

आयकर अपीलीय अधिकरण, “बी” न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL ‘B’ BENCH, CHENNAI
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.1772/Chny/2018
निर्धारण वर्ष/Assessment Year:2010-11

M/s. Himalayan Educational Trust,
Mount Shevaroy's Matriculation
School, Poosaripatti, Omalur TK,
Salem 636 305.

The Addl. Commissioner of
Income Tax (Exemptions),
Coimbatore.

[PAN: AAATH7716E]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri T.S. Lakshmi Venkataraman, CA
प्रत्यर्थी की ओर से/Respondent by : Shri G.N. Ragavendra Rao, JCIT
सुनवाई की तारीख/ Date of hearing : 12.11.2018
घोषणा की तारीख /Date of Pronouncement : 27.11.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), Salem dated 28.03.2018 relevant to the assessment year 2010-11 passed against levy of penalty under section 272A(2)(e) of the Income Tax Act, 1961 [“Act” in short].

2. Brief facts of the case are that the assessee has filed a return of income for the assessment year 2010-11 on 08.03.2012 along with earlier two assessment year returns of income for the year ended 31.03.2008 and

31.03.2009. The trust was not granted any Registration under section 12AA of the Act. The return of income filed for the assessment year 2010-11 was taken up for scrutiny under section 143(2) of the Act and accepted the 'Nil' income returned by the assessee vide assessment order dated 28.01.2013. A penalty notice under section 271(2)(e) dated 08.12.2015 was issued by the Addl. Commissioner of Income Tax (Exemption Range), Coimbatore. Penalty was levied for delay in filing of return of 509 days @ ₹.100/- per day vide order dated 23.03.2016.

3. Against the levy of penalty, the assessee trust carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and facts of the case, the Id. CIT(A) confirmed the penalty levied under section 272A(2)(e) of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the belated filing of returns for the earlier two assessment years projected itself in the delay in finalization of return for the year under appeal and thus, the belated filing of the return for an earlier year is a reasonable cause for belated filing of return for the subsequent year and prayed for deleting the penalty levied under section 272A(2)(e) of the Act. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. It is an admitted fact that the assessee has belatedly filed the return of income, which attracts application of provisions of section 272A of the Act. Accordingly, against the delay of 509 days in filing the return of income for the assessment year under consideration, the Assessing Officer levied penalty under section 272A(2)(e) of the Act. After considering the submissions, the Id. CIT(A) has observed as under:

“5. I have perused the submissions of the appellant and the penalty order. The appellant's argument that delay caused due to delay in filing of the return for the A.Y. 2009-10 (previous year) is the main cause for the delay for the year under appeal. The Income-tax Act treats each assessment year as a separate entity. The A.O. found that the appellant has earned a total receipt of Rs.39,62,207/- which was much above the taxable limit before giving effect to the provisions of sections 11 and 12 of the Income-tax Act. The assessee was under a statutory obligation to file its return of income according to the provisions of section 139(4A) of the Income Tax Act, 1961 for the year under consideration. Thus, I do not find any valid reason to interfere with the penalty order. Therefore, these Grounds of Appeal are dismissed.”

Ignorance of law is not an excuse. A mistake committed by the assessee cannot be a reasonable cause for committing another mistake. The penalty proceedings under section 272A(2)(e) of the Act is a separate proceeding from assessment of income and the determination of income has no bearing with the quantum of penalty as long as the assessee is required to file its return of income under section 139(4A) of the Act. Once the assessee is

liable to file the return of income under the provisions of the Act and it fails to do so, then the provisions of section 272A(2)(e) of the Act automatically arises. We find that the penalty levied under section 272A(2)(e) of the Act was rightly confirmed by the Id. CIT(A). Thus, the ground raised by the assessee stands dismissed.

6. By filing written submissions, the assessee has contended that the penalty proceedings initiated is beyond the time limit specified under section 275 of the Act and is not valid in law. We find that clause (a) to section 275(1) of the Act speaks about appealable assessment, which is not applicable to the case in hand. Clause (b) to section 275(1) of the Act speaks about appealable order under section 263 of the Act, which is also not applicable to the case in hand. Clause (c) to section 275(1) of the Act speaks about

- in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later – also not applicable because in this case, penalty proceedings initiated by service of notice under section 272A(2)(e) r.w.s. 274 of the Act on 08.12.2015 and the penalty was levied vide order dated 02.03.2016, which is

well within six month period provided and thus, clause (c) to section 275(1) of the Act also not applicable. Similarly, sub-sections 1(a) and 2 to section 275 of the Act also not applicable. Thus, the issue raised in the written submission by the assessee that the penalty proceeding is barred by limitation has no merits. In the appellate order, the Id. CIT(A) has considered all the grounds raised by the assessee and dismissed the appeal filed by the assessee since there was no merit in the grounds raised by the assessee. Thus, we find no reason to interfere with the order passed by the Id. CIT(A).

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 27th November, 2018 at Chennai.

Sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 27.11.2018

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.