

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE**

**BEFORE GEORGE GEORGE K, JUDICIAL MEMBER AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos.991 to 994/Bang/2022
Assessment Year : 2012-13 to 2015-16

Shri. Rajesh Suresh Vernekar, #15/1, Proprietor of friends Fashion Jewellers, Doddapet, Davangere-577001. <b>PAN : ACOPV6780 A</b>	Vs.	ITO, Ward -1(5), Davangere - 577 004.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Shantha Veeranna Abbigeri, Advocate
Revenue by	:	Shri. K. R. Narayana, Addl. CIT(DR)

Date of hearing	:	16.11.2022
Date of Pronouncement	:	22.11.2022

**ORDER**

***Per Bench:***

These four penalty appeals filed by the assessee against the separate orders passed by the CIT(A) dated 18.08.2022 confirming the penalty order passed by the AO (Assessing Officer) under section 271F of the Income Tax Act, 1961 (hereinafter called 'the Act'), for belated filing of income tax return under section 139(4) of the Act.

2. This is the second round of proceedings before the Tribunal. The sole issue involved in all these appeals is regarding challenging the penalty imposed by the AO under section 274F of the Act .

3. The brief facts of the case are that the assessee filed his return of income for all the assessment years as per section 139(4) of the Act. The details of the income tax filed are as under:

Sl. No.	Assessment Year	Due date to file return of income under section 139(1) of the Act	Date of filing of Return of Income	Returned income as per Return of Income	Income Tax Paid
1.	2012-13	31/08/2012	07/12/2013	1,89,710/-	1160/-
2.	2013-14	05/08/2013	21/11/2014	2,13,630/-	1630/-
3.	2014-15	31/07/2014	15/03/2016	2,48,350/-	3500/-
4.	2015-16	07/09/2015	04/07/2016	3,03,200/-	3760/-

4. The above returns filed by the assessee were processed under section 143(1) of the Act. Accordingly, the AO noted that the assessee has committed default by filling his income tax return as per section 139(1) and filled return as per section 139(4) of the Act. Therefore, the penalty proceeding under section 271F of the Act was initiated vide notice dated 10.10.2017 under section 274 r.w.s. 271F of the Act. In response to the notice, the Authorised Representative appeared and filed detailed reply for justifying not imposing penalty upon the assessee for belated filing of income tax return relying with two judgments of Hon'ble Supreme Court. The AO considered his reply, the same is mentioned in his order and the case law quoted by the AR has also been discussed. Accordingly, the AO passed order well within time allowed as per the provisions of the Act on 30.11.2017.

5. Aggrieved from the above order of the AO, the assessee filed appeal before the CIT(A) and the CIT(A) decided the issue and passed the consolidated order on 15.03.2018.

6. Aggrieved from the above order, the assessee filed appeal before the Tribunal.

7. The Co-ordinate Bench of the Tribunal passed its order on 27.11.2018 and restored the matter to the file to the CIT(A) for fresh adjudication on merits. The CIT(A) passed order u/s 250 r.w.s. 254 of the Act on 18.08.2022. The CIT(A) in pursuant to the direction of the Co-ordinate Bench of the Tribunal dismissed the appeal of the assessee. The relevant part of the order is as under:

*"I have perused the facts as well as argument taken on behalf of the appellant. Since, the appellant had taxable income therefore he was under obligation to file regular return of income which has not been done. As the assessee's total income exceeded the maximum amount not chargeable to tax, for the said assessment year, the assessee was required to file the return of income within the due date specified u/s139(1) of the Income Tax Act,1961. The appellant failed to furnish valid explanation as to the reasonable cause for the said default. Further, the appellant had committed similar default for the other assessment years also i.e.A.Y.2012-13 to 2015-16, wherein also penalty proceedings u/s271F have been initiated. Thus it goes to show that the assessee is a habitual defaulter.*

*Thus, the assessee has committed default within the meaning of section 271F for the A.Y. 2012-13. I accordingly confirm the order of the AO in levying penalty u/s 271F of the I.T. Act at Rs.5,000/-*

*2. In the result, the appeal is Dismissed."*

8. Against the above order, the assessee filed appeal before the Tribunal. The learned Authorized Representative reiterated the submissions made before the lower authorities. The order passed by the AO was not within the reasonable time. He also submitted that the assessee filed return of income voluntarily and order passed by the AO is beyond the limit prescribed as per section 275(1)(c) of the Act. He also

submitted that while the return was processed under section 143(1) of the Act, no penalty notice was issued to the assessee and it was issued on 10.10.2017, which is invalid notice. Therefore, the penalty order passed by the AO is not in conformity with the Income Tax provisions. Therefore, the penalty should be dropped. He also submitted that the assessee had reasonable cause for not filing IT Return within the provision of section 139(1) of the Act. Therefore, the assessee will get relief as per section 273B of the Act.

9. On the other hand, the learned DR relied on the order of the lower authorities and he submitted that the penalty under section 274 of the Act is an expressed provision and the assessee did not file his return of income within the prescribed time limit as per section 139(1) of the Act and the income was above the taxable limit. Therefore, he is liable for penalty under section 271F of the Act. There was no reasonable cause mentioned by the assessee before the authorities below as well as the before the Tribunal. He also submitted that there is no time limit for issue of notice for penalty under section 274 r.w.s. 271F of the Act and the penalty order passed by the AO was well within the time after issue of notice. Therefore, the contention of the assessee challenging the legal issue will not survive. The learned DR also submitted that the assessee is a regular defaulter. In the first round of proceedings, the CIT(A) had noted that for 4 years he has not filed any return of income within the due date as prescribed under section 139(1) of the Act. Therefore, the order of the lower authorities should be restored.

10. After hearing both the sides and perusing the entire material available on records and order of the authorities below and previous

order of the Co-ordinate Bench of the Tribunal, we note that in all the 4 years, the income of the assessee was above the taxable limit and he was required to file IT returns within the due date as prescribed under section 139(1) of the Act but we noted that in all the 4 years, as noted supra, in any of the 4 Assessment Years, the assessee did not file his return within the due date. The impugned defaults can only be considered as a conscious disregard of once statutory obligations, and the penalty stands rightly levied as the assessee is a habitual defaulter. We also reject the arguments of the learned Authorized Representative that the order passed by the AO is beyond time limit. The AO issued noticed on 10.10.2017 and passed his order on 13.10.2017, which is well within the time. We also observe from the orders of the lower authorities that the assessee could not establish any reasonable cause for delay in filing of his IT Returns, even during the course of hearing, before us, could not point out any reasonable cause so as to any reasonable cause can be considered for granting relief to the assessee as per section 273B of the Act. Accordingly, we uphold the order of the lower authorities and dismiss the appeals of the assessee.

10.1 If the assessee's is liable to pay income tax and file returns subsequently. He will be liable for penalty as per section 271F quoted supra. From the facts noted above, the assessee's total income for the relevant Assessment Years was above the taxable limit in spite of the fact that he did not file his return of income within due date as specified under section 139(1) of the Act in any of the above assessment year . Therefore, he is liable for penalty under section 271F of the Act. The CIT(A) is justified in confirming the penalty as per section 271F of the Act. In support of our decision we rely on the following judgments:-

- i. CIT Vs. Kerala Transport Co (Kerala HC) [2002] 121 Taxman 235 (Kerala)
- ii. Pradip Lamp Works Vs. CIT, 249 ITR 797 (SC)
- iii. Armin Chand Pyarelal Vs. IAC, 285 ITR 546 (SC)

The case law cited by the learned AR is not applicable in the present facts of the case and the lower authorities have rightly analyzed the case laws cited by the assessee and assessee will not get the immunity as per section 273B of the Act. Therefore, we dismiss the appeals of the assessee.

11. In the result, all the appeals of the assessee are dismissed and copy of the order should be placed in all the respective files.

Pronounced in the open court on 22<sup>nd</sup> day of November, 2022

**Sd/-**

**(GEORGE GEORGE K)**  
**Judicial Member**

**Sd/-**

**(LAXMI PRASAD SAHU)**  
**Accountant Member**

Bangalore,  
Dated:. 22.11.2022.  
/NS/Vms

Copy to:

- |                         |               |
|-------------------------|---------------|
| 1. Appellants           | 2. Respondent |
| 3. CIT                  | 4. CIT(A)     |
| 5. DR, ITAT, Bangalore. | 6. Guard file |

By order  
Assistant Registrar,  
ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S .....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so .....
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10. Date on which the file goes to the Head Clerk .....
11. The date on which the file goes to the Assistant Registrar for signature on the order .....
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order .....
13. Date of Despatch of Order. ....