

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No. 251/MUM/2023
Assessment Year: 2015-16

M/s Sanjeev Chirania HUF,
301, Sona Chambers, 507/509
JSS Road, Chira Bazar,
Marine Lines – East,
Mumbai-400 002.

PAN No. AARHS 4527 D
Appellant

ITO-28(3)(1),
Tower No. 6, Vashi Railway
Station Commercial
Complex, Vashi,
Navi Mumbai-400703

Vs.

Respondent

Assessee by : Ms. Ritu Kamalkishor, AR
Revenue by : Mr. Milind S. Chavan, CIT-DR

Date of Hearing : 23/03/2023
Date of pronouncement : 31/03/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 29.12.2022 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2015-16 in relation to levy of penalty by the Assessing Officer for non-filing of regular return of income for the year under consideration. The grounds raised by the assessee are reproduced as under:



1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in upholding the order passed by the Ld. Assessing Officer W/s 271F of the Income Tax Act, 1961 imposing penalty of Rs 5,000/-.

2. On the facts and in the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in sustaining the penalty by not appreciating that the belief of the assessee that he is not under obligation to file return of income, his income for the impugned year being far below the maximum amount not chargeable to tax, constitutes reasonable cause for non-filing and hence is not liable to penalty.

2. Briefly stated, facts of the case are that the regular return of income was not filed by the assessee. Subsequently, notice u/s 148 of the Income-tax Act, 1961 (in short 'the Act') was issued on 31.03.2021 asking the assessee to file its return of income. In response the assessee filed return of income declaring total income of Rs.22,440/- on 30.04.2021. The reassessment u/s 147 of the Act was completed on 27.03.2022 wherein the total income was assessed at Rs.4,88,05,223/-. In view of the assessed income, the Assessing Officer was of the view that the income of the assessee being more than the threshold minimum taxable income, the assessee was liable for filing return of income and for non-compliance of the same, he initiated penalty proceedings u/s 271F r.w.s. 274 of the Act along with assessment order passed on 27.03.2022. After considering the submission of the assessee, he levied penalty of Rs.5,000/- as prescribed u/s 271F of the Act. On further appeal before the Ld. CIT(A), the assessee submitted that he



was under bona fide belief that his income was not taxable which is being a reasonable cause, the penalty might be deleted. The Ld. CIT(A) however, upheld the penalty observing as under:

“4.1 Further, during the Penalty proceedings, the Assessing Officer issued show cause notice u/s 274 r.w.s. 271F of the Income Tax Act dated 27.03.2022 and on 03.08.2022 to Appellant as to why an order imposing penalty us 271F of the Act should not be passed for the non-compliance of notice issue during the assessment proceedings. In response to these show cause notices the Appellant submitted that the appellant was having bonafide belief that the income being far below taxable limit as prescribed, hence the appellant was not liable to file its return of income and also appellant was under no obligation to file its return of income, which constitutes 'reasonable cause'. The AO, however, was not impressed with the contention of the appellant and opined that the income of the assessee has been assessed at an amount, which is more than the maximum amount chargeable to tax, hence the filing of return of income was necessary and thereafter proceeded to levy penalty of Rs.5,000/- as per the provisions of section 271F of the Act.

5. The provisions of section 271F of the Act states that penalty of Rs. 5,000/- for late filing of return of income. The provision of section 271F of IT act is as below:

"Penalty for failure to furnish return of income.

271F.

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."



6. It is clear from bare reading of the above provision that whether or not the penalty as envisaged in Section 271F is to be imposed, is a matter to be determined by the Assessing Officer within the meaning of the section. He may direct such penalty to be paid and conversely, it would be correct to say, he may choose not to direct for such penalty to be paid. To determine whether the default was wilful or otherwise, the explanation offered, if any by the appellant, will have to be seen and construed. Section 273B provides that no penalty shall be imposed, inter alia, u/s.271F where the assessee establishes a reasonable cause for failure referred to in said section.

7. The Appellant has opted to remain silent during the Assessment proceedings and the assessment was made as ' Best Judgement Assessment' u/s 144 of the Act. It indicates that the Appellant had no intention of filing return of income till he was offered an opportunity in the form of notice u/s 148 of the Act. During the Appellate proceedings, the Appellant submitted its reply in the form of Paper book including the reply submitted before the AO against the show cause issued for levy of penalty u/s 271F of the Act and judicial pronouncements in support of its contention.

7.1 In the case of *Shankar Lal Kumawat v. Income Tax Officer, Ward-7(2), Jaipur*, [2021] 125 taxmann.com 347 (Jaipur - Trib.), the Hon'ble ITAT JAIPUR BENCH 'A' had held that where assessee had not filed its return of income on ground that his income did not exceed maximum non-taxable amount as his income was exempt under section 54, in view of fact that assessee's total income without giving effect to provision of section 54 came to an amount which exceeded maximum amount not chargeable to tax, assessee was required to file his return of income, and the penalty under section 271F levied upon him was justified.

8. Admittedly, there was a default in terms of Section 271F and violation of clear mandate of the statutory provisions of Section 271F. The quantum of Income or the interest does not alter or influence the provisions of 271F of I.T. Act. In the cases where the appellant is able to



show or prove any reasonable cause for not furnishing the return of income by 31st March of the relevant assessment year, the provisions of Section 271F are not automatically imposed for late filing of the return. Section 273B of IT Act also comes to the rescue in the cases where the delay in filing of return is due to reasonable cause. However, it is evident from the records that the appellant has not submitted any reasonable cause for not filing the return of income for the A.Y. 2015-16 in spite of having taxable income for the relevant assessment year, which was subsequently assessed in the hands of appellant. The plea that the income was below the taxable limit was never put to test during the assessment proceedings where the appellant remained non responsive.

9. In view of the above discussion and considering the totality of the facts, I am of the considered view that the penalty order passed under 271F of the I.T. Act by the AO on account of failure for furnishing the return of income for the A.Y. 2015-16 and also not having any reasonable cause to prove for the same. Hence, it was a fit case for imposition of penalty under Section 271F. The penalty imposed under Section 271F of I.T. Act is hereby confirmed.”

3. Before us, the Ld. Counsel of the assessee vehemently argued on the issue of reasonable cause for non-filing of return of income. The relevant submission of the assessee is reproduced as under:

“6. On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in upholding the order passed by the Assessing Officer w/s 271F of the Income Tax Act, 1961 imposing penalty of Rs 5,000/- by not appreciating that the belief of the appellant that it was not under an obligation to file return of income as per the provisions of Income Tax Act, 1961 as its income for the captioned assessment year being far below the maximum amount not chargeable to tax, constitutes reasonable cause for non-filing and hence is not liable to penalty.



7. Besides, it is humbly submitted before your honour that the father of Karta of appellant, who is 67 years old is a patient of acute asthma and during the said period he was afflicted with acute breathlessness rendering him incapacitated to look after his own needs. Under these stressful circumstances, the Karta of appellant was forced to leave station and be with his father who lives alone in the remote village in the state of Rajasthan. The village does not have the kind of facilities that are available in cities and this necessitated the Karta of appellant staying with his father in fulfillment of his filial duties. Since father's condition was not getting better, the Karta of appellant brought his father to the city for better medical care and expert consultation. During the period under consideration, the spouse of Karta of appellant being in the family way also required due care & attention. Subsequently the grandfather succumbed to his illness rendering the Karta of appellant unable to attend to his daily affairs.

8. As held by the Hon'ble High Court of Bombay in CIT Vs. Triumph International Finance Limited [2012] 345 IT 270, in view of the provisions of 273B, if reasonable cause exists, no penalty is leviable. The reasons for the failure to file returns within the stipulated time was bonafide and genuine. In this context, reference is made to the observations of the Hon'ble Bombay High Court in the judgement cited above;

"The expression 'reasonable cause' used in Section 273B is not defined under the Act. Unlike the expression 'sufficient cause' used in Section 249(3), 253(5) and 260A(2A) of the Act, the legislature has used the expression 'reasonable cause' in Section 273B of the Act. A cause which is reasonable may not be a sufficient cause. Thus, the expression 'reasonable cause' would have wider connotation than the expression 'sufficient cause'. Therefore, the expression 'reasonable cause' in Section 273B for non-imposition of penalty under Section 271 E would have to be construed liberally depending upon the facts of each case."



The jurisdictional High Court has laid down that the legislature has deliberately used the expression 'reasonable cause' and not 'sufficient cause' in section 273 B of the Income Tax Act, 1961 thereby construing that the said provision of section 273B has to be given liberal interpretation.

9. It has been held that levying of penalty w/s 271F is not sustainable as per law as laid down in a catena of judgments as listed below:-

a. Mrs Maniu Kataruka vs Income Tax Officer (ITA No: 94 TTJ Kol 873)

b. Sanjay Srivastava, Ghaziabad vs Income Tax Officer (ITA No: 4348 to 4350/Del/2010)

c. R S Investment, New Delhi vs ITO Ward - 30(2) (ITA No: 1338 to 1343/Del/2011)

d. M/s Hubli Dharwad Stock Trading House vs Dy. Commissioner of Income Tax, Circle- 1(1), Hubli (ITA No: 891 to 902/Bang/2017)

e. Hon'ble High Court of Bombay in CIT Vs. Triumph International Finance Limited[2012] 345 ITR 270.”

4. On contrary, the Ld. Departmental Representative (DR) supported the order of the lower authorities and submitted that for non-filing the regular return of income, the assessee is liable for penalty of Rs.5,000/- levied u/s 274F of the Act.

5. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. Before us, the assessee has mainly sought cancellation of the order of the Ld. CIT(A) on the ground of the existence of a reasonable cause u/s



273B of the Act for penalty not to be imposed. The relevant provision of section 273B of the Act is reproduced as under:

*“273B. Notwithstanding anything contained in the provisions of 20[clause (b) of sub-section (1) of] 21[section 271 , section 271A, 22 [section 271AA,] section 271B 23[, section 271BA], 24 [section 271BB,] section 271C , 25[section 271CA ,] section 271D, section 271E, 26 [**section 271F**, 27 [section 271FA,] 28 [section 271FB,] 29 [section 271G,] clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA] or 30 [section 272B or] 31[sub-section (1) 32[or sub-section (1A)] of section 272BB or] 33 [sub-section (1) of section 272BBB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause 34 for the said failure.]”*

5.1 Thus in view of the above provision, if the assessee proves that there was a reasonable cause for the failure in non-filing the return of income then no penalty shall be imposed. Before us, the assessee has cited two reasonable causes. **Firstly**, the assessee has submitted that he was under bona fide belief that his total income was not exceeding the minimum threshold income for the purpose of the Income-tax. **Secondly**, due to illness in the family, Karta of the HUF was out of station and therefore, he could not file the return of income. The Ld. DR could not controvert the existence of the reasonable cause in above circumstances. In our opinion there exists a reasonable cause for failure on the part of the assessee in filing regular return of income as prescribed u/s 139(1) of the Act.



Accordingly, the penalty u/s 271F of the Act levied by the Assessing Officer and upheld by the Ld. CIT(A), is deleted. The grounds of appeal of the assessee are accordingly allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 31/03/2023.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 31/03/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai



		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on:	31.03.2023		Sr. PS/PS
2.	Draft placed before author:	31.03.2023		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			