

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.519/MUM/2020
(Assessment Year: 2011-12)**

Mayfair Gardens Co-operative Housing Society Limited, CTS No. 508/A, Azad Lane, Near Shopper's Stop, S.V. Road, Andheri (West), Mumbai – 400 058	Vs. Income Tax Officer -10(2)(3) R. No. 212, Aayakar Bhavan, New Marine Lines, Mumbai – 400 020
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PAN No. AAHAM8296J

(Assessee)

(Revenue)

Assessee by	: Shri Ravikant Pathak, A.R
Revenue by	: Shri Tharian Oommen, D.R

Date of Hearing	: 19/07/2021
Date of pronouncement	: 22/07/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-17, Mumbai, dated 25.11.2019, which in turn arises from the order passed by the A.O u/s 271F of the Income Tax Act, 1961 (for short 'Act'), dated 30.11.2018 for A.Y. 2011-12. The assessee has assailed the impugned order on the following grounds before us:

- "1. The Commissioner of Income Tax (Appeals)-17, Mumbai [(CIT(A)] erred in levying penalty of Rs.5,000/- u/s 271F of the Income Tax Act, 1961 (' the Act').
2. On the facts and circumstances of the case, the Appellant submits that delay/non filing of return of income was due to reasonable cause. Hence, the Appellant prays that the penalty u/s 271F of the Act levied by the A.O shall be deleted.

3. The appellant craves leave, to add, to alter or to amend the aforesaid grounds of appeal.”

2. Briefly stated, the assessee is a non-profit making organization registered as a co-operative housing society. As is discernible from the records, the assessee had failed to voluntarily file its return of income for A.Y 2011-12. Elaborating on the reasons leading to failure on its part in filing the aforesaid return of income, it is the claim of the assessee that as it was issued a PAN in the status as that of a company, viz. AAECM3827G instead as that of a co-operative housing society, therefore, it was for the said reason that it had failed to file the return of income on its own. Thereafter, on the basis of a rectification a new PAN was issued to the assessee society in the correct status, viz. AAHAM8296J. As the assessee was in receipt of interest income from fixed deposits, therefore, its case was reopened u/s 147 of the Act. Notice u/s 148 was issued to the assessee on 23.03.2018. In compliance, the assessee on 29.10.2018 filed its return of income u/s 147 of the Act, declaring a total income of Rs. Nil. The A.O vide his order passed u/s 143(3) r.w.s 147, dated 30.11.2018 assessed the income at the returned income of Rs. Nil.

3. As the assessee had delayed filing of its return of income, therefore, the A.O issued a ‘Show cause’ notice, dated 24.10.2018 therein calling upon it to explain as to why penalty u/s 271F may not be imposed. As the assessee failed to come forth with any explanation, the A.O vide his order passed u/s 271F, dated 30.11.2018 imposed a penalty of Rs.5,000/-.

4. Aggrieved, the assessee assailed the penalty imposed by the A.O u/s 271F before the CIT(A). It was observed by the CIT(A) that the assessee had adopted a non-cooperative approach and had failed to furnish its return of income in the prescribed form for the year under consideration. Further, it was noticed by him that the assessee adopted a lackadaisical approach and had even delayed the filing of its return of income in compliance to notice issued u/s

148 of the Act. Backed by the aforesaid facts, the CIT(A) was of the view that in case if the A.O would have not issued the notice u/s 148 of the Act, then, the assessee would not have filed its return of income for the year under consideration. Accordingly, the CIT(A) finding no infirmity in the view taken by the A.O upheld the penalty that was imposed by him u/s 271F of the Act.

5. The assessee being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. Authorized representative (for short 'AR.') that as the assessee was wrongly allotted the PAN in the status as that of a company which only pursuant to a rectification was thereafter issued in the correct status i.e as that of a co-operative society, therefore, the delay in obtaining the PAN in the correct status had resulted to delay in filing of the return of income by the assessee society. In order to drive home the bonafides of the assessee society, it was submitted by the Id. A.R that the return of income filed in compliance to notice issued u/s 148 was thereafter accepted by the department. It was, thus, submitted by the Id. A.R that in the backdrop of the aforesaid bonafides of the assessee that had resulted to delay in filing of the return of income no penalty u/s 271F r.w Sec. 273B could have been validly imposed.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

7. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, it is a matter of fact borne from the record that initially the department had wrongly issued a PAN to the assessee in the wrong status i.e as that of a company, viz. AAECM3827G, which only pursuant to rectification was thereafter issued in the correct status as that of a co-operative housing society, viz. AAHAM8296J. As stated by the Id. A.R, and rightly so, the aforesaid delay in

obtaining the rectified PAN in the correct status had resulted in delay on the part of the assessee society, a non-profit making organization, in submitting its return of income. Apart from that, we find that the bonafides of the assessee can safely or in fact inescapably be gathered also from the fact that the return of income so filed by it in compliance to notice issued u/s 148 of the Act, declaring nil income, was thereafter accepted by the A.O vide his order passed u/s 143(3) r.w.s. 147, dated 30.11.2018. In the totality of the aforesaid facts, we are of a strong conviction that the bonafides of the assessee resulting to delay on its part in filing the return of income stands safely explained for the aforementioned reasons. Accordingly, in the backdrop of our aforesaid deliberations, we are of the considered view that the assessee society could not justifiably have been saddled with penalty u/s 271F of the Act. We, thus, backed by our aforesaid observations vacate the penalty of Rs. 5,000/- imposed by the A.O u/s 271F of the Act.

8. Resultantly, the order passed by the CIT(A) sustaining the penalty imposed by the A.O u/s 271F is set-aside and the appeal filed by the assessee is allowed.

Order pronounced in the open court on 22.07.2021

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;
Dated: 22.07.2021
PS: Rohit

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai