

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.6859, 6860, 6861, 6862 & 6863/Del./2017  
Assessment Years 2005-2006, 2006-2007, 2007-2008,  
2008-2009 & 2009-2010

Shri Sanjay Tyagi, Delhi. PAN AEIPT1282R C/o. Sh. Sankalp Anil Sharma, Advocate, C-4/129, 1 <sup>st</sup> Floor, Safdarjung Development Area, Delhi - 110 016.	vs.	The DCIT,  Central Circle – 1,  New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rajiv Saxena, Ms. Sumana Dam Saxena & Shri Shyam Sunder, Advocates
For Revenue :	Shri H.K. Chaudhary, CIT- DR

Date of Hearing :	01.09.2020
Date of Pronouncement :	01.09.2020

**ORDER**

**PER BHAVNESH SAINI, J.M.**

All the Appeals by the same Assessee are directed  
against different Orders of the Ld. CIT(A)-11, New Delhi,  
Dated 06.04.2017, 07.04.2017, 03.05.2017 for the A.Ys.

2005-2006 to 2009-2010, challenging the levy of penalty under section 271(1)(b) of the I.T. Act, 1961.

2. We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record.

3. The appeal for the A.Ys. 2005-2006, 2006-2007 and 2007-2008 are time barred by 150 days, whereas the appeals for the A.Ys. 2008-2009 and 2009-2010 are time barred by 134 days.

3.1. The assessee has filed an application for condonation of delay for all these years consolidatedly supported by affidavit of the assessee.

3.2. Learned Counsel for the Assessee contended that in all these years penalty was levied under section 271(1)(b) of the I.T. Act, 1961, for failure to comply with notices issued under section 142(1) at the assessment proceedings. He has submitted that the A.O. in the assessment orders in absence of assessee passed the ex-

parte Orders under section 153A/144 of the I.T. Act, 1961 and determined the income of assessee on estimate basis. He has submitted that assessee preferred appeals before the Ld. CIT(A) against the quantum additions made in ex-parte assessment orders and the Ld. CIT(A) vide Order Dated 02.05.2017 for above assessment years deleted the entire additions holding that the additions are made in absence of any material found during the course of search under section 132 of the I.T. Act, 1961, following the decision of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla [2016] 380 ITR 573 (Del.), copies of the Orders Dated 02.05.2017 are placed on record. Learned Counsel for the Assessee, therefore, submitted that since quantum does not survive, therefore, there is no tax liability upon the assessee and as such, no penalty is leviable against the assessee. Learned Counsel for the Assessee as regards condonation of delay, submitted that impugned orders were not served personally upon the assessee as the same were delivered to his wife and because assessee was involved in several round of litigations including the criminal cases and

even could not get salary, therefore, he was unable to file the appeals challenging the levy of penalty under section 271(1)(b) of the I.T. Act, 1961. He has submitted that since quantum addition have been deleted, therefore, for substantial cause of justice, the delay in filing the appeals may be condoned and penalty may be cancelled.

4. On the other hand, Ld. D.R. submitted that assessee has not filed any evidence for service of the impugned order upon the wife of the assessee and that assessee has not filed any explanation whatsoever to explain the delay in filing the appeals after receipt of the impugned order. The Ld. D.R, therefore, submitted that delay in filing the appeals may not be condoned. The Ld. D.R. however, admitted that the Ld. CIT(A) vide Order Dated 02.05.2017 has deleted the additions on merit.

5. We have considered the rival submissions and perused the material on record. In the present appeals, the assessee has challenged the levy of penalty under section 271(1)(b) of the I.T. Act for non-compliance of the notices

issued under section 142(1) at the assessment proceedings. Since there was default on the part of the assessee, A.O. passed the ex-parte assessment order and determined the income of assessee on estimate basis. Since the case of the assessee are connected with the search, therefore, assessment orders were passed under section 153A/144 of the I.T. Act, 1961. The Ld. CIT(A) vide Order Dated 02.05.2017 for the above assessment years deleted the entire additions following the Judgment of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla (supra). Thus, no additions stand against the assessee and the estimated additions did not survive against the assessee. Thus, technically, on deletion of all the additions as per the Judgment of Hon'ble Delhi High Court in the case of CIT vs., Kabul Chawla (supra), there may not be any default on the part of the assessee to comply with the statutory notices. It may now be a technical and venial default on the part of the assessee and as such, the penalty may not be leviable against the assessee under section 271(1)(b) of the I.T. Act. Considering the above facts in the light of explanation of

assessee, we are of the view that assessee was prevented by sufficient cause in not filing the appeals within the period of limitation and assessee has a bonafide explanation for not filing the appeals within the period of limitation and further for substantial cause of justice, when additions stand deleted by the Ld. CIT(A), penalty is not leviable. Further, even if assessee may not be strictly able to support the explanation for condonation of delay, we are of the view that for taking a pragmatic view in the facts and circumstances explained above, the delay shall have to be condoned. In view of the above, we condone the delay in filing the appeals before the Tribunal in all the above years. Since the additions on merit have already been deleted by the Ld. CIT(A) and no further appeals are pending as per contention of the Ld. D.R. on merit, therefore, there may not be a default on the part of the assessee and at best it could be considered as a technical default, for which, in our view, penalty should not be levied by the authorities below for failure to comply with the notices under section 142(1) of the I.T. Act, 1961. In view of the above discussion, we set

aside the Orders of the authorities below and cancel the penalty under section 271(1)(b) of the I.T. Act in all the above impugned assessment years. Appeals of the Assessee are allowed.

6. In the result, all the appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 01<sup>st</sup> September, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.