

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, BENGALURU**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
and  
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.1145 to 1150/Bang/2016  
(Assessment years:2003-04 to 2008-09)

And

ITA No.1151 to 1156/Bang/2016  
(Assessment years:2003-04 to 2008-09)

1) Shri A.Kumar,  
No.224, Budigere Main Road,  
Prashanth Nagar, Devanahalli,  
Bengaluru-562 110  
*PAN:BEQPK 5289 G*

2) A.Kumar(HUF)  
No.224, Budigere Main Road,  
Prashanth Nagar, Devanahalli,  
Bengaluru-562 110  
*PAN:BEQPK 5289 G*

... Appellant

Vs.

Deputy Commissioner of Income-tax,  
Central Circle 1(4)  
Bengaluru.

... Respondent

Appellant by : None  
Respondent by : Shri P.Dhivahar, JCIT(DR)

Date of hearing : 03/08/2017  
Date of pronouncement : 04/08/2017

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**O R D E R**

**Per BENCH:**

These are appeals filed by the assessee directed against the orders of the Commissioner of Income-tax (Appeals), Bangalore-6 [CIT(A)] 07/03/2016 confirming the levy of penalty u/s 271(1)(b) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]. Since the issue involved in all these appeals is common, we dispose of the same vide this common order.

2. Brief facts of the case are that the appellants are individual and HUF. A search and seizure operations under the provisosn of section 132 of the Act were conducted in the case of Ashwanthararyana Group of companies on 26/08/2008. It is the case of the Assessing Officer (AO) that consequent upon search and seizure operations in the said case, certain incriminating material pertaining to the appellant was found and therefore, AO issued notice u/s 153C dated 20/07/2010 calling upon the appellants to file return of income for assessment years 2003-04 to 2008-09 by 30/07/2010. According to the AO, despite contacting the appellant over telephone several times to file return of income, there was no response from the appellant to file return of income. Therefore, a show cause notice proposing to levy penalty u/s 271(1)(b) of the Act was issued for non-compliance of the notice and the same was served on 12/10/2010

and the appellant had not filed any explanation with respect to said show cause notice. Therefore, the AO proceed with the levy of penalty u/s 271(1)(b) of the Act by levying penalty of Rs.10,000/- for each year vide order dated 20/10/2010.

3. Being aggrieved by the penalty order, the appellant preferred appeals before the CIT(A) wherein it was contended that the delay in filing return of income is on account of the fact that the Chartered Accountant who is entrusted with the responsibility of filing the return of income in response to notice u/s 153C was busy with the filing of returns of income of his clients due in the month of July and it was further contended that time granted to file the return of income was less than 15 days, which was not sufficient/reasonable time to file the return of income and thus it was contended that the time allowed by the AO was insufficient and since the notice *per se* was invalid, no penalty could be levied. However, the CIT(A) rejected the explanation and held that the default on the part of the appellant is deliberate and willful noncompliance and therefore, confirmed the levy of penalty.

4. Being aggrieved, the appellant is in appeal before us in the present appeal. It was contended on behalf of the appellant that notice calling upon the appellant to file return of income within the period of less than 15 days is invalid and therefore, the question of compliance does not arise. Alternatively, it was also

submitted that since the Chartered Accountant who was given the responsibility of filing the returns was busy with filing of return of income of his clients due in the month of July 2010 the appellant could not, comply with the notice well within time. However, since the returns were subsequently filed on 2/10/2010 and 10/11/2010 and the returns of income were accepted by the AO in the assessment after scrutiny proceedings, there was no prejudice caused to the revenue. It is only technical breach of law and therefore, no penalty is exigible. Reliance in this regard was placed on the decision in the case of *Hindustan Steels Ltd. vs. State of Orissa*.

On the other hand, learned Departmental Representative placed reliance on the orders of the lower authorities.

5. We heard rival submissions and perused the material on record. The only issue that arises for consideration is whether the levy of penalty was justified in the facts of the present case under the provisions of section 271(1)(b) for the delay in filing the returns of income in response to notice u/s 153C of the Act. The relevant provisions of section 271(1)(b) reads as under:

271(1).....

- (a) has failed to comply with a notice under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or under sub-section (1) of section 142 or sub-section (2) of section 143 or fails to comply with a direction issued under sub-section (2A) of section 142], or

.....

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(b) in the cases referred to in clause (b) in addition to tax, if any payable by him, a sum of ten thousand rupees for each such failure.

6. From the bare reading of the above provisions, it is clear that the penalty is leviable only in the cases where any person has failed to comply with notice issued under sub-section (2) of section 115WE or under sub-section (1) of section 142 or sub-section (2) of section 143 or fails to comply with a direction issued under sub-section (2A) of section 142 is liable for penalty in addition to tax if any payable a sum of Rs.10,000/- for each such failure in the cases referred to in clause (b) in addition to tax, if any, payable by him, a sum of ten thousand rupees for each such failure. In the present cases, the penalty was obviously levied for delay in filing the return of income in response to notice u/s 153C of the Act. But the provisions of section 271(1)(b) does not empower the AO to impose the penalty in the case of delay or failure to file the returns in response to notice u/s 153C of the Act. Thus, we find that the penalty orders do not have any legal basis. Therefore, the orders passed by the AO imposing penalty u/s 271(1)(b) has no statutory basis and has no legs to stand. Therefore, we direct the AO to delete the penalty of Rs.10,000/- in each case.

7. In the result, all the appeals filed by the assessee are allowed.

*Order pronounced in the open court on 04<sup>th</sup> August, 2017*

Sd/-

**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

Place : Bengaluru

D a t e d : 04/08/2017

*srinivasulu, sps*

**Copy to :**

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

sd/-

**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

By order

Senior Private Secretary  
Income-tax Appellate Tribunal  
Bangalore