

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHIR RAJENDRA, ACCOUNTANT MEMBER AND

SHRI SHRI C.N. PRASAD, JUDICIAL MEMBER

आयकर अपील सं /I.TA Nos.4324 to 4328/Mum/2015

(निर्धारण वर्ष / Assessment Years: 2007-08 to 2011-12

M/s. Korpus Financial Services Pvt. Ltd., 16,Gundecha Chambers, N.M. Road, Fort, Mumbai-400 023	बनाम/ Vs.	The DCIT, C.C.-44, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACCK 4562A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		Shri Neelkanth Khandelwal
प्रत्यर्थी की ओर से/ Respondent by:		Shri Manjunatha Swamy

सुनवाई की तारीख / Date of Hearing :26.07.2016

घोषणा की तारीख /Date of Pronouncement : 21.09.2016

आदेश / ORDER

PER C.N. PRASAD, JM:

All these appeals are filed by the assessee against the common order of the Ld. CIT(A)-50, Mumbai dated 31.03.2015 pertaining to assessment years 2007-08 to 2011-12.

2. The only issue in all these appeals is that the Ld. CIT(A) erred in sustaining the action of the Assessing Officer in levying penalty u/s. 271F of the Act.

3. Brief facts are that a search was conducted on 4.2.2011 in the case of M/s. JIK Industries and at the premises of CMD Shri R.G. Parikh. The assessee company is a subsidiary and a group company of the JIK Industries Ltd. , therefore it was covered u/s. 153C of the Act as search documents and computer back up was found and seized in the course of search proceedings notices u/s. 153C were issued to the assessee on 30.4.2012 for filing return of income on or before 30 days for all these assessment years i.e. 2005-06 to 2011-12. The assessee filed returns with the delay of 3 to 4 months i.e. beyond the date specified in the notice issued u/s. 153C of the Act. The assessments were completed u/s. 143(3) R.W. Sec. 153C on 22.3.2012.

3.1. Since the assessee filed returns beyond the time specified in the notice issued u/s. 153C, notice u/s. 271F was issued requiring the assessee to show cause as to why penalty u/s. 271F should not be imposed for delay in filing the returns. In response to the notice, assessee filed letter dated 22.7.2013 stating that there were 8 assessees in its group and total 55 search assessments were in progress and the returns of the entire group were also required to be filed and therefore there is little delay in filing the returns. It was also contended that Chairman/Chief Promoter of the group was unwell/sick and was not attending to the business regularly and he was hospitalized twice. Therefore, it was contended that there was no willful and deliberate delay on the part of the assessee in filing the returns belatedly. It was also contended that assessee has reduced its accounting staff as was no much business and therefore no sufficient staff was left to deal with huge return filing work. It was

also contended that the assessee was regular and prompt in filing its returns since inception except on this occasion which was beyond its control. Therefore it was contended that no penalty u/s. 271F should be levied as the Assessing Officer has discretion to impose the penalty u/s. 271F of the Act and it is not mandatory and automatic. However, not convinced with the submissions of the assessee, the Assessing Officer proceeded to levy penalty u/s. 271F observing that the assessee has failed to file the returns within the specified time without any reasonable cause.

4. On appeal, the Ld. CIT(A) sustained the penalty levied by the Assessing Officer.

5. The Ld. Counsel for the assessee reiterated the submissions made before the authorities below and submits that there is no willful default in filing the return belatedly and the delay was occurred for the following reasons:

- a. Appellant were regular and prompt in filing their return of income, since inception except this stray incident, that too beyond the control of the appellant.
- b. Appellant and their group companies were required to file a total number of 55 returns, followed by search proceedings which necessarily required time.
- c. Chairman of the Group/Chief Promotor of the group was unwell/sick and was not attending business regularly and had to be hospitalized twice.
- d. There were no willful/deliberate delay on the part of the appellant.

- e. Provision of Sec. 271F were not applicable on the facts and circumstances of the case and if it is considered to be applicable, it may be appreciated that the alleged delay was on account of reasonable grounds and does not warranted levy of penalty u/s. 271B r.w. Sec. 273.

5.1. The Ld. Counsel for the assessee further relying on the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd., Vs State of Orissa (83 ITR 26) submits that levy of penalty is not automatic. The Assessing Officer has the discretion to impose penalty and such discretion is to be exercised judiciously and no penalty should be imposed where there is a technical or venial breach of the provisions of the Act. The Ld. Counsel for the assessee submits that here there is a reasonable cause within the meaning of Sec. 273B for not filing the returns within the time stipulated in the notice u/s. 153C. Therefore he submits that penalty be deleted.

6. The Ld. Departmental Representative vehemently supports the orders of the authorities below.

7. Heard both parties and perused the orders of the authorities below. The Assessing Officer in this case levied penalty u/s. 271F for delay in filing the return of the assessee i.e. beyond the stipulated period mentioned in the notice issued u/s. 153C of the Act. The assessee submitted before the authorities below that:

- a. Appellant were regular and prompt in filing their return of income, since inception except this stray incident, that too beyond the control of the appellant.

- b. Appellant and their group companies were required to file a total number of 55 returns, followed by search proceedings which necessarily required time.
- c. Chairman of the Group/Chief Promotor of the group was unwell/sick and was not attending business regularly and had to be hospitalized twice.
- d. There were no willful/deliberate delay on the part of the appellant.
- e. Provision of Sec. 271F were not applicable on the facts and circumstances of the case and if it is considered to be applicable, it may be appreciated that the alleged delay was on account of reasonable grounds and does not warranted levy of penalty u/s. 271B r.w. Sec. 273.

8. The assessee also placed reliance on the decision of the Hon'ble Supreme Court in the case of M/s. Hindustan Steel Ltd Vs State of Orissa (supra) in support of its contention that penalty is not leviable in case of technical and venial breach. The submissions of the assessee were not appreciated by the authorities below and the penalty was levied by the Assessing Officer u/s. 271F which was sustained by the Ld. CIT(A). It was the submission of the assessee that returns were filed regularly and promptly since inception except on this occasion which was beyond the control of the assessee. It was the submission of the assessee that its group companies required to file a total No. of 55 returns followed by search proceedings which necessarily required time and the Chairman/Chief Promotor of the group was unwell/sick and was not attending business regularly and was hospitalized twice. All these submissions of the assessee were not disputed or disbelieved by the Revenue. Therefore, we are of the view that there was no willful or deliberate delay on the part of the assessee in filing the returns. Therefore, there is reasonable cause

for delay in filing the returns. The assessee was prevented with reasonable cause in not filing the returns in time, ultimately the returns were filed and the assessments were completed u/s. 143(3) r.w. Sec. 153C of the Act.

9. The Hon'ble Supreme Court in the case of Hindustan Steel Ltd (supra) held as under:

“An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute”.

The Hon'ble Supreme Court held that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings and penalty should not be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. It was also held that penalty also will not imposed merely because it is lawful to do so. In this case the assessee filed returns belatedly and there is reasonable cause in filing the return in time as stated above and further the record does not show that assessee has acted either deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in

conscious disregard of its obligation. In the circumstances, we hold that assessee was prevented with reasonable cause in filing the returns and there is no deliberate attempt to file the returns belatedly. Thus, we delete the penalty levied u/s. 271F of the Act.

10. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open court on 21st September, 2016.

Sd/-

(RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 21st September, 2016

व.नि.स./ Rj , Sr. PS

Sd/-

(C.N. PRASAD)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai