



॥ आयकर अपीलीय न्यायाधिकरण, पुणे "बी" न्यायपीठ, पुणे में ॥
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "B" BENCH, PUNE
BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.611/PUN/2021

निर्धारण वर्ष / Assessment Year : 2011-12

Sanjay Mahadev Jagtap
A/P Shikrapur, Tal.-Shirur,
Pune, Maharashtra
PAN:AFYPJ7221D

..... अपीलार्थी / Appellant

बनाम / V/s.

Asstt. Commissioner of Income Tax,
Central Circle-1(3), Pune

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : None for the Assessee

Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing : 04/10/2022

घोषणा की तारीख / Date of Pronouncement : 04/10/2022

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

The present appeal assailed against the order of Commissioner of Income Tax (Appeals)-11, Pune [for short "**CIT(A)**"] dt. 31/08/2021 passed u/s 250 of the Income-tax Act, 1961 [for short "**the Act**"], which ascended out of order of penalty [for short "**PO**"] dt. 05/11/2018 passed by the Asstt. Commissioner of Income Tax, Central Circle-1(3) Pune [for short "**AO**"] u/s 271F of the Act.



2. The grounds raised by the appellant in the present appeal is inconsonance with rule 8 of Income Tax Appellate Tribunal Rules, 1963 [for short **"ITAT Rules"**], hence reproduction thereof is dispensed with.

3. Briefly stated the facts as borne out the records are;

3.1 A search action dt. 16/08/2017 u/s 132(1) of the Act was conducted on the assessee, wherein certain incriminating documents were seized relating to cash deposits and availment of bank loan, consequent to which the assessee was served with a notice dt. 28/03/2018 u/s 148 of the Act, thereby requiring him to file a return of income [for short **"ITR"**] in response thereto within 30 days therefrom. In the event of failure, the Ld. AO by service of further notice u/s 142(1)(i) r.w.s. 148 dt. 28/09/2018 called upon the assessee to file the ITR, which remained fruitless and un-responded, consequently the total income was assessed u/s 144 r.w.s. 147 of the Act.

3.2 Subsequently to culmination of assessment proceedings, a show cause notice u/s 274 r.w.s. 271F



of the Act was served requiring assessee to show case as to why a penalty u/s 271F for not filing ITR in response to notice u/s 148 be levied in his case, and when the same remained unattended, the Ld. AO finding no reasonable cause for not complying with notice served u/s 148, culminated the penalty proceeding levying penalty u/s 271F for violation of provisions of section 148 of the Act.

3.3 In an appeal before learned first appellate authority [for short "**FAA**"), the assessee opted out from responding to as much as seven hearing opportunities, therefore in the absence of any reasonable cause Ld. FAA confirmed the levy of penalty echoing the reasoning laid by the Ld. AO.

3.4 Aggrieved by the orders of both the tax authorities, the appellant brought up the present appeal before this Tribunal seeking deletion of penalty on the grounds laid in memorandum of appeal.



4. When the case was called up for physical hearing, none represented the assessee, bearing in mind hoary assessment year involved, in the interest of justice we proceeded u/r 24 of the **ITAT-Rules**, to adjudicate the matters ex-parte on merits, which empowers this Tribunal to decide the appeal filed by the appellant ex-parte on merits where the appellant does not appear in person or through an authorised representative and the same is done placing on record a no-objection from the learned departmental representative [for short "**DR**"] who vehemently relied upon the orders of tax authorities below and prayed for confirming the penalty in the absence of reasonable cause as laid u/s 273B.

5. After hearing to rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short "**ITAT, Rules**"] perused the material placed on record (upto the date conclusive hearing), case laws relied upon by the appellant as well the respondent and duly considered the facts of the case in the light of settled legal position forewarned to either parties.



6. Since sole and substance of controversy of present appeal seeks to adjudicate the liability u/s 271F for failure to file return otherwise than u/s 139(1) of the Act, it is necessitate the reproduction of provision of penalty as;

271F. Penalty for failure to furnish return of income.

If a person who is required to furnish a return of his income, as required under sub-section (1) of [section 139](#) or by the provisos to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of five thousand rupees.

7. As can be evident from the bare text of aforesaid provision that, the scope vis-à-vis authority to levy a penalty therein is encircled and domineering round non-compliance of provisions of section 139(1) of the Act utterly and by no stretch of imagination it envisages non-compliance of provision of section 142(1)(i) r.w.s. 148 of the Act. In the present case, the impugned penalty order clearly states that, the appellant failed to file his ITR in response to notice u/s 148 till finalization of assessment u/s 144 r.w.s. 147 of the Act, and not in context of provisions of section 139(1).



8. It shall be suffice to state that, the provision of section 271F being calamitous, albeit commercial consequences, and illiberal, hence brooks no trifling or dilution therewith, as a result levy of penalty u/s 271F for non-compliance of section 148 turns invalid and untenable in the eyes of law, and by holding so we set aside the first appellate order and delete the penalty levied u/s 271F of the Act, being ***extra-territorialis*** and bad in law.

2. Resultantly, the appeal of the appellant assessee is allowed in terms of aforestated observation.

In terms of rule 34 of ITAT Rules, 1963 the order is pronounced in the open court on this Tuesday 04th day of October, 2022.

-S/d-

S. S. GODARA

JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI

ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 04th day of October, 2022.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

- 1.अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The PCIT, Pune (M.H.-India)
4. The CIT(A)-11, Pune (M.H.-India)
5. DR, ITAT, Pune Bench 'B', Pune
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY RDER,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.