



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.146 & 147/Rpr/2014

Assessment Years : 2008-09 & 2009-2010

Seetal Anusandhan & Gramin Vikas Sansthan, Ambikapur	Vs.	JCIT, Korba
PAN/GIR No.AAFTS 2990 E		
(Appellant)	..	(Respondent)

Assessee by : Shri S.R.Rao, AR
Revenue by : Mrs Sheetal Verma, DR

Date of Hearing : 12/01/ 2018
Date of Pronouncement : 15 /01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

Both the appeals filed by the assessee are directed against separate order of the CIT(A) both dated 8.10.2012 of the CIT(A)-Bilaspur for the assessment years 2008-09 & 2009-2010.

2. In both the appeals, the assessee is aggrieved by the confirmation of penalty u/s.272(A)(2)(e) of the I.T.Act, 1961 of Rs.15,700/- for the assessment year 2008-09 and Rs.18,100/- for the assessment year 2009-2010.



3. The assessee is a society registered under Society Registration Act as well as u/s.12A of Income Tax Act, 1961. The society is solely engaged in imparting education and medical /health camp through its institutions. The penalty proceedings were initiated under section 272A(2)(e) for the years under consideration on the ground that the assessee had filed the return of income late by 157 days for the assessment year 2008-09 and 181 days for the assessment year 2009-2010. The explanation of the assessee was that the activity of the society is imparting education and since receipts of the years under consideration were less than Rs.1 crore, the income is exempt u/s.10(23C) (iiiad) of the Act, the society was under bonafide belief that it is not obliged to file return of income and as such no penalty can be levied for delay in filing the returns. This explanation was not accepted by the Assessing Officer and, accordingly, penalty of Rs.15,700/- for the assessment year 2008-09 and Rs.18,100/- for the assessment year 2009-2010 was imposed by the Assessing Officer u/s.272A(2)(e) of the I.T.Act, 1961.

4. The matter was carried before the Commissioner (Appeals), who has held that the assessee-society is exempt under section 10(23C)(iiiad) of the Act. As per the trust deed, there is a managing committee to hold the assets of the society on behalf of its members. It was held that the assessee society has not pleaded any reasonable cause for delay in filing the return of



income before the Assessing Officer in true sense within the meaning of section 273B of the Act. The society is availing benefits of exemption u/s.11 & 12 of the Act and the bonafide of belief that it is not required to file income tax return is based on registration granted under the aforesaid section, which lays down fulfillment of certain conditions including auditing of account books and filing of return u/s.139(4A) every year. The books of accounts of the year were audited. Therefore, it cannot be inferred that the assessee society is not required to file income tax returns. Since the assessee society has filed income tax return late, the CIT(A) confirmed the levy of penalty imposed by the Assessing Officer for the assessment years under consideration. Aggrieved by the same, the assessee society is in appeals before the Tribunal.

4. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. Penalty may be imposed under section 272A(2)(e) for failure to furnish the return of income in accordance with the provisions of section 139(4A) rws 139(1) of the Act. In the present case, there was no deliberateness in not filing the return of income within the prescribed time limit. The assessee society was under a bonafide belief that since the income of the society is exempt, it is not required to file income tax return. However, when it came to the knowledge of the assessee society that it is required to file income tax return, immediately,



the society filed the same. Penalty cannot be levied under section 272A(2)(e) if there exists sufficient or reasonable cause for the default. The meaning of the term "reasonable cause" as enunciated by the Hon'ble Delhi High Court in the case of Azadi Bachao Andolan v Union of India 252 ITR 471 reads as follows:-

"Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides".

5. The Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v The State of Orissa (83 ITR 26) held as follows:-

"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 to 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 provision 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".



6. In the present case, the assessee was under a bonafide impression/belief for not filing the return of income. The assessee did not act dishonestly or negligently. The delay in filing the return was due to a reasonable and genuine cause. It is also not a case that the assessee did not file a return of income at all. As a result of late filing of the returns, there was no loss of revenue to the Government. The assessee had no ulterior motive to defraud the revenue and had not acted dishonestly or negligently. Therefore, there was sufficient/ reasonable cause for the delay in furnishing the return of income.

7. In view of the above, we are of the view that the assessee society is not liable for penalty under section 272A(2)(e) of the Act for delay in filing the returns of income. Therefore, we cancel the penalty imposed by the Assessing Officer for both the years under consideration.

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

Order pronounced on 15/01/2018.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Raipur; Dated 15 /01/2018
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1.	The Appellant : Seetal Anusandhan & Gramin Vikas Sansthan, Ambikapur
2.	The Respondent. JCIT, Korba
3.	The CIT(A)-Bilaspur
4.	Pr.CIT-Bilaspur
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur