IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI “A” BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JUDICIAL MEMBER,
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER.

ITA. Nos. 4634 to 4640/Mum/2014
(Assessment Years:2005-06 to 2011-12)

M/s. Korpus Financial Services Pvt. Ltd.,
16, Gundecha Chambers, N. M. Road, Fort, Mumbai – 400 023 — Appellant

Vs.

DCIT, C.C.-44, Mumbai 400 020 — Respondent

PAN: AACCK4562A

अपीलार्थी की ओर से /By Appellant	: Nidhi Patel, A.R.
प्रत्यर्थी की ओर से/By Respondent	: Shri Santanu Kumar Saikia, D.R.
सुनवाई की तारीख/Date of Hearing	: 10.08.2016
घोषणा की तारीख/Date of Pronouncement	: 12.08.2016

ORDER

PER SHAILENDRA KUMAR YADAV, J.M:

All appeals have been filed by assessee against the consolidated order of Commissioner of Income-Tax (Appeals)-38, Mumbai, dated 30.05.2014 for all A.Ys. i.e. 2005-06 to

2011-12. Since, these appeals pertain to same assessee and on similar issue, so they are being disposed of by common order for the sake of convenience.

2. In ITA No.4634/Mum/2014 for A.Y. 2005-06, assessee has filed appeal on following ground:

> "1. On the facts and circumstances of the case and in law, the Commissioner of Income Tax, (Appeals)-38, Mumbai erred in upholding the action of the Assessing Officer, Mumbai in levying the penalty under section 271(1)(b) of the Income Tax Act, 1961."

3. A search and seizure action u/s.132 of the Act was conducted in case of M/s. JIK Industries Limited. During course of search, certain incriminating documents and computer back up was found and seized, which belonged to assessee. Therefore, the case of assessee company was covered u/s.153C of the Act. Subsequently, notice u/s. 143(2) and 142(1) of the Act were issued to assessee company on 10.08.2012 for the A.Ys.2005-06 to 2011-12 fixing the date of compliance on 21.08.2012, which were duly served upon assessee. There is nothing on record to suggest that there was any compliance from assessee on the scheduled date. In view of assessee's non-compliance to the statutory notice, notice u/s.271(1)(b) of the Act was served upon the assessee company on 22.03.2013 along with assessment order to which there was no compliance on the part of assessee as mentioned in the penalty order. Thereafter, a show cause notice dated 08.07.2013 was issued to explain as to why penalty

uls.271(1)(b) of the Act should not be levied. In response to same, assessee company vide letter dated 22.07.2013 submitted that the requisite reply in this regard was furnished by them by their letter dated 22.05.2013 and copy of the same was furnished. It was submitted by assessee that there were eight assessees in the group and total 55 search assessments were in progress and hence, there was minor delay in submission of details. Assessing Officer did not accept the explanation of assessee on the ground that assessee failed to comply with two statutory notices issued. Accordingly, he levied penalty u/s.271(1)(b) of the Act of Rs.10,000/each in respect of default committed by assessee in complying with the notices issued on two occasions i.e. notice u/s.143(2) and notice u/s.142(1) of the Act dated 10.08.2012 aggregating to Rs.20,000/- in respect of each of the assessment years 2005-06 to 2011-12. Same was confirmed by CIT(A).

3.1 Before us, ld. Authorized Representative submitted that similar issue arose in ITA Nos. 4759 to 4765/Mum/2014 for A.Ys. 2005-06 to 2011-12 in case of M/s. JIK Industries Ltd. vs. DCIT, wherein Tribunal held as under:

> "3.3. We have gone through the facts of the case brought before us. It is noted that in pursuance to the search, the assessment proceedings of seven years were commenced by the Income Tax Department. The admitted facts on record are that the assessee company was a sick company, and was under the scheme of BIFR. We have further noted that it has been stated by the AO while levying the penalty that he had issued notice u/s 142(1) dated 04.09.2012 fixing the hearing for 10.09.2012, and since non-compliance was

made by the assessee on 10.09.2012, and therefore, it was a fit case for levy of penalty, and accordingly, penalty was levied. We are surprised to note that the AO has no where mentioned in the assessment or penalty order that whether the impugned notice was served at all upon the assessee. It is further noted that impugned notice claim to be issued on 04.09.2012, fixed the date for hearing on 10,09.2012. If, we exclude Saturday and Sunday and the time taken for dispatch and delivery of the notice, the assessee was left with hardly two or three day time, even if the notice was duly and expediently served upon the assessee. Further there is no case made out by the AO of any other non-compliance on the part of the assessee. Rather, it is noted that subsequently details and documents were filed by the assessee to the AO on the basis of which assessment proceedings were completed and assessment order was passed u/s 143(3) and not u/s 144. Thus, it shows that subsequently, compliance has been made by the assessee. Under such circumstances, in our considered opinion without giving adequate time and without making out a case of substantive non-compliance by the assessee, it was unfair and unjustified on the part of the AO in levying the penalty u/s 271(1)(b). In the totality of the facts and circumstances of the case, we find that levy of penalty was not justified. The action of the AO is unsustainable in the eyes of law, and therefore, we direct the AO to delete the penalty.

4. In the result, all above seven appeals filed by the Assessee are allowed."

3.2 Similar view has been taken by ITAT 'D' Bench, Mumbai in case of Mr. Rajendra G. Parikh vs. DCIT in ITA Nos. 6944 to 6950/Mum/2014 for A.Ys. 2005-06 to 2011-12, wherein similar state of facts penalty has been deleted by ITAT by observing as under:

"2.1. We find that while levying the penalty u/s 271(1)(b) of the Act (as is oozing out from para-2 of the penalty order), the assessee was issued notice u/s 142(1) of the Act on

04/09/2012, fixing the compliance by the assessee on 10/09/2012. It has not been mentioned as to when the notice was served upon the assessee. It is also noted that during that period, as explained before us, the assessee was suffering from ailment, meaning thereby, sufficient time/opportunity for compliance was not provided to the assessee. This is clearly violation of principle of natural justice on the part of the Revenue. It is noted that the Tribunal in the aforesaid order dated 18/02/2016 has made an elaborate discussion on identical fact including the decision from Hon'ble Apex Court in M/s Hindustan Steel Ltd. 83 ITR 26 and the case of the assessee Delhi Bench of the Tribunal in Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust vs ADIT 115 TTJ 419 (Del.). If we exclude the Saturday and Sunday, falling within the given time in the notice, time taken for dispatch and delivery of the notice hardly two or three days left with the assessee. It is noted that the ld. Assessing Officer has not made a good case for non compliance on the part of the assessee. Considering the totality of facts and the circumstances narrated before us, we direct the ld. Assessing Officer to delete the penalty, imposed upon the assessee. Thus, the impugned appeals are allowed.

Finally, the appeals of the assessee are allowed."

3.3 In this case, service of notice has not been established by Assessing Officer. In absence of service, any action for non compliance is not justified. Moreover, time for compliance was not found sufficient according to us. Moreover, there is sufficient compliance by assessee in the proceedings, so, taking all facts and circumstances into consideration, we are of the view that penalty levied by Assessing Officer is not sustainable. Same is directed to be deleted as held in case of M/s. JIK Industries Ltd. vs. DCIT (supra).

3.4 As a result, appeal filed by assessee for A.Y. 2005-06 is allowed.

4. In ITA Nos. 4635 to 4540/Mum/2014 for A.Ys. 2006-07 to 2011-12 similar issue arose that of 4634/Mum/2014 for A.Y. 2005-06. Facts being similar, so, following same reasoning, penalty in all these years are also directed to be deleted.

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

Pronounced in the open Court on this the 12th day of August, 2016.

Sd/-	Sd/-
(RAJESH KUMAR)	(SHAILENDRA KUMAR YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai: Dated 12/08/2016

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार,
आयकर अपीलीय अधिकरण, मुंबई।