

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA No. 659/Hyd/2022		
Assessment Year:2017-18		
Shri Palabathuni Chandra Ravi, Ramasamudram PAN:ATEPR8548M (Appellant)	Vs.	Income Tax Officer Ward-1 Madanapalle (Respondent)
Assessee by:	Shri K.A. Sai Prasad, CA	
Revenue by:	Shri KPRR Murthy, CIT(DR)	
Date of hearing:	26/04/2023	
Date of pronouncement:	28/04/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 29.6.2022 of the learned CIT (A)-NFAC, Delhi relating to A.Y.2017-18.

2. Levy of penalty of Rs.1,50,000/- made by the Assessing Officer u/s 271B of the Act and confirmed by the learned CIT (A)-NFAC is the only issue raised by the assessee in the ground of appeal.

3. There is a delay of 87 days in filing of the appeal by the assessee for which the assessee has filed a condonation petition along with an affidavit explaining the delay which was

due to inability of the assessee to operate the mail and download the penalty order as he was not computer savvy. After considering the contents of the condonation application and after hearing both the sides, the delay in filing of the appeal is hereby condoned and the appeal is admitted for adjudication.

4. Facts of the case, in brief, are that the assessee is an individual and filed his return of income electronically on 21.1.2018 declaring total income at Rs.6,21,210/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee deposited a total of Rs.15,78,19,159/- during the demonetization period which is on account of sale of petrol, diesel and lubricants. The Assessing Officer completed the assessment u/s 143(3) of the Act on 23.12.2019 assessing the total income of the assessee at Rs.6,21,120. Subsequently, the Assessing Officer initiated penalty proceedings u/s 271B of the Act on the ground that the turnover of the assessee is at Rs.17,49,27,756/- which exceeds the limit as mandated under the provisions of section 44AB of the I.T. Act. It was explained by the assessee that he got his accounts audited u/s 44AB of the Act within the stipulated time under the I.T. Act. However, he could not file the same due to ill health and immobility as he was advised to take rest for 3 months. The assessee also filed the Doctor's certificate and requested to drop the penalty proceedings issued u/s 271B of the I.T. Act.

5. However, the Assessing Officer was not satisfied with the explanation given by the assessee. According to him, the certificate furnished by the assessee was not certified from any specialist doctor related to any recognized/specialty hospital but certified from a private hospital run by an MBBS doctor whereas

the disease mentioned in the certificate was low back pain with enteric fever (nerve) which requires supervision from a specialist doctor in that field. Rejecting the various explanations given by the assessee and relying on various decisions, the Assessing Officer levied a penalty of Rs.1,50,000/- u/s 271B of the I.T. Act.

6. In appeal, the CIT (A)-NFAC upheld the action of the Assessing Officer by observing as under:

“4.4 I have gone through the penalty order and have considered the facts and material available on record. During the course of appellate proceedings, the appellant was provided many opportunities as enumerated above. However, the appellant has remained noncompliant. No material fact has been brought on record in support of the grounds of appeal. The appellant in spite of being given ample opportunities during the assessment and appellate proceedings, failed to offer any explanations/supporting documents in respect of grounds of appeal raised by the appellant. Considering the above, I do not find any reason to interfere with the penalty order in which penalty of Rs.1,50,000/- has been levied by the Assessing Officer. Accordingly, ground No.1 to 3 are dismissed. Ground.4 is general in nature and does not require specific adjudication”.

7. Aggrieved with such order of the learned CIT (A) NFAC the assessee is in appeal before the Tribunal.

8. We have heard the rival arguments made by both the sides and perused the record. As mentioned by the CIT (A)-NFAC, despite a number of opportunities granted, the assessee did not comply to the statutory notices for which CIT (A)-NFAC dismissed the appeal filed by the assessee. Although the learned Counsel for the assessee filed certain decisions before us to substantiate that the penalty should not be levied u/s 271B of the Act when there is a reasonable cause, however, considering the fact that the assessee did not comply to the statutory notices issued by the CIT

(A)-NFAC, for which he dismissed the appeal, we deem it proper to restore the issue to the file of the CIT (A)-NFAC with a direction to grant one last opportunity to the assessee to substantiate his case and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 28th April, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 28th April, 2023

Vinodan/sps

Copy to:

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3	Pr. CIT-, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order