

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 42/Srt/2023 (Assessment Year 2011-12)  
(Physical hearing)

Shashikant Chhotubhai Tania, L/h-Hemendra Shashikant Tania, 8/652A, Bharwad Falia, Navsari Bazar, Surat. <b>PAN No. AAJPT 9963 G</b>	Vs.	I.T.O., Ward 1(2)(4), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Vasant A Shah, A.R.
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of appeal	23/01/2023
Date of hearing	15/03/2023
Date of pronouncement	22/03/2023

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

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

1. This appeal by the assessee/appellant is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals), (in short, the Id. CIT(A)) dated 22/11/2022 for the Assessment year (AY) 2011-12 wherein the assessee has raised following grounds of appeal:

- “1. The Commissioner of Income Tax (Appeals) was not justified in confirming the penalty of Rs. 10000 because CIT(A) failed to consider unavoidable circumstances have to face by L/H of the Appellant, during the course of the assessment proceedings.*
- 2. CIT(A) confirmed the penalty on the ground that the appellant has not filed details/documents in reference to the notice dated 02/07/2018 without considering the affidavit of the LH of the appellant, medical certificate of the mother of the LH and reply filed on e-mail address of the ITO and copy thereof was filed next day with the office of the ITO.*

3. *CIT(A) failed to observe that the officer has not considered the reply of LH of the appellant filed on e-mail address of the ITO and copy thereof filed personally to the office of ITO on 08/01/2019 i.e. well before the order passed on 09/05/2019 which is not proper and just.”*
2. Brief facts of the case are that no return of income was filed by the assessee for the A.Y. 2011-12. The case of assessee was reopened on the basis of information that the assessee made cash deposit of Rs. 10.04 lacs in his savings bank account with Karur Vysya Bank Ltd. In absence of return of income, the source of cash deposit remained unexplained in the hands of assessee. Thus, on the basis of such information, the assessment was reopened. During the assessment, the Assessing Officer noted that the assessee has not complied with the notice dated 02/07/2018 under Section 142(1) of the Income Tax Act, 1961 (in short, the Act) for fixing the date of hearing on 11/07/2018, the Assessing Officer levied penalty of Rs. 10,000/- by taking a view that the assessee failed to furnish any detail or submission in response to statutory notice. The Assessing Officer levied penalty of Rs. 10,000/- vide order dated 09/05/2019.
3. Aggrieved by the penalty, the legal heir of the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee submitted that the assessee expired on 13/1/2012. The case of deceased assessee was reopened by issuing notice under Section 148 of the Act dated 28.03.2018. The Assessing Officer issued first notice under Section 271(1)(b) dated 13/12/2018 fixing the date of hearing on 28/12/2018.

The legal heirs of assessee personally attended the office of ITO on 15.12. 2018 with return of income and authority letter. The same was not accepted by Assessing officer on the ground that the assessment order has been finalised on 12/12/2018. Second notice was issued on 02/1/2019 fixing the date of hearing on 07/01/2019, the said notice was served in the afternoon of 07/01/2019, thus remained un-complied. The compliance was made by filing reply on 09/01/2019 which was received by the Steno of Assessing Officer but no acknowledgement was given. The assessee also submitted that the penalty was levied without considering the reply filed on 08/01/2019 and copy was personally handed over on 09/01/2019. The legal representative (LR) of the assessee further stated that they were totally unaware about the business carried out by the assessee nor they found any material maintained by assessee.

4. The Id. CIT(A) after considering the submission of assessee, held that the notice dated 02/07/2018 was not complied which proved that the appellant had malafide intention and deliberately not furnished the details. Due to non-furnishing of details, the assessment order was passed under Section 144 of the Act and the Assessing officer was justified in levying the penalty. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

5. The registry has recorded that there is delay of one day in filing appeal before the Tribunal. On perusal of record, I find that the impugned order was passed on 22/11/2022. The present appeal is filed on 23/01/2023, the appellant has filed affidavit that 21<sup>st</sup> January, 2023 was Saturday and 22<sup>nd</sup> January, 2023 was Sunday and thus, the appeal was filed on 23/1/2023. On verification of calendar of January, 2023, I find merit in the explanation of assessee that the appeal is within time.
6. On merits of the penalty, the Id. AR of the assessee submits that the assessee expired on 13/1/2012 much before the issuance of notice under Section 147 of the Act. The legal heir of assessee attended the office of Assessing Officer and came to know that the case of assessee was reopened. The assessee requested the bank authority to furnish the delay of bank account. The bank authorities were not cooperating and legal heir of assessee further attended the office of Assessing Officer and requested for supply of copy of statement and fled return of income. The intention of legal heir of assessee was never to disobey the show cause notice. The assessee also responded to the penalty notice. Even in response to such notice, the legal heir attended but their attendance was not taken on record. Thus, there was reasonable cause explained by the legal heir of the assessee that no penalty is leviable in such circumstances. Before the Id. CIT(A), the assessee made detailed written submission but the same was not considered and order of penalty was

confirmed. The observation in the assessment order and the penalty order that non-furnishing of details or documents is not proper and justified.

7. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of the lower authorities.
8. I have considered the submissions of both the parties and perused the material available on record carefully. I find that the case of assessee was reopened under Section 147 of the Act. Notice under Section 148 dated 28/03/2018 was issued by the Assessing Officer. The Assessing Officer recorded that the notice was served upon the assessee. I find that the legal heir of the deceased assessee appeared before the Assessing Officer and requested for bank statement. On supplying of such statement, return of income was filed. I further noted that before the Id. CIT(A), the legal heir of assessee categorically pleaded that the assessee expired on 13/1/2012. I find that the order of penalty is passed against a dead person. The Id. CIT(A) instead of considering the fact that the penalty order was passed against a dead person, inserted the name of legal heir namely Hemendra Shashikant Tania. It is settled position under the law that the order in the name of a dead person is nullity. Therefore, considering the totality of facts and circumstances of the case, the order passed by the Assessing Officer in levying the penalty as well as

confirming the penalty by the Id. CIT(A) under Section 271(1)(b) is set aside/deleted.

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

Order pronounced in the open court on 22<sup>nd</sup> March, 2023.

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

Surat, Dated: 22/03/2023  
*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue --
3. CIT
4. DR
5. Guard File

// TRUE COPY //

By order

Sr. Private Secretary, ITAT, Surat