

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER  
and  
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

1. ITA Nos.1521, 1522, 1524 & 1527/Bang/2014  
(Assessment years : 2005-06 to 2007-08 & 2009-10)  
AND
  2. ITA Nos.1523, 1525, 1526, 1528/Bang/2014  
(Assessment years: 2006-07, 2007-08, 2008-09 & 2009-10)
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1. M/s.L.G.Builders & Developers,  
No.4, L.G.Rose Heritage,  
Hennur Bagalur Main Road,  
Bande Hosur Village,  
Bangalore.  
PAN:AABLO142J
  2. M/s.L.G.Builders & Developers (P) Ltd.,  
No.4, L.G.Rose Heritage,  
Hennur Bagalur Main Road,  
Bande Hosur Village,  
Bangalore. ... Appellant  
PAN:AABCL1577D
- Vs.
- Asst. Commissioner of Income-tax,  
Central Circle 1(2),  
Bangalore. ... Respondent

Assessee by: Shri K.Yadavan, ITP.  
Revenue by: Shri M.Vijay Kumar, ACIT (DR)

Date of hearing : 26/11/2015  
Date of pronouncement: 30/11/2015.

**O R D E R**

**Per ABRAHAM P GEORGE, AM:**

These are appeals filed by the respective assesseees directed against the orders dated 26/8/2014 of the CIT(A)-VI, Bangalore, for the impugned assessment years.

2. Assesseees in all these appeals assail levy of penalty under section 271B r.w.s.274 of the IT Act for failure to conduct audit specified under section 44AB of the Act. The Assessing Officer (AO) had levied penalty under section 271B finding that the turnover of these assesseees for the impugned assessment years exceeded Rs.40 lakhs. Though the AO had issued notices to the assessee seeking reasons why penalty should not be levied, it seems, assessee had not responded to such notices. Assesseees, however, filed appeals before the CIT(A). CIT(A) issued notice on 10/08/2012, 10/10/2012, 03/01/2014, 21/05/2014 and 23/6/2014 fixing various dates of hearing. However, assesseees had, except for filing adjournment letters, never entered appearance. CIT(A) was of the opinion that the assessee was involved in dilatory tactics. He dismissed the appeals of the assesseees, inter alia, noting that the assessee had not complied with the requirement of sec.44AB of the Act.

3. Now before us, AR strongly assailing the orders of the CIT(A) submitted that assesseees had a reasonable cause since its auditors being very busy and could not enter appearance or give proper explanation before the lower authorities. As per the Id.AR, if the assessee are given one more opportunity before the lower authorities, they would be able to establish a reasonable cause for

not getting its accounts audited as required under section 44AB of the act.

5. Per contra, DR submitted that number of opportunities were given by the AO and the CIT(A) and the assesseees were not diligent in pursuing the remedies available to them. Hence, as per the Id.DR it would not be fair to give another chance.

6. We have perused the orders of the authorities below and heard the rival submissions. It is true that the assesseees were given number of chances by the AO for explaining why penalty should not be imposed on them for failure to comply with sec.44AB. The CIT(A) had also given five opportunities to the assessee, when the matter came before him. However, we find that assesseees had filed adjournment letters. The CIT(A) himself has at para.3 of his order summarized the contents of such adjournment letters. The reasons mentioned in these adjournment letters were different from one another and not identical. In our opinion, assesseees were not acting mechanically while seeking adjournment. Ends of justice will be met if one more chance is given to the assesseees to explain its position. We, therefore, set aside the order of the CIT(A) and remit it back to his file for consideration afresh in accordance with law. Ld.CIT(A), however, need give only one final opportunity to the

assessee and the Id.CIT(A) can proceed in accordance with law, whether they enter appearance or not on the appointed day.

7. In the result, the appeals of the assessee for all the years are treated as allowed for statistical purposes.

*Pronounced in the open court on 30<sup>th</sup> November, 2015*

sd/-  
**(Vijay Pal Rao)**  
**JUDICIAL MEMBER**  
*eksrinivasulu,sps*

sd/-  
**(Abraham P George)**  
**ACCOUNTANT MEMBER**

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore