

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

ITA No. 215/Srt/2023 (Assessment Year 2014-15)

(Physical hearing)

M/s Divya Enterprise, C/o- CA Mayank Dave, O-19, Panchratna Tower, Opp.- Affil Tower, L H Road, Surat-395006. Ph. No.-9909777600 PAN No. AAFFD 5058 A	Vs.	I.T.O., Ward-3(3)(2), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Arjav Vidani, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of appeal	28/03/2023
Date of hearing	20/04/2023
Date of pronouncement	21/04/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 31/01/2023 for the Assessment Year (AY) 2014-15. The assessee has raised following grounds of appeal:

- “1. Learned Assessing Officer has erred in law ad fact by imposing penalty under Section 271F of Rs. 5,000/-
2. Your appellant prays and with your Honours pre permission reserve the right to add, alter, amend or withdraw ay of above ground of appeal.”

2. Brief facts of the case are that the Assessing Officer levied penalty of Rs. 5,000/- under Section 271F of the Income Tax Act, 1961 (in short, the

Act) vide order dated 29/06/2018 by holding that the case of assessee was reopened on the basis of information that the assessee has taken accommodation entry of loan from M/s Tishiya Trading Company, which is sister concern of Kamal Zaveri Group, which is a paper company, involving in providing accommodation entries. The assessee obtained unsecured loan of Rs. 15.00 lacs on 7th March 2014, from Tishiya Trading Company, which escaped the assessment and required to be taxed. The Assessing Officer after serving notice under Section 148 of the Act dated 01/03/2017 and serving various other notices, completed assessment under Section 144 r.w.s. 147 of the Act determining total income of Rs. 15.00 lacs. The Assessing Officer also initiated penalty under Section 271F of the Act by taking a view that the assessee has not filed return of income for the assessment year under consideration. Show cause notice for levy of penalty was issued to assessee on 22/12/2017. The Assessing Officer recorded that no reply of such show cause notice was filed by the assessee. The Assessing Officer accordingly passed the order under Section 271F dated 29/06/2018.

3. Aggrieved by the penalty under Section 271F of the Act, the assessee filed appeal before the Id. CIT(A)/NFAC. Before the Id. CIT(A), the assessee submitted its written submission vide submission dated 15/11/2022. The submission of assessee are recorded in para 7.2 of order of Id. CIT(A). In the submission, the assessee stated that the assessee

firm closed their business in the year 2009 and left Surat. The notice was served at the address which was left, in fact, the notice was not served on the assessee. The person who has occupied the erstwhile place of business, informed the assessee at their native place to comply the assessment proceedings. The assessee participated in the assessment proceedings which is duly acknowledged by the Assessing Officer in the assessment order. The case of assessee was reopened due to identical name with some other tax evader. The addition in the assessment order and penalty was levied without verification. The Id. CIT(A) after considering the submission of assessee, dismissed the appeal by holding that the Assessing Officer was justified in imposing penalty under Section 271F of the Act of Rs. 5,000/- for non-filing of return of income. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

4. I have heard the submissions of learned Authorised Representative (Id. AR) of the assessee the learned Senior Departmental Representative (Id. Sr. DR) for the revenue. The Id. AR of the assessee submits that the business of assessee firm was closed in 2009. After closing of business of assessee, no income was accrued, earned or arise in favour of assessee. Since, there was no taxable income, the assessee has no obligation to file return of income. The case of assessee was reopened due to similarity of name of some other person. The assessee has not received any loan amount of Rs. 15.00 lacs as alleged by the Assessing Officer, while making

reopening the case of assessee. The Id. AR of the assessee submits that he has filed bank statement of assessee having account No.624605059562 maintained with ICICI bank for the financial year 2013-14 relevant to A.Y. 2014-15. There is no credit in the bank account. The Id. AR further reiterated that if no taxable income in the hands of assessee, the assessee is not under obligation to file return of income. The Id AR for the assessee submits that assessee is their submissions before Id CIT(A) clearly stated that assessing officer reopened the case without verifying the fact that that the assessee has received loan from Tishiya Trading Co. on 07.3.2014, copy of submissions filed before Id CIT(A) is filed on record. To support his submissions, the Id AR for the assessee relied on the decision of Madras High Court in S. Jayanthi Shri Vs ACIT (2016) taxmann.com 248 (Madras).

5. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities.
6. At the time of hearing, I directed the Id. AR of the assessee to file complete bank statement for the period 01/03/20214 to till 31/03/2014 duly certified by their bankers.
7. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. On considering the contention of both the parties, I find that the main submission of Id. AR of the assessee that the assessee has no taxable income in A.Y.2014-15

as the assessee has closed its business long back. At the time of hearing, I directed the Id. AR of the assessee to file certified statement of bank account for the month of March, 2014. On my direction, the Id. AR of the assessee furnished the certified bank statement for the month of March, 2014. On perusal of such statement, I find that there is no such amount credited of Rs. 15 lacs in the bank account of assessee. Considering the afforesaid facts, I find that the assessee has reasonably explained that he has no obligation to file return of income when there was no taxable income of the assessee during the relevant financial year. Therefore, in my view penalty under section 271F was not justified. Hence, I direct the assessing officer to delete the penalty levied under Section 271F of the Act.

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

Order announced in open court on 21 April 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 21/04/2023

**Ranjan*

Copy to:

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

By Order

Sr. Private Secretary, ITAT, Surat