

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER

I.T.A. No.622/Coch/2019
Assessment Year : 2007-08

Shri K.P. Musthafa, M/s. Fathima Hospital, South Bazar, Kannur. [PAN: AEHPM 9306C]	Vs.	The Assistant Commissioner of Income-tax, Circle-1, Kannur Range, Kannur.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri Arun Raj S., Adv.
Revenue by	Shri Mritunjaya Sharma, Sr. DR

Date of hearing	22/01/2020
Date of pronouncement	28 th /01/2020

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the CIT(A) dated 22.08.2019. The relevant assessment year is 2007-08.

2. The solitary issue raised in this appeal is whether the CIT(A) is justified in confirming the penalty imposed u/s. 271F of the I.T. Act amounting to Rs.5000 for the assessment year 2007-08.

3. Briefly stated, the facts of the case are as follows:

The assessee is the proprietor of M/s. Fathima Hospital, Kannur. For the assessment year 2007-08, the return of income was filed belatedly on 31-03-2009. Subsequently, there was survey u/s. 133A of the I.T. Act on 15.02.2010. Consequent to the survey, the assessment was completed u/s. 143(3) r.w.s. 147 of the I.T. Act at Rs.16,64,392/- as against the returned income of Rs. 8,89,390/-. Since the return of income was not filed within the due date specified, the Assessing Officer issued notice u/s. 274 r.w.s. 271F of the I.T. Act. The Assessing Officer noted that there was a delay of 17 months from the due date of filing of return of income and 12 months from the end of the assessment year. Therefore, it was held by the Assessing Officer that penalty u/s. 271F of the I.T. Act is to be imposed and accordingly, penalty of Rs.5000/- was imposed vide order dated 31/05/2012.

4. Aggrieved by the penalty order passed u/s. 271F of the I.T. Act, the assessee preferred the appeal before the first appellate authority. The CIT(A) confirmed the imposition of penalty u/s. 271F of the I.T. Act by holding that the delay was caused without giving valid reasons. The relevant finding of the CIT(A) reads as follows:

"6. I have considered the submission. The decision cited by the Appellant is only applicable in regard to penalty u/s. 271B and not applicable to 271F. Even otherwise, in the said decision the facts are entirely different and theory of reasonable cause is accepted by hon'ble ITAT on the facts supported by evidence. In the present case the Appellant is not able to furnish any explanation or

evidence to support that there was reasonable cause for failure to file return of income within the due date or at the end of relevant asst. year. The Appellant is a practitioner of long standing in medical profession and is presumed to be well aware of the provisions of the Income Tax Act. The Appellant is a habitual defaulter as evidenced by fact that no return of income was filed within the due date or end of assessment year for asst. year 2009-10 also.

7. In one of the grounds, the Appellant pleads that notice of hearing was served only on 30.05.2012 on Appellant and order was passed on 31.05.2012 by A.O.. This contention is not correct as A.O. has noted in his orders that case was posted on 25.05.2012 for which Appellant had filed an adjournment petition. Thus plea of Appellant is dismissed. In these circumstances, I find no reason to accept the explanation of reasonable cause furnished by the Appellant and therefore penalty order u/s. 271F of IT Act for asst. years 2007-08 is sustained."

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The Ld. AR submitted that for the assessment year 2007-08, the return of income alongwith the audit report was filed much before the survey conducted u/s. 133A of the I.T. Act and the same was filed before the assessment order u/s. 143(3) r.w.s. 147 of the I.T. Act was passed. It was submitted that the delay in filing the return of income alongwith the audit report was on account of genuine, bona fide reasons. It was submitted that the delay in filing the return of income had occurred only due to the fact that the assessee's accountant who was familiar with the assessee's accounts had abruptly left the services of the assessee as he got employment in Kerala Government Service and it took time for the assessee to find a suitable alternative which had resulted in delay. It was submitted that since the return of

income was furnished before the assessment u/s.143(3) r.w.s. 147 of the I.T. Act was completed, the delay can only be treated as a technical breach which has not resulted in any loss to the exchequer. Further, the Ld. AR relied on the decision of the ITAT, Cochin Bench in the case of Attinkara Electronics vs. ITO in ITA No. 601/Coch/2018 (order dated 01.03.2019). The Ld. DR on the other hand strongly supported the orders of the Assessing Officer as well as of the CIT(A).

7. I have heard the rival submissions and perused the material on record. Admittedly, for assessment year 2007-08, the return of income alongwith the audit report was filed much before the date of survey and the same was available with the Assessing Officer prior to completion of assessment u/s. 143(3) r.w.s. 147 of the I.T. Act. Therefore, it is only a technical breach which has not resulted in any loss to the exchequer. The delay in filing the return of income along with audit report was on account of the assessee's accountant leaving the services of the assessee and the assessee required time to find a suitable person. In these circumstances, I am of the view that there is reasonable cause as mandated u/s. 273B of the I.T. Act. In this context, I rely on the judgment of the Hon'ble Madras High Court in the case of P. Senthil Kumar vs. Pr. CIT (2019) 416 ITR 336 and the order of the Cochin Bench of the Tribunal in the case of Attinkara Electronics vs. ITO (supra). Accordingly, I

delete the penalty or Rs. 5000/- imposed by the Assessing Officer. It is ordered accordingly.

8. In the result, the appeal of the assessee is allowed.

Pronounced in the open court on 28th -01-2020.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 28th January, 2020

GJ

Copy to:

1. Shri K.P. Musthafa, M/s. Fathima Hospital, South Bazar, Kannur.
2. The Assistant Commissioner of Income-tax, Circle-1, Kannur Range, Kannur.
3. The Commissioner of Income-tax(Appeals), Kozhikode.
4. The Pr. Commissioner of Income-tax, Kozhikode.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin