

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 199/Srt/2021 (Assessment Year: 2011-12)  
**(Hearing in Physical Court)**

Suresh Ramanbhai Naik, L/R of Ramanbhai Parbhubhai Desai, 41, Meghna Raw House, Near Maharaja Agrasen Bhavan, City Light Road, Surat-395003. <b>PAN No. AKQPD 5495 J</b>	Vs.	I.T.O., Ward-3(2)(3), Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Suresh Kabra, CA
Respondent represented by	Shri J.K. Chandani, Sr.DR
Date of hearing	05/05/2022
Date of pronouncement	12/07/2022

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals), Surat (in short, the Id. CIT(A) dated 01/09/2021 which in turn arises from the order of penalty levied under Section 271F of the Income Tax Act, 1961 (in short, the Act) dated 15/03/2019 for the Assessment year (AY) 2011-12. The assessee has raised following grounds of appeal:

*"1. The order of the Learned CIT(A) confirming the order of the Learned AO is not correct as per the law, facts, different*

*pronouncements and for other reasons for taking the penalty of Rs. 5000 under Section 271F.*

2. *The Learned CIT(A) has failed to provide the opportunity to reply the notice before finalization of order. This has happened due to failure of the system.*
3. *The Learned CIT(A) has failed to pass the order early and not kept in abeyance till passing the order first to delete the addition 11,60,194/- (quantum appeal).*
4. *The order of learned CIT(A) is not valid, as it is not passed within the time prescribed as per the circular of the CBDT.*
5. *The appellant craves leave to amend, alter or delete any of the above grounds of appeal.”*

2. Facts in brief as extracted from the orders of lower authorities are that the case of assessee for the A.Y. 2011-12 was reopened under Section 147 of the Act and notice under Section 148 dated 30/03/2018 was issued after taking necessary approval from the competent authority. In response to notice under Section 148 of the Act, the assessee filed his return of income on 25/04/2018 declaring income of Rs. 2,13,897/-. The Assessing Officer recorded that the assessee has not given any explanation/reply in respect of question raised by him during the assessment about the cash deposit in bank of Baroda. Accordingly the assessment was completed under Section 144 read with Section 147 of the Act by determining total income of Rs. 15,83,042/-. The Assessing Officer at the time of passing assessment order initiated penalty proceedings under Section 271F of the Act by taking

a view that the assessee had failed to furnish return of income within due time as prescribed under the provisions of Section 139(1) of the Act. A show cause notice under Section 274 r.w.s. 271F of the Act was issued to the assessee on 30/09/2018 in fixing hearing on 18/10/2018. The assessing officer recorded that the assessee filed his reply on 10/01/2019 and furnished copy of original return of income filed on 02/10/2012 and prayed to waive the penalty proceedings. The reply of assessee was not accepted by the Assessing Officer by holding that the assessee has not filed return of income as required under sub-section (1) of Section 139 before end of the relevant assessment year. Accordingly, the Assessing Officer levied the penalty of Rs. 5,000/- under Section 271F of the Act vide his order dated 15/03/2019.

3. Aggrieved by the penalty under Section 271F, the assessee filed appeal before the Id. CIT(A), Surat. The appeal was transferred to NFAC New Delhi and was decided on 01/09/2021 by confirming the order of penalty levied by the Assessing Officer. The Id. CIT(A)/NFAC held that the intention of legislation is to encourage for filing return of income within due date and in case, there is delay, the penalty under Section 271F is mandated. Further aggrieved, the assessee has filed the present appeal before the Tribunal.

4. We have heard the submissions of Id. authorised representative (AR) of the assessee and the Id. Senior Departmental representative (Sr. DR) for the revenue and have gone through the orders of the authorities below. The Id. AR of the assessee submits that the assessee has not filed his return of income for A.Y. 2010-11 within due date as he was under bonafide belief that he has no taxable income and is not required to file return of income. The assessee on receiving proper advice, filed original return of income on 02/10/2012 and paid tax of R. 23,183/-. The Id. AR of the assessee submits that he has already filed copy of acknowledgement of return on record which clearly shows the date of filing return of income on 02.10.2012. The assessee in response to notice under Section 148 also filed return of income. Non-filing of return of income was not intentional but due to bonafide belief that the assessee is not having any taxable income and when he realised and received advice, immediately filed return of income on 02/10/2012. The Id. AR submits that the assessee has reasonable cause within the scope of Section 273B of the Act and in such circumstances, no penalty under Section 271F is leviable. To support his submission, the Id. AR of the assessee relied on the following case laws:

- (i) Mrs. Manju Kataruka Vs ITO (2005) 3 SOT 414 (Kol).
- (ii) R.S. Investment Vs. ITO (2011) 15 taxmann.com 270 (Delhi)
- (iii) NHK Japan Broadcasting Corporation Vs DCIT (2006) 101 TTJ 292 (Delhi)

5. On the other hand, the Id. Sr. DR for the revenue has vehemently supported the order of the Id. CIT(A)/NFAC.
6. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. There is no dispute that the assessee has not filed return of income within due date prescribed under Section 139(1) of the Act for the A.Y. 2011-12. It is matter of fact that the assessee filed return of income belatedly on 02/10/2012. Copy of acknowledgement of return is placed on record. On perusal of acknowledgement, we find that the assessee has claimed payment of tax of Rs. 23,183/- (by way of TDS). The Assessing Officer while finalizing the assessment order under Section 144 r.w.s. 147 of the Act in the year 2018 initiated and levied penalty of Rs. 5,000/- for non-filing of return of income within due date as per the provisions of section 271F. Before us, the Id. AR of the assessee vehemently submitted that the assessee was under bonafide belief that he is not having taxable income, therefore is not liable to file return of income. The Id. AR also submitted that subsequently, the assessee under legal advice, filed return of income, though it was filed belatedly. Thus, from the submission of Id. AR of the assessee, we find that the assessee has a reasonable cause for not filing the return of income on the pretext that he is not having taxable income. The Assessing Officer has not brought on record that the assessee is

habitual in filing return belatedly. Considering the totality of facts and circumstances of the case, we find that the assessee has shown reasonable cause for not filing the return of income before due date of return. Therefore, we direct the Assessing Officer to delete the penalty levied under Section 271F of the Act. Accordingly, the grounds raised by the assessee are allowed.

7. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 12<sup>th</sup> July, 2022 at the time of hearing of this appeal.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 12/07/2022  
*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat