

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos. 4, 5 & 6/Rjt/2022
Assessment Years: 2010-11 to 2012-13**

Shri Pankaj Chimanlal Lodhiya, Prop. M/s. Shreeji Trading Co. 10, Shaligram Complex, Opp. Diwanpara Police Station, Rajkot PAN No: AAMPL3903F (Appellant)	Vs	The Assistant Commissioner of Income-tax, Central Circle-2, Rajkot (Respondent)
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**Assessee Represented: Shri Mehul Ranpura, A.R.
Revenue Represented: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 11-01-2023
Date of pronouncement : 25-01-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These three appeals are filed by the Assessee as against the separate orders dated 24.11.2021 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad, confirming the levy of penalty of Rs. 5,000/- under section 271F of the Income Tax Act,

1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2010-11 to 2012-13 respectively.

2. The brief facts of the case is that the assessee, an individual and Proprietor of M/s. Shreeji Trading Company which is engaged in the business of trading in gold, silver bullions and other precious metals. The assessee filed his Returns of Income under section 139 of the Act for the Assessment Year 2010-11 on 15.10.2010; for the Assessment Year 2011-12 on 28.09.2011 and for the Assessment Year 2012-13 on 29.03.2013. A Search operation u/s. 132(1) of the Act was carried out at the residence and business premises of the assessee on 20.05.2013. Thereafter the assessee was served with the notice issued u/s. 153A of the Act dated 10.10.2013 requiring him to file the Return of Income within 30 days from the receipt of notices. In response to the notices, the assessee filed his Returns of Income on 08.08.2014 declaring the same income as filed in the original Returns of Income.

2.1. The AO passed assessment orders u/s. 143(3) r.w.s. 153A of the Act dated 10.07.2017 wherein various additions/disallowances were made by the A.O. to the income returned for the respective assessment years as follows:

(i) Rs.57,37,78,876/- as against returned income of Rs.1,66,45,230/- for AY 2010-11.

(ii) Rs. 1,61,24,13,919/- as against returned income of Rs. 5,68,82,480/- for AY 2011-12 and

(iii) Rs. 1,38,90,64,100/- as against returned income of Rs. 4,82,13,340/- for AY 2012-13.

2.2. Thereafter, the AO initiated the penalty proceedings u/s. 271F of the Act vide notice dated 27.02.2020 requiring the assessee to show cause as to why penalty u/s. 271F of the Act should not be levied for not filing the Returns of Income. In response, the assessee vide letter dated 14.03.2020 submitted that penalty u/s. 271F of the Act can be levied only in case of failure to furnish return of income u/s. 139(1) of the Act and its provisos. The Assessee having filed original Returns of Income before the end of the relevant assessment years, therefore u/s. 271F penalty is not applicable in the present case.

2.4. The A.O., however, in total disregard to the facts of the case and submissions made by the assessee, levied penalty of Rs. 5,000/- each for all the three Assessment Years vide orders dated 30.09.2020 u/s. 271F of the Act.

3. Aggrieved against the penalty orders, the assessee filed appeals before Ld. Commissioner of Income Tax (Appeals)-11, Ahmedabad. The assessee has not appeared before the ld. CIT(A) inspite of 15 opportunities given to the assessee. Therefore the ld. CIT(A) confirmed the levy of penalty u/s. 271F of the Act, relying upon few ITAT decisions.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The learned Commissioner of Income-tax (Appeals), erred on facts as also in law in confirming levy of penalty u/s 271F of the Act at Rs. 5,000/-

on the alleged of not filing return of income within time limit specified in the notice issued u/s 153A of the Income-tax Act, 1961 (hereinafter referred as to the "Act"). The Penalty confirmed u/s 271B of the Act may kindly be deleted.

3. The ld. CIT(A) ought to have deleted the penalty of Rs. 5,000/- levied u/s. 271F of the Act.

4.1. Ld. Counsel for the assessee Mr. Mehul Ranpura submitted as follows:

(a) The AO levied penalty u/s 271F of the Act on the ground that return of income for that year was furnished beyond the time prescribed in the notice issued u/s 153A of the Act.

(b) In connection with the above, at the outset it is submitted that the provisions of section 271F of the Act are not at all applicable in the case of the appellant as the return filed was in pursuance to the notice issued u/s 153A of the Act which is a self-contained code in itself as is provided for the assessment of the search cases.

(c) From the plain reading of the above, it is clear that penalty u/s 271F can be levied/imposed only if (i) There is taxable income to the assessee and (ii) the assessee failed to furnish return of income for that year before the end of the relevant assessment years. Thus, provisions of section 271F of the Act come in to play only when return of income for the relevant assessment year was not filed before the end of that year. It cannot be imposed in a case where return of income is filed after the statutorily prescribed due date, but prior to the end of the relevant assessment year.

(d) The AO referred to the later part of clause (a) of section 153A and held that other provisions of the Act including provisions of section 271F of the Act are applicable in the case of the search related assessments and as the appellant has not filed the return of the income within 30 days from the receipt of notice issued u/s. 153A/153C of the Act, is liable for penal action u/s 271F of the Act. Here it is pertinent to note that in stretching/co-relating the applicability of provisions of section 271F to section 153A of the Act, the AO totally failed to appreciate the fact that penalty cannot be levied in a case where return is not filed within statutorily prescribed time, but only when return of income is filed after the end of the relevant assessment year. Thus, the second limb of provisions of section 271F i.e. "before the end of relevant assessment year" is lacking in case if the provisions of section 271F is co-related/applied to section 153A/153C of the Act. As a matter of fact, time for filing return of income for all assesses is prescribed in section 139(1) which is applicable to all for that particular year, whereas in case of

provisions of section 153A/153C, the AO has liberty to give time up to 30 days.

(e) Without prejudice to the above, it is submitted that the appellant has reasonable cause for the delay in filing the return of income in compliance with notice issued u/s. 153A of the Act. During the search u/s. 132 of the Act, various books of account, diaries, papers, etc. were found and seized. Seized materials were voluminous and pertaining to different group concerns and checking, cross checking and reconciling data etc. was a lengthy process. Considering the complexities of transactions and huge volume of data, the appellant decided to opt for settlement of case by filing application with Hon'ble Income-tax Settlement Commission. The appellant has filed settlement application before the Hon'ble Income-tax Settlement Commission, Additional Bench-II, Mumbai on 08.08.2014 and simultaneously filed return of income with the AO. Copy of order u/s.245D (1) is attached at Page 4 to 16. Thus, since there is reasonable cause for delay in filing return of income no penalty could be levied.

(f) In view of the above, the appellant most respectfully submits that penalty levied on misapprehension of facts may kindly be deleted.

5. Per contra, the Ld. Sr. D.R. Mr. B. D. Gupta appearing for the Revenue supported the orders passed by the Lower Authorities and pleaded to confirm the levy of penalty.

6. We have given our thoughtful consideration and perused the materials available on record. The first argument of the assessee namely that the penalty provisions of Section 271F are not applicable in the case of a search and calling for the assessee to file the Return under section 153A of the Act, which goes to the root of the case. However the other submissions of the assessee namely "reasonable cause" for the delay in filing the Returns of income in response to the 153A notice on 08.08.2014. We address this issue first namely the assessee's explanation pursuant to the search action u/s. 132 of the Act, various books of accounts, diaries, papers were seized by the Department which were voluminous and

pertaining to different group concerns. Checking, cross checking and reconciliation of datas was a very lengthy process. Further there was considerable delay in furnishing seized documents was also a “reasonable cause” in filing the Returns of Income. Without the above information, the assessee was not able to file the Returns of income within the stipulated time limit of 30 days of the receipt of the notice. Further the assessee also gone to the Settlement Commission, where his application for settlement of the case was admitted on 14.08.2014 is also a valid “reasonable cause”, which prevented the assessee from filing the Returns of income, in response to the 153A notices. On this count, the penalty levied u/s. 271F r.w.s. 273B is legally not valid. Therefore we hereby delete the penalties levied u/s. 271F of the Act.

7. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 25 -01-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 25/01/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट