld. DR relied on the orders of the Revenue Authorities and cited some decisions of the Tribunals.

7. We have heard the rival contentions of both the parties and have perused the material available on record. We find that the present issue has been decided by this very Bench in the group appeals i.e. Hemant Kumar Soni and others vide order dated 16.1.2017. The present group appeals are also connected with the group appeals of Hemant Kumar Soni and others. Vide above order dated 16.1.2017, we have decided the present issue in favour of the assessee. For ready reference, we are reproducing hereunder the relevant finding recorded by us:

"7. We have heard rival contentions of both the parties and perused the material available on record. We find from the assessment orders in all these group appeals that the assessments have been completed u/s 143(3) of the IT. Act. We find that the Assessing Officer has levied penalty 271(1)(b) for non-appearance on 15.10.2015. As per Id. Authorized Representative of the assessee, the assessee's counsel appeared and stated categorically that he appeared for seeking time. The counsel regularly attended the proceedings and the assessments have been framed u/s 143(3) and not u/s 144. We find that this was the first notice for compliance and since the voluminous records and papers were required to be scrutinized and individually in each case, the appropriate replies were to be filed, the assessee prayed for the time to submit the reply and ultimately submitted all the necessary replies and cooperated with the Department. We are of the view that assessee had reasonable cause for non-appearance on that day. Therefore, there is no justification for levying the penalty u/s 271(1)(b) of the Act. Secondly, in this matter, the assessments have been completed u/s 143(3) of the Act, therefore, no penalty can be levied if the assessments have been completed u/s 143(3) and there is subsequent compliances in the assessment proceedings was considered as good compliances and default committed earlier were ignored. Therefore, penalty u/s 271(1)(b) was deleted by various Tribunals. In the case of Akhil Bhartiya Parthmik

Shmshak Sangh Bhawan Trust vs. ADIT (2008) 115 TTJ 419 (Del), it was held that where the assessee had not complied with notice u/s142(1) but assessment order was passed u/s 143(3) and not u/s 144, that meant that subsequent compliance in assessment proceedings was considered as good compliance and defaults committed earlier were ignored by the Assessing Officer, therefore, levy of penalty u/s 271(1)(b) of the Act was not justified. The case laws cited by Id. Departmental Representative are distinguishable on facts, hence, inapplicable to this case. We also noted that in the Vinit Chouhan group cases, an order is passed in a group in I.T.A.Nos. 1061 to 1181/Ind/2016 dated 23.11.2016, in which similar set of facts the penalty levied u/s 271(1)(b) was set aside. Therefore, respectfully following the said order and facts, we set aside the orders of the Revenue Authorities and delete the levy of penalty u/s 271(1)(b) of the Act in all these appeals.

8. Following our above order on the identical facts and circumstances relating to assessee's group, we set aside the orders of the Revenue Authorities and delete the penalty u/s 271(1)(b) of the Act in all the present appeals.

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

The order has been pronounced in open court on the 18th January, 2017.

Sd/-
(डी.टी.गरासिया)
न्यायिक सदस्य
(D.T.GARASIA)
JUDICIAL MEMBER

Sd/-
(ओ.पी.मीना)
लेखा सदस्य
(O.P.MEENA)
ACCOUNTANT MEMBER

दिनांक /Dated : 18th January, 2017.