

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "C" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA Nos.5833, 5887 to 5890/Del/2018  
Assessment Years : 2011-12 to 2015-16**

DCIT, Circle-12(1), New Delhi.	vs	M/s. Infonox Software Pvt.Ltd., A-1/292, Janakpuri, New Delhi-110058. PAN-AAACI7076H
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		Ms. Anima Barnwal, Sr.DR
<b>Respondent by</b>		Sh.Deepak Chopra, Adv. & Ms.Rashi Khanna, Adv.
<b>Date of Hearing</b>		03.08.2021
<b>Date of Pronouncement</b>		09.08.2021

**ORDER**

**PER KUL BHARAT, JM :**

This bunch of appeals filed by the Revenue for the assessment years 2011-12 to 2015-16 is directed against the orders of Ld. CIT(A)-4, New Delhi, all dated 18.05.2018 respectively.

2. It is also taken on record that the original files in ITA Nos. 5887 to 5890/Del./2018 pertaining to Assessment Years 2012-13 to 2015-16 are not traceable. Therefore, re-constructed files have been placed on record before the Bench. Looking to the smallness of the issue, hearing of all appeals were taken up on the basis of re-constructed files.

3. All these appeals are having identical grounds of appeals. Therefore, all appeals were taken up together being disposed off by way of a consolidated

order. Since the identical grounds raised in bunch of these appeals, we take up **ITA No.5833/Del/2018 (Assessment Year 2011-12)** as lead case. The Revenue has raised following ground of appeal:-

1. *“Whether, on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the penalty of Rs.5,000/- imposed by the Assessing Officer u/s 271F of the Income Tax Act, 1961 by holding that there was reasonable cause for the failure of the assessee to furnish its return of income required u/s 139(1) of the Act.*

a) *Whether the Ld.CIT(A) has erred in deleting the penalty u/s 271F falling to appreciate that the correctness of advance tax paid by an assessee can be ascertained only after completion of assessment pursuant to a return filed by an assessee and therefore, payment of some advance tax on estimate basis is by itself not sufficient to mitigate the failure to file return of income and to escape the penal consequences of such failure.”*

4. The only effective ground raised in this appeal by the Revenue is against the deletion of penalty imposed u/s 271 F of the Income Tax Act, 1961 (“the Act”) on account of non-filing of the return of income.

5. The facts of the case are that it was noticed from the ITBA application that the assessee had not furnished its return of income for Assessment Year 2011-12. Therefore, the Assessing Officer proceeded to initiate penalty proceedings u/s 271F of the Act for not filing the return of income in terms of section 139(1) of the Act. Notice u/s 274 r.w.s 271 of the Act dated 11.10.2017 was issued and served upon the assessee company calling upon as to why penalty u/s 271F of the Act should not be imposed. In response thereto, the

assessee filed its explanation however, the explanation offered by the assessee was not found acceptable. Therefore, the Assessing Officer imposed penalty of Rs.5,000/- u/s 271F of the Act.

6. Aggrieved against this, the assessee preferred this appeal before Ld.CIT(A) who after considering the submissions, deleted the penalty.

7. Ld. Sr. DR supported the order of the Assessing Officer and submitted that the assessee failed to show any reasonable cause for not filing the Income Tax Return ("ITR") reasons as per section 139(1) of the Act.

8. On the contrary, Ld. Counsel for the assessee supported the order of Ld.CIT(A) and reiterated the submissions before Ld.CIT(A).

9. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has decided the issue by observing as under:-

5. *Examination of the issue and decision:-*

5.1. *"I have perused the penalty order and submissions of the appellant. It was submitted that the appellant had furnished explanation for not filing its Return of Income both online on Department's website as well as before the AO. It was further submitted that its detailed reasons submitted before the AO in response to penalty notice were also not considered by the AD. In these responses and also before me, it was submitted that in the absence of important records which were in possession of the erstwhile Directors with whom the appellant was in legal battle, the accounts of the company could not be audited in time. However, though the return could*

*not be filed on time, the company had duly deposited the advance tax installments on estimate basis and on subsequent audit and finalization of accounts in August 2013, the company paid the shortfall of taxes alongwith applicable interest. Thus, the company has paid advance tax of Rs.38,66,000/- by March, 2011 and after final tax computation based on audit report, paid for short fall of taxes alongwith applicable interest for the year under consideration, though return could not be filed as the statutory time limit for filing return had elapsed.*

*5.2. I have carefully examined the materials available on record. I have also perused the various case laws on the issue including those on which the appellant has relied upon in support of its grounds of appeal. Tax auditors in their report has also pointed out about the appellant company's conflict with its past directors. On the other hand, nothing has been brought on record to establish that appellant's explanation and evidences produced lack bonafide.*

*5.3. Keeping all the facts and circumstances of the case in view, it is seen that the appellant has been able to show that reasonable cause existed to justify its failure in filing Return of Income within prescribed time. I find that the cause shown to explain the delay is evidenced by sufficient material and as a whole shows existence of a state of circumstances which constitute 'reasonable cause' in this case. Accordingly, the order u/s 271F imposing penalty of Rs.5,000/- is cancelled. Penalty imposed amounting to Rs.5,000/- is deleted. Grounds of appeal are allowed.”*

10. We find that the assessee before Ld.CIT(A) has stated that the important documents were in possession of the Directors and there was serious legal dispute was going on with the former Directors in this regard. Therefore, considering the totality of the facts and material placed before us, we do not

find any infirmity in the order of Ld. CIT(A) and same is hereby affirmed. Thus, Ground of the appeal raised by the Revenue is dismissed.

**ITA Nos.5887 to 5890/Del/2018**  
**Assessment Years : 2012-13 to 2015-16**

11. The grounds raised in Assessment Year 2011-12 are identical to the grounds raised in Assessment Years 2012-13 to 2015-16.

12. Both representatives adopted the same arguments as in ITA No.5833/Del/2018.

13. We have heard the rival contentions and perused the material available on record. The facts in the year under consideration are similar to the facts for the Assessment Years 2012-13 to 2015-16. The grounds are also identical. Thus, taking the consistent view, the grounds raised by the Revenue in these appeals are also dismissed as the issues are identical in Assessment Year 2011-12.

14. In the result, all appeals of the Revenue in ITA Nos. 5833, 5887 to 5890/Del/2018 are dismissed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 09<sup>th</sup> August, 2021.

**Sd/-**

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

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