

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: 101, 102, 103 & 104/Chny/2019

निर्धारण वर्ष / Assessment Years: 2007-08, 2008-09, 2009-10 & 2010-11

M/s. National Institute of Women Child and Rural Health Trust (NIWCRHT), 4/1, Raja Veethi, Keelavalavu Post, Melur – 626 106.	v. The Joint Commissioner of Income Tax, Range –II, Madurai.
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[PAN: AAATN 3813C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	: Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by	: Shri. G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 30.11.2021

घोषणा की तारीख/Date of Pronouncement : 08.12.2021

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These 4 appeals filed by the assessee are directed against common order passed by the learned Commissioner of Income Tax (Appeals)-2, Madurai, dated 04.12.2018 and pertains to assessment years 2007-08 to 2010-11.

2. The assessee has more or less raised common grounds for both assessment years. Therefore for the sake of brevity, grounds of appeal filed for the assessment year 2007-08 are reproduced as under:

"1 The common order of the Commissioner of Income Tax (Appeals) 2, Madurai dated 04.12.2018 in IT.A.Nos 0048 to 0051/2012-13 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the levy of penalty u/s 272A(2)(e) of the Act in rejecting the technical ground of limitation without assigning proper reasons and justification

3. The CIT (Appeals) failed to appreciate that the order imposing penalty under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law and ought to have appreciated that the starting point for calculating the limitation prescribed for imposing penalty under the Act should be reckoned from February 2012 and not from May 2012 while vitiating the consequential penalty order under consideration.

4. The CIT (Appeals) failed to appreciate that in any event the levy of penalty u/s 272A(2)(e) of the Act for the failure to furnish the return of Income under sub section 4A or sub section 4C of section 139 of the Act or to furnish it within the time allowed and in the manner required under those sub sections was wrong, erroneous, unjustified, incorrect and not sustainable in law

5. The CIT (Appeals) failed to appreciate that the levy of penalty for such default was subjected to the provisions of section 2738 of the Act and ought to have appreciated that the Ground Nos.4 to 6 raised before him and extracted in para 3 of the impugned order were completely overlooked and brushed aside in recording perverse findings in page no. 6 of the impugned order

6. The CIT(Appeals) failed appreciate that there was no proper opportunity given before passing the impugned order and ought to have appreciated that any order passed in violation of the principles of natural justice should be reckoned as nullity in law.

7. The appellant craves leave to file additional grounds/arguments at the time of hearing.”

3. The brief facts of the case are that the assessee is a charitable trust registered u/s. 12AA of the Income Tax Act, 1961 (herein after 'the Act'). The assessee has filed its return of income up to assessment year 2006-07, but for the assessment year 2007-08 to 2009-10, it has filed return of income beyond the due date specified u/s. 139 of the Act, and for assessment year 2010-11, the assessee has not filed return of income. The AO has initiated penalty proceedings u/s. 272A(2)(e) of the Act and called upon the assessee to show cause as to why the order imposing penalty u/s. 272A(2)(e) of the Act should not be passed for non-filing of return of income within the due date specified under the Act. In response, the assessee submitted that the Managing Trustee, Smt. Chitra Ganapathy, was falling ill from the year 2006 and up to assessment year 2010-11, this has resulted in delayed filing of return of income. The AO however, was not convinced with the explanations furnished by the assessee and

according to him, there is no reasonable cause as provided u/s. 273B of the Act for not filing return of income within the due date specified under the Act and thus, opined that the reasons given by the assessee, ill health of managing trustee does not come under reasonable cause and hence, opined that it is a fit case to levy penalty u/s. 272A(2)(e) of the Act. Accordingly, levied penalty @ Rs. 100 for every day of delay u/s. 272A(2)(e) of the Act for failure to file return of income u/s. 139 of the Act.

4. Being aggrieved by the assessment order, the assessee carried the matter in appeal before the first appellate authority. Before the first appellate authority, the assessee neither appeared nor offered any justification for not filing return of income within due date specified under the Act. However, filed written submissions on 25.05.2016 and challenged penalty order passed by the AO on the ground of limitation by specifying notice issued by the AO u/s. 272A(2)(e) of the Act. The Ld. CIT(A) after considering relevant submissions and also taken note of notice issued by the AO proposing levy of penalty, opined that, if one goes by notice issued by the JCIT on 03.05.2012 and the date of

penalty order, then the penalty order passed by the AO on 17.09.2012 is well within the time stipulated under law. Accordingly, dismissed appeals filed by the assessee. The assessee carried the matter in further appeal before the tribunal. The ITAT, vide its order in ITA Nos. 101 to 104/Chny/2019 dated 16.12.2019 dismissed appeals filed by the assessee by holding that penalty order passed by the AO is well within the time stipulated under law. The assessee has filed a Miscellaneous Application u/s. 254(2) of the Act and requested the tribunal to recall the order for the reasons stated in the said Miscellaneous Application. The tribunal, vide its order dated 24.02.2020 recalled the order dated 16.12.2019, *quo* ground no. 4 and 5 of assessee appeal. Therefore, the present appeals filed by the assessee are posted for hearing to decide ground no 4 & 5 filed by the assessee.

5. The Ld. AR for the assessee submitted that the Ld. CIT(A) erred in sustaining penalty levied by the AO u/s. 272A(2)(e) of the Act for failure to furnish return of income under sub section (4A) of section 139 of the Act, within time allowed under the Act, even though the assessee has

explained reasons for not filing returns in time and such reasons does comes under reasonable cause as provided u/s. 273B of the Act. The Ld. AR for the assessee further referring to the return of income filed for assessment year 2007-08 to 2010-11 submitted that the assessee is having excess expenditure over income for all those years and thus, by not filing return of income within the due date specified under the Act, there is no loss of revenue to the Government. Further, although assessee is required to file return of income within the due date specified under the Act, but such filing of return is only a formality to comply with law, but it does not result in any loss of revenue to the Government. Therefore, under these circumstances, levying penalty u/s. 272A(2)(e) of the Act is incorrect and against the principles of law.

6. The Ld. DR, on the other hand supporting the order of the Ld. CIT(A) submitted that the reasons given by the assessee for not filing return of income within due date specified under the Act does not come under reasonable cause as provided u/s. 273B of the Act and thus, the AO as well as the Ld. CIT(A) were right in levying penalty for delay in filing return of income and hence, their orders should be uphold.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the assessee has filed return of income for all these assessment years, but such returns of income was filed belatedly after the due date specified u/s. 139(4A) and 139(4C) of the Act. The assessee has explained reasons for delay in filing return of income, as per which, the Managing Trustee Smt. Chitra Ganapathy, was falling ill from the year 2006 and was hospitalized for treatment to various illness. In her absence, no one was in a position to take care day to day affairs of the assessee which resulted in delay in finalization of accounts and filing return of income for all these assessment years. But, the delay in filing of return of income was neither intentional nor to derive any undue benefit. We have gone through the reasons given by the AO to reject arguments of the assessee for levying of penalty u/s. 272A(2)(e) of the Act, in light of arguments of the assessee, and we ourselves do not subscribe to the reasons given by the AO for the simple reason that, when the AO himself has recorded a finding that medical records submitted by the assessee shows that Managing Trustee Smt. Chitra Ganapathy, was suffering from illness for the period 2010-11, he ought not to have rejected the

arguments of the assessee that she was ill since 2006. In our considered view, illness of Managing Trustee of the trust during the relevant period will definitely comes under reasonable cause as provided u/s. 273B of the Act for not filing return of income within due date specified under the Act. We further noted that the assessee neither intentionally filed return of income belatedly, nor derived any benefit by filing belated return. In fact, the assessee was having excess of expenditure over income for all these years and thus, by not filing return of income within due date specified under the Act, there is no loss of revenue to the Government. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the reasons given by the assessee for not filing return of income within due date specified u/s. 139(4A) of the Act comes under reasonable cause as provided under the Act for not levying penalty u/s. 272A(2)(e) of the Act. The Ld. CIT(A) without appreciating facts simple confirmed penalty levied by the AO. Hence, we set aside order of the Ld. CIT(A) and direct the AO to delete penalty levied u/s. 272A(2)(e) of the Act for all four assessment years.

8. In the result, all the appeals filed by the assessee for assessment years 2007-08 to 2010-11 are allowed.

Order pronounced in the court on 08th December, 2021 at Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /Vice President

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 08th December, 2021

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |