

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai**

**Before Shri G.Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.6120/Mum/2018
(Assessment Year: 2013-14)**

Late Ramila Vadilal Mehta,
66-B Shyam Sadan, Bajaj Road, Vile
Parle(W), Mumbai 400 056

Vs. ITO-25(3)(3),
Mumbai.

PAN – ACBPM6616K

(Appellant)

(Respondent)

Appellant by: Shri Vimal C. Punmiya, A.R.
Respondent by: Smt. Jothilakshmi Nayak, D.R.
Date of Hearing: 10.12.2019
Date of Pronouncement: 10.01.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-37, Mumbai, dated 21.08.2018, which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 28.06.2017 for A.Y. 2013-14. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. The Ld. CIT(A) has grossly erred in confirming the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 by the Ld. Assessing Officer of Rs. 3,14,748/- even though the return income and assessed income is same.
2. The Ld. CIT(A) erred in not considering that the assessee is deceased and her legal heir have been settled abroad and subsequent to the death of the assessee the compliance under the income tax could not be made and the return could not be filed in time.
3. The assessee craves leave to add, alter or amend the existing grounds of appeal on or before the date of hearing.

2. Briefly stated, the assessee had not filed her return of income under Sec. 139 of the Act for the year under consideration viz. A.Y. 2013-14. On the basis of information gathered from the Individual Transaction Statement (ITS), the case of the assessee was reopened under Sec. 147 of the Act. In response to the notice issued under Sec. 148 of the Act, dated 22.09.2015, the authorized representative of the assessee submitted a letter dated 23.11.2015 stating that the assessee had expired on 08.05.2013. In order to support the aforesaid factual position the death certificate of the assessee was placed on the record of the A.O. Return of income of the assessee declaring a total income of Rs. 16,85,270/- was filed at the fag end of the assessment proceedings on 29.12.2016.

3. Observing, that the assessee during the year had earned interest income of Rs. 16,85,268/- from FDR, which was duly reflected in the return of income filed by the legal representative of the deceased assessee, the A.O accepted the returned income and framed the assessment vide his order passed under Sec. 143(3) r.w.s 147, dated 29.12.2016. However, the A.O while culminating the assessment also initiated penalty proceedings under Sec. 271(1)(c) of the Act.

4. Subsequently, the A.O vide his order passed under Sec. 271(1)(c), dated 28.06.2017 imposed penalty of Rs. 3,14,750/- for impugned concealment of income on the legal heirs of the deceased assessee.

5. Aggrieved, the legal heirs of the deceased assessee assailed the penalty imposed by the A.O under Sec. 271(1)(c) before the CIT(A). Observing, that no infirmity did emerge from the order of the A.O, the CIT(A) upheld the penalty imposed by him under Sec. 271(1)(c) and dismissed the appeal.

6. The legal heirs of the assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Learned Authorized Representative (for short 'A.R') for the assessee (through legal heir) assailed the validity of the penalty imposed by the A.O under Sec. 271(1)(c) of the Act. It was averred by the Ld. A.R that as the assessee had expired on 08.05.2013, therefore, for the said reason the return of income for the captioned year could not be filed. The Ld. A.R taking us through the facts of the case submitted that as the nephew of

the deceased assessee viz. Mr. Manish Mehta who was looking after the assessee and her income tax work had also migrated to USA, pursuant where to the return of income of the deceased assessee could not be filed. It was submitted by the Ld. A.R that on receipt of the notice under Sec. 148, the legal representatives of the assessee had filed the return of income of the deceased assessee, which was accepted as such by the A.O vide his order passed under Sec. 143(3) r.w.s. 147, dated 29.12.2016. On the basis of the aforesaid facts, it was averred by the Ld. A.R that now when the returned income had been accepted and assessed as such, therefore, no penalty under Sec. 271(1)(c) could have been validly imposed.

7. Per contra, the Ld. Departmental Representative (for short 'D.R') supported the orders of the lower authorities.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities, material available on record, as well as the judicial pronouncements relied upon them. Assessee who was a senior citizen had during her lifetime regularly filed her returns of income, wherein the interest income that would be received by her from the FDR's during the said respective years would duly be disclosed by her. As per the ITS, the assessee during the year was in receipt of interest on FDR of Rs. 16,85,268/-. However, as the assessee had expired as on 08.05.2013 i.e. prior to the 'due date' of filing of the return of income for the year under consideration viz. A.Y. 2013-14, therefore, for the said reason the return for the said year could not be filed. Also, as the nephew of the assessee viz. Mr. Manish Mehta who was looking after the assessee and her income tax matters had migrated to USA, therefore, as claimed by the Ld. A.R, the issue as regards the filing of the return of income of the assessee for the captioned year had gone unattended. As can be gathered from the records, after the case of the assessee was reopened under Sec. 147 of the Act, the legal heirs of the deceased assessee had complied with the same and filed her return of income (though at the fag end) on 29.12.2016, and the returned income was thereafter accepted by the A.O vide his order passed under Sec. 143(3) r.w.s.147, dated 29.12.2016.

9. We have given a thoughtful consideration to the facts of the case and are unable to persuade ourselves to subscribe to the imposition of penalty under Sec. 271(1)(c) upon the legal heir of the deceased assessee. On a perusal of the submissions made by the legal heirs

of the deceased assessee before the lower authorities, which have neither been refuted nor proved to be incorrect by the revenue, we find substantial force in the claim of the Ld. A.R that there was a justifiable reason for the non filing of the return of income of the assessee. Admittedly, the assessee had expired on 08.05.2013, which unfortunate fact in itself explains for the reason for non filing of her return of income for the year under consideration. In fact, we find that a glimpse over the past conduct of the assessee reveals that she as a law abiding citizen had consistently been filing her returns of income for the preceding years. At this stage, we may herein observe that the said fact as had been averred by the Id. A.R had not been rebutted by the counsel for the revenue. Apart from that, it is also a fact borne from the record that the nephew of the assessee viz. Mr. Manish Mehta who during the lifetime of the assessee was looking after her and her income tax matters, had also migrated to USA. On the basis of the aforesaid facts, we are of the considered view that there was more than sufficient justification for the non filing of the return of income of the deceased assessee. However, the legal heirs of the deceased assessee on receipt of a notice under Sec. 148 had filed the return of income (though at the fag end of the assessment proceedings), wherein there was a full and true disclosure of the interest income of Rs. 16,85,268/- on the FDR's which weer held by the assessee during the year under consideration. As observed by us hereinabove, the returned income of the assessee had been accepted by the A.O, as such, vide his order passed under Sec. 143(3) r.w.s. 147, dated 29.12.2016. In the backdrop of the aforesaid facts, we are of a strong conviction that as the legal heirs of the deceased assessee had offered an explanation which clearly substantiated their bonafides leading to the failure in filing of the return of income for the year under consideration under Sec. 139 of the Act, therefore, as per Explanation 1(B) no penalty under Sec. 271(1)(c) could have been validly imposed upon the assessee. Apart from that, we find that now when the returned income of the deceased assessee had been accepted and assessed as such by the A.O, vide his order passed under Sec. 143(3) r.w.s. 147, dated 29.12.2016, then de hors any addition or disallowance in computing the total income of the deceased assessee no penalty under Sec. 271(1)(c) could have been imposed as the same is to be levied with reference to the tax sought to be evaded, which is the difference between the income returned and that assessed by the A.O. Our aforesaid view is fortified by the judgments of the **Hon'ble High Court of Delhi** in the case of **CIT Vs. SAS Pharmaceuticals [ITA No. 1058 of 2009; dated 08.04.2011]** and **CIT, Delhi -1 Vs. Mohan**

Das Hassa Nand 141 ITR 203 (Del). Also, a similar view had been taken by a coordinate bench of the Tribunal in the case of **Armoury International Pereira Compound Vs. ACIT-21(3), Mumbai [ITA Nos.3299, 3300 & 3301 /Mum/2017; dated 01.01.2019]**. On the basis of our aforesaid deliberations, we are of the considered that in the backdrop of the peculiar facts involved in the case before us no penalty under Sec. 271(1)(c) could have validly been imposed on the legal heirs of the deceased assessee. Accordingly, the order of the CIT(A) is set aside and the penalty of Rs. 3,14,748/- imposed by the A.O under Sec. 271(1)(c) is vacated.

10. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 10.01.2020

Sd/-
(G.Manjunatha)
ACCOUANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 10.01.2020
PS. Rohit

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai