

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.3015 to 3017/PUN/2017
निर्धारण वर्ष / Assessment Years : 2007-08, 2008-09 and 2009-10

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| M/s. Sun Infrastructure Pvt. Ltd., F 1/2, Suyojit Heights, Sharanpur Road, Opp. Rajiv Gandhi Bhavan, Nashik – 422 002 PAN : AAHCS5734P | Vs. | ACIT, Central Circle-2, Nashik |
| Appellant | | Respondent |

Assessee by None
Revenue by Shri Vitthal Bhosale
Date of hearing 16-03-2021
Date of pronouncement 16-03-2021

आदेश / ORDER

PER R.S. SYAL, VP :

These three appeals by the assessee are directed against the confirmation of penalty of Rs.10,000/- each u/s.271(1)(b) of the Income-tax Act, 1961 (hereinafter also called 'the Act') by the Id. CIT(A) through his separate orders, all dated 10-08-2017 in relation to the assessment years 2007-08, 2008-09 and 2009-10. Since these appeals involve common factual scenario and similar grounds, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. For reference sake, we are taking up the factual matrix from the appeal folder for the assessment year 2007-08. A search and seizure action u/s.132 of the Act was taken in Suyojit group, Nashik on 21-03-2012. Notice u/s. 142(1) dt. 11-08-2015 was issued seeking compliance on 21-08-2015. Since the assessee did not appear, the AO imposed penalty of Rs.10,000/- u/s.271(1)(b) of the Act. The assessee pleaded for a reasonable cause before the Id. CIT(A) through written submissions, that have been reproduced in para 3.1 of his order. Not convinced, the Id. CIT(A) echoed the penalty, which has brought the assessee before the Tribunal. Similar facts obtain in respect of the other two years as well.

3. We have heard the Id. DR through Virtual Court and gone through the relevant material on record. There is no appearance from the side of assessee despite notice. As such, we are proceeding to dispose of the appeals *ex parte qua* the assessee. From the facts narrated in para 3.1 of the impugned order, it can be seen that the assessee maintained regular books of account which were audited. Consequent upon the search, the assessments for the relevant seven years were completed in March, 2013. The Id. CIT, invoking his power u/s.263, set aside the assessment orders for the years under consideration. It was in pursuance of such orders u/s.263 that the

AO initiated instant assessment proceedings for which notice dated 11.08.2015 u/s.142(1) was issued which was served upon the assessee on 14-08-2015. Compliance was sought on 21-08-2015. There were three holidays between this period of seven days in total, namely, 15th August, intervening Saturday and Sunday, thereby leaving only four days at the disposal of the assessee for putting in appearance and furnishing the details. The assessee stated before the Id. CIT(A) that the proceedings u/s.263 were represented by Advocate Dewani from Nagpur since such proceedings were carried out at Nagpur. Thereafter, the record was carried to Shri Abhay Gundecha, Chartered Accountant in Pune for filing of appeals against the order passed u/s.263 of the Act. Because of these proceedings, the relevant records were frequently moved from Nashik, Pune and Nagpur depending upon the necessity where these were required. In view of this peculiar situation, we find that it was difficult on the part of the assessee to collect different records from the scattered places in a short period of four days, which was at the disposal of the assessee for complying with the requirements of the AO. There is no doubt that the assessee did not comply with the notice issued by the AO and thus, became liable for penalty u/s.271(1)(b) of the Act. However,

section 273B states that wherever there is a *reasonable cause* in not complying with the requirements resulting into imposition of penalty including section 271(1)(b) under consideration, the penalty needs to be deleted. Adverting to the facts of the instant case, we find that there was a *reasonable cause* with the assessee in not complying with the requirements of the AO in such a short period for the reasons discussed hereinabove. This being a *reasonable cause* has brought the case within the ambit of section 273B of the Act. We, therefore, order to delete the penalty imposed by the AO and confirmed in the first appeal in respect of all the three years under consideration.

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

Order pronounced in the Open Court on 16th March, 2021.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 16th March, 2021
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-12, Pune
4. The Pr. CIT, Central, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR
6. 'A', ITAT, Pune;
गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

| | | Date | |
|-----|--|------------|-------|
| 1. | Draft dictated on | 16-03-2021 | Sr.PS |
| 2. | Draft placed before author | 16-03-2021 | Sr.PS |
| 3. | Draft proposed & placed before the second member | | JM |
| 4. | Draft discussed/approved by Second Member. | | JM |
| 5. | Approved Draft comes to the Sr.PS/PS | | Sr.PS |
| 6. | Kept for pronouncement on | | Sr.PS |
| 7. | Date of uploading order | | Sr.PS |
| 8. | File sent to the Bench Clerk | | Sr.PS |
| 9. | Date on which file goes to the Head Clerk | | |
| 10. | Date on which file goes to the A.R. | | |
| 11. | Date of dispatch of Order. | | |

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