In the Income-Tax Appellate Tribunal,
Agra Bench, Agra

Before : Shri A.D. Jain, Judicial Member And
Shri Dr. Mitha Lal Meena, Accountant Member

ITA Nos.400 to 406/Agr/2017
Assessment Year: 2008-09 to 2014-15

Shri Satish Kumar Arora,1 Ashoka Enclave, Dayal Bagh, Agra PAN AAMPA 0703 C **(Appellant)**	vs.	DCIT, Central Circle, Agra. **(Respondent)**

Appellant by	Shri Rajendra Sharma, Advocate
Respondent by	Shri Waseem Arshad, Sr. D.R.

Date of Hearing	28.08.2018
Date of Pronouncement	27.09.2018

ORDER

PER BENCH:

This bunch of appeals by the assessee is directed against the order of the ld. CIT(A)-IV, Kanpur dated18.09.2017, for A.Ys. 2008-09 to 2014-15, wherein, the assessee has raised the following common grounds of appeal:

> *"1. That the Ld. CIT(A) has erred on facts and in law while sustaining the penalty for Rs.10,000/- imposed by the AO under section 271(1)(b) of the Income Tax Act. The penalty imposed by the AO and sustained by the CIT(Appeals) is highly unjustified and against law, liable to be cancelled.*
>
> *2. That while sustaining the penalty, the CIT(A) has not appreciated the facts and the submissions made before him, after taking into consideration the facts and the submissions forwarded before him, no penalty is liable to be sustained, the penalty imposed by the AO and sustained by the CIT(A) is liable to be cancelled."*

2. The AO has levied seven penalties in all, each of Rs.10,000/- u/s 271(1)(b) of the Act for non compliance of a consolidated notice issued u/s 142(1) of the Act for the A.Ys.2008-09 to 2014-15, which penalties have been confirmed by the ld. CIT(A). Aggrieved, the assessee is in appeal before us.

3. The ld. counsel for the assessee submitted that while sustaining the penalty, the CIT(A) has not appreciated the facts of the case, the submissions made before him and without taking into consideration the facts and the submissions filed before him, wrongly sustained the penalties imposed by the AO. In support, he relied upon the order of ITAT, Ahmedabad Bench in the case of 'Swarnaben M. Khanna vs. DCIT', [2010] 37 SOT 25 (Ahd.).

4. The Id. DR on the other hand placed strong reliance on the impugned orders.

5. Heard. A search U/s 132(1) of the I.T. Act was conducted at the premises of the assessee on 12.11.2013. The case of the assessee was centralized u/s 127 of the I.T.Act, 1961 with ACIT/DCIT (Central Circle), Agra vide order F.No. CIT-II/Agra/Tech/Centralization/2014-15 dated 17.11.2014 of the CIT-II, Agra. In pursuance of the aforesaid search, notice u/s 153A was issued on 25.06.2015 in the year under consideration. However, in compliance to such notice, neither the assessee attended nor any written submission was filed by the assesses. The AO observed as under:

> *"Looking to the time barring matter, notice U/s 142,(1)/questionnaire dated 28.08.2015 was issued to the assessee and the date fixed for hearing on 15.09.201 5. On this date, neither anybody attended nor submission or any written reply were submitted by the assessee, even no compliance was made till date by the assessee. Thus, assessee was failed to submit reply/documents as required in notice U/s 142(1) dated 28.08.2015 Therefore, notice u/s 271 (1)(b) dated 10.08.2015 was issued for non-compliance of notice dated 28.03.2015 and an opportunity was given to appear on 18.08.2015. Again, neither any submission was filed nor any written request for adjournment was submitted by the assessee, Hence, assessee's default has been dearly established and it is a fit case for imposition of penalty for non-compliance of notice U/s 142(1) dated 28.08.2015.*

Taking a fair and reasonable view of acts and merits of the case, I impose penalty of Rs.10,000/- which the assessee is directed to pay. Issue notice of demand.”

6. The assessee, in this regard, filed an appeal before the first appellate authority and a written reply which is reproduced as below:

“5.2 In this regard the appellant has filed the written submission which is reproduced as under:

That the AO has imposed the penalty under section 271(l)(b) of Income Tax Act for non compliance to the notice issued under section 142(1) of Income Tax Act dated 28.08.2015. in which (he date/or compliance, was fixed on 15.09.2015.

That the AO has issued a notice under section 142 (Ij of Income Tax Act /questionnaire, dated 28.08.2015 which is issued in connection with the proceedings initiated after search I53A of Income Tax Act. A consolidated notice under section 142(1) dated 28.08.2015 was issued for the Assessment Year 2008- 09 To 2014-i 5 i. e. for 7 Years and the date for compliance, as stated above, was fixed on 15.09.2015. As per the penalty order dated 14.01.2016, The AO has mentioned that no compliance So the consolidated notice, issued under section 142(1) dated 28.08.2015 had been made by the assessee. Therefore, a show cause notice dated 10.08.20} 5 for imposition of penalty was also issued allowing the assessee to furnish his explanation. As per the body of penalty order, the AO has mentioned no compliance of either the notice issued under section 142(1) or of the .show cause notice was made by the assessee, resulting the AO has imposed seven penalties separately by passing of the seven penalty orders in respect of one default committed by the assessee for not making the compliance to the one notice issued under section 142(1) dated 28.08.2015.

That the appellant respectfully submits, that in response to the notice issued under section 142(1), the assessee did attend the office and has made the request for supply of some seized document which are no! either copied or missed from the assesses accordingly an oral adjournment was allowed by the AO while there is no record of attending the office is available on the assessment record. There was no default intentionally on the part of the assessee. The penalty imposed vide penalty order dale 14-01.2016 is not called for.

That alternatively the assessee also submitted that as per the record, there is only one default committed by the assessee i.e. not making the compliance to the questionnaire/notice issued under section 142(1) dated 28.08.2015 fixing the date for *compliance i.e. 15.09.2015. The AO for not making compliance to the one notice dated 28.08.2015 has imposed seven penalises by passing seven separate penalty orders, while there was one default i.e. non-compliance of the notice dated 28.08.2015. Seven penalties imposed by passing of seven separate penalty orders on one default are against the provisions of section 27l(l)(b) of (he Income Tax Act, as per the provisions of section 271(l)(b), one penalty can he imposed for each default, in the case of the appellant, there is one default as per the assessment record being committed by the assessee. therefore, only one penalty under Section 271(l)(b) could be imposed. Alternatively it is requested that out of the seven penalties imposed for the seven assessment years, only one penalty for any one year may kindly he maintained for one default cancelled by the assessee. Other penalties are liable to he cancelled being imposed against the provisions of season 271{l)(b) of the income Tax Act by which for each default one penalty can be imposed.*

It is therefore requested that the penalties imposed by the AO is liable to he cancelled being:-

(a) The penalty U/s 2 71 (I) (b) can be imposed where, the assessee has failed to comply with a notice U/s 142(1) of the Income Tax Act, that as per the provisions of the section 271(l)(b) wherein it is clearly mentioned that the penalty u/s 271(1)(b) is to he imposed where the assessee has failed To comply with a notice issued it/a 142(1), meaning there by the penalty U/s 271(!)(b) relates to the notice & not with Assn. years, In this case one notice dated 28.08.2UI5 was issued requiring the assessee to furnish the details / explanation for seven years, which is as per AO has not been complied. As per provisions of section 27l(l)(h) there is non-compliance of one notice dated 28.08.2015 issued U/s 142(1), therefore there is one non-compliance A penalty if (my could be imposed i.e. one penalty only for one non-compliance. Thus the seven penalties imposed against the non-compliance of one notice is against the provisions of section 27](t}(h) of Income Tax, Act.

(b) That, seven penalties imposed are also highly unjustified being assessee was prevented by sufficient cause as suffering with illness of loss of memory and also his advocate did attend the office of the AO and an oral adjournment was duly allowed, no penalty for non-compliance is to be imposed."

7. The Ld. CIT(A) was not satisfied with the reply of the assessee and confirmed the penalty levied u/s 271(1)(b) of the Act by the AO in respect of all the seven assessment years.

8. The ld. CIT(A) has held as follows:

“5.3 The undersigned has carefully gone through the penalty order and written submission filed by the appellant. It may be seen that a notice u/s 142(1) of the Act dated 28.08.2015 was issued and duly served upon the assessee calling for certain information/explanation. The date for compliance was fixed for 15.09.2015. In response, appellant did not comply and no adjournment was sought by the appellant. Further, show cause notice u/s 271(1)(b) dated 10.08.2015 was issued which remained unattended. Therefore, undersigned is of the view that the appellant has not only committed the default under the provision of 271 (1) (b) but also failed to show the reasonable cause for committing such default. As regards to consolidated notice issued by AO for A.Y. 2008-09 to 2014-15, it is seen that it is perfectly in order. AO did not object to consolidated notice during penalty proceedings. Further, appellant has submitted the consolidated reply on 15.07.2015 to the undersigned. This shows that consolidation of notices or replies or orders for more than one assessment year is possible if it involves common issues or grounds. The default of non-compliance to notice is for each A.Y. 2008-09 to 2014-15, hence argument of the appellant that there exist only single non-compliance is not acceptable.

Further, the reliance is also placed on the judgment of Hon'ble ITAT bench, Lucknow in case of 5hri Krishna Krishna Bihari Agarwal Vs. DCTT, Range-IV, Kanpur in ITA No. 296/LKW/2015 dated 26.06,2015 which is squarely applicable to the facts of case of the appellant in which it has been observed by the Hon'bie ITAT that "the conduct of the assessee shows that he is non cooperative to the AO and he has no respect for the authorities. Since the assessee never appeared before the AO in response to the notices issued by the AO either in the assessment proceedings or in the penalty proceedings, we are of the view that no lenient view can be taken on the assessee, as if the penalty is deleted, a message will go to the public at large that there is no need to make compliance of the notices of the I.T. authorities. Therefore, we are of the view that the order of the Ld. CIT(A) who has rightly confirmed the penalty, deserves to be confirmed and accordingly we confirm the same.”

Therefore, undersigned is of the view that the appellant has not only committed the default under the provision of 271 (1) (b) but also failed to show the reasonable cause for committing such default. Thus, penalty levied by AO is hereby confirmed and the appeal of the appellant is dismissed.”

9. The notice u/s 142(1) of the I.T. Act, 1961 in respect of assessment proceedings for the search Assessment proceedings for the A.Y. 2008-09 to 2014-15 is reproduced hereunder (APB Page 1 to 6).

"To,

Shri Satish Arora 1-Ashok Enclave, Dayal, Bagh Agra.

PAN: AAMPA0703C

Sub : Notice u/s 142(1) of the I.T. Act, 1961-Assessment proceedings for the A.Y. 2008-09 to 2014-15 - Regarding.

In connection with the assessment proceedings before me for the above mentioned assessment year, you are required to furnish the following information/ details/explanation with supporting evidences so as to enable me to complete your pending assessment :

1. *Give a brief note on nature of activities and sources of income during the year relevant to assessment year under consideration.*
2. *Furnish details of other income whether it is interest income or other than interest income. Amount of loans/advances/deposits on which interest was received. Name and address of persons whom deposits/loans are given file their copy of account and explain source of such loans etc.*
3. *Furnish evidence In support of agriculture income shown for different years, details of crop cultivated, total quantity of yield, details of expenses, gross sales price and net income with supporting evidence.*
4. *Complete names and addresses of parties from/to whom purchases/sales above Rs.1lac were made with a copy of account of such parties.*
5. *Month wise details of Salary, Vehicle expenses and Interest with supporting evidence.*
6. *Furnish complete name and address alongwith telephone no. and detailed copy of account of sundry debtors above Rs.1 lacs and sundry creditors above Rs.40,000/- and justify liability in the names of creditors.*

7. (a) Complete address of companies/persons from whom unsecured loans have been taken, file their copy of account, date & mode of receipt of loan, file confirmation and justify the loans in terms of identity of creditors their creditworthiness and genuineness of transaction.

(b) Furnish bank certificate regarding loans taken and details of FDRs against which loans were taken from the bank.

8. Furnish complete name and address of persons whom advances/ loans above Rs 1 Lakh was given, date and mode of giving such advances/loans, rate of interest charged, purpose of giving such loans and advances.

9. (a) Furnish a list of assets held, list of assets on which depreciation has been claimed, date of their acquisition and putting to use of business and a chart of depreciation thereon.

(b) Evidence in support of addition in fixed assets and source of Investment. Also furnish details of assets sold, opening W.D.V. as on 01.04.2003, basis of valuation of sales consideration, name and address of the purchaser, date and mode of receipt of sales consideration. Furnish evidence to justify sale of assets.

10. Details of family members, their names, age and their occupation/activities and source of income with address of Assessing Officer, if assessed to Income-tax along with copies of acknowledgement evidencing filing of return for the relevant years. Total withdrawals for house hold and other personal expenses and source thereof with supporting evidences.

Please give justification/utilization of withdrawals.

11. Details of all bank accounts maintained, name and address of bank and account Mo. Please furnish a copy of bank statement. Reconciliation should also be furnished.

S.IMo.	Name of the A/c Holders	Bank name	Account Number
1	2	3	4

12. *Please furnish year wise details of FDRs/STDRs/TDRs/NSCs/IVP/ KVP/ Bonds etc. held as on 31st March of the relevant year in the following manner:-*

Date of purchase	*Name and address of Bank / Institution*	*FDR/NSC/TDR No./Bonds etc*	*Amount*	*Rate of interest*	*Date of maturity*	*Accrued Interest as during relevant F.Y.*
1	*2*	*3*	*4*	*5*	*6*	*7*

Source of investment must also be explained with supporting evidence.

13. *Complete address and exact location of immoveable properties, land, plots, fiats, houses held by you, area of land/plots etc., date and mode of their acquisition, amount of investment and source thereof. Details should be in following manner-*

S.No.	*Name & Address of Property.*	*Purchase/acquisition value of Property*	*Date of Purchase / acquisition*	*Addition made as construction of building, if any.*	*Date on which addition on were made.*	*Total value of property*	*Sources from where payments were made.*
. 1	*2*	*3*	*4*	*5*	*6*	*7*	*8*

Please furnish all the documents/Bills voucher of addition/Constriction of property alongwith purchase deed/sale deed. You are required to furnish certified map of the property, if any.

14. *Whether you are assessed to Wealth-tax or not? If not, explain why you are not liable for wealth-tax.*

15.Furnish confirmatory certificate regarding secured loans and furnish details of securities given for taking bank loan.

16.Copy of account of all the specified persons u/s 40A(2)(b) from whom loans were taken and interest has been paid, prove their identity, credit worthiness and genuineness of loans taken from them. Also prove the reasonableness of interest paid to them. File their copy of account.

17.a) To furnish details of addition in fixed assets made during the year if any, the names and address of the suppliers, description of asset purchased, dates of purchase, date of installation and date on which each item of asset was first put1 to use, stating whether the machinery was new or second hand, date and mode of payment. How such goods were transported, documents of delivery of these items, documents of installation/fitness issued by the supplier and evidence of putting of such machines/items to use.

b) Whether any asset was purchased from sister concern during the F.Y. 2008-09. If yes, details thereof and justify the purchase price of asset purchased.

18. Furnish Composition of each item produced by you in terms of ratio/percentage, percentage of yield and percentage of wastage.

19. Furnish the item wise details of opening and closing stock in terms of description of item, rate, quantity and value. Also justify the valuation by supporting evidence.

20. Month wise purchases of different items of raw materials, copy of account of parties from which purchases above Rs.5 lacs were made with their complete address.

21. Month wise quantitative details of consumption of each item of raw material, production of each items of finished goods and quantity of wastage.

22. Month wise details of goods produced and excise duty paid/payable on them alongwith supporting evidence.

23.Month wise Sales of different items, copy of account of parties to whom sales above Rs.5 lacs were made with their complete address.

24. Complete name and address of other sister concerns, their nature of business and whether you had made any transaction with them in the relevant year. If yes, details thereof alongwith copy of account and justify reasonableness of such transactions.

25. Comparative Chart of Sales, G.P. G.P. Rate, N.P., N.P. Rate for last 3 years.

26.In respect of Foreign Trip furnish the following information:

Date of journey	*Name of person*	*Place visited*	*Air ticket No.*	*Place of stay*	*Expenses on fooding, loading shopping in site seeing exp.*

Also specify exact business activities carried out during the foreign visit with supporting details of expenses incurred on such account.

27. Furnish the copies of all squared up accounts.

28. Produce all books of accounts, purchase &sale bills, stock register etc.for the relevant years.

29. At the time of Search/Survey operation on your premise, a reasonable quantity of cash and jewelry was found/seized. Please explain the source of cash and jewelry found from your premise with documentary evidences.

You are requested to appear before me personally or through an authorized representative (with Vakalatnama/Power of attorney) along with above information with supporting evidences in my Room No.104, Aayakar Bhawan, Sanjay Place, Agra on 15.09.2015."

10. The order of the ITAT, Ahmedabad Bench in the case of 'Swarnaben M. Khanna' (Supra), relied upon by the assessee is distinguished by the Department on the basis that in that case, a search

and seizure was conducted in assessee group, notice u/s 153A were issued to assessees for filing return of income, thereafter the AO issued notice u/s 142(1) to all assessees for AY 2006-07 only, and the AO issued letter requiring assessee to furnish detailed information for six assessment years, i.e. 2000-01 to 2005-06, except in case of one assessee letter did not mention that compliance was required to be made u/s 142(1) and proper time was not given for making compliance, whereas in the present case, a specific notice u/s 142(1) dated 28.08.2015 was issued for specific assessee, mentioning PAN AAMPA 0703 C with specific subject as under:

> "Sub: Notice u/s 142(1) of the I.T. Act, 1961- Assessment proceedings for the A.Y. 2008-09 to 2014-15- Regarding."

Further, it is contended that the assessee has been given reasonable opportunity for making compliance of information sought for in respect of penalties initiated in all the assessment years for the assessee under appeal.

11. Thus, as per the Department, in the instant case, there was a specific notice to the assessee for specific consolidated assessment

year with specific requirement to be complied with, however, in the case of ‘Swarnaben M. Khanna (Supra), it was not so, and hence, the case relied upon by the assessee is not applicable to facts of the present case and it is of no help to the assessee.

12. It is the submission of the Department that the Ld. CIT(A) specifically observed that the notice u/s 142(1) of the Act dated 28.08.2015 was issued and duly served upon the assessee calling for certain information/explanation; that however, on the date fixed for hearing i.e. 15.09.2015,none attendednor adjournment was sought by the appellant; that again, show cause notice u/s 271(1)(b) dated 10.08.2015 remained unattended and, therefore, the Ld. CIT(A) was of the view that the appellant has not only committed the default under the provision of 271 (1) (b), but has also failed to show the reasonable cause for committing such default.

13. The Department also urges that the Ld. CIT(A) has made specific observation as regards to consolidated notice issued by AO for A.Y. 2008-09 to 2015, by stating that it is perfectly in order; that the assessee did not object to the consolidated notice during penalty proceedings and further, the appellant had submitted the consolidated reply on

15.07.2015 to him which shows that consolidation of notices or replies or orders for more than one assessment year is possible if it involves common issues or grounds in case of one assessee when it is a case of search involving several years in particulars; that therefore, the Ld. CIT(A) has correctly held that it was a default for non-compliance to notice is for each A.Y. 2008-09 to 2014-15, and hence, the argument of the appellant that there exists only a single non-compliance cannot be accepted.

14. The CIT(A) has placed strong reliance on the order of ITAT, Lucknow bench in case of 'Shri Krishna Bihari Agarwal Vs. DCTT, Range-IV, Kanpur' in ITA No. 296/LKW/2015 dated 26.06,2015, holding thatit is squarely applicable to the facts of case of the appellant where the ITAT held that *"the conduct of the assessee shows that he is non cooperative to the AO and he has no respect for the authorities. Since the assessee never appeared before the AO in response to the notices issued by the AO either in the assessment proceedings or in the penalty proceedings, we are of the view that no lenient view can be taken on the assessee, as if the penalty is deleted, a message will go to the public at large that there is no need to make compliance of the notices of the I.T.*

authorities. Therefore, we are of the view that the order of the Ld. CIT(A) who has rightly confirmed the penalty, deserves to be confirmed and accordingly we confirm the same."

15. It is seen that in 'Swarnaban M. Khanna' (Supra), it has been laiddown that before levying penalty u/s 271(1)(b) of the Act, there must be a specific notice to the assessee for specific assessment requirements to be complied with; that the compliance must have relevance to the assessment year in question; that it must have apparent in question; that it must have apparent nexus with the assessment of the assessment year to be framed, and that the statutory provision for levy of penalty is not for mere technical non-compliance, but for actual or habitual defaulters. Referring to 'Akhil Bhartiya Prathmik Sangh Bhawan Trust Vs. Assistant DIT', 115 TTJ (Del) (419), it was observed that if the assessment order is passed u/s 145(3) of the Act and not u/s 144 thereof, then the non-compliance is deemed to have been waived off.

16. No contra decision has been cited to counter the above ratio decidendi of 'Swarnaben M. Khanna' (Supra), obviously, only one

penalty can be levied for one default. As such, the grievance of the assessee is found to be justified. 'Shri Khrishna Bihari Agarwal' (Supra), relied on by the Ld. CIT(A) is of no consequence. The assessee has not been shown to be a heavily defaulter.

17. In view of the above, respectfully following 'Swarnaben M. Khanna'(Supra), all the penalty imposed are cancelled.

18. In the result, all the appeals are allowed.

(order pronounced in the open Court on 27/09/2018)

Sd/-	**Sd/-**
(A.D. Jain)	**(Dr. Mitha Lal Meena)**
Judicial member	**Accountant Member**

Dated: 27/09/2018
Aks - Doc

Copy of order forwarded to:
(1) The appellant *(2) The respondent*
(3) Commissioner *(4) CIT(A)*
(5) Departmental Representative *(6) Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Agra Bench, Agra

		Date		
1.	Draft dictated / (DNS)	07.09.2018		PS
2.	Draft placed before author	27.09.2018		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			