

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

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

**ITA Nos: 281 to 284/Rjt/2022
Assessment Year: 2012-13**

Smt. Vijayaben Ramabhai Vaja, Campus Quarter, 222, Opp. Bahumali Bhavan Rajkot-360002 PAN No: AKXPV1266G (Appellant)	Vs	The I.T.O., Ward-1(2)(4), 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 : 21-06-2023
Date of pronouncement : 23-06-2023

आदेश/ORDER

PER BENCH:-

These four appeals are filed by the Assessee as against separate Appellate orders all dated 26.09.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), arising out of the exparte reassessment order passed under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and

Penalties levied u/s. 271(1)(c), 271(1)(b) and 271F of the Act relating to the Assessment Year (A.Y) 2012-13.

2.1. The brief fact of the case is that the assessee is an individual and Homemaker. Her husband working as Sub Inspector of Police. The net taxable income for the Assessment Year 2012-13 was below the basic exemption limit, therefore the assessee has not filed her Return of income u/s. 139 of the Act. The A.O. initiated reassessment proceedings by issuing notice u/s. 148 on the ground that the assessee made time deposits of Rs.2,00,000/- in the bank account maintained with State Bank of India and also received interest income thereon Rs. 93,948/-, but the assessee failed to file the Return of Income. The assessee neither replied to the above notice nor filed the Return of Income. The assessee issued further notices u/s. 142(1) on various dates and in the absence of any reply from the assessee the Ld. A.O. made an addition of Rs. 2,93,948/- as the unexplained income of the assessee and demanded tax thereon vide order dated 10-12-2019.

2.1. It is thereafter the Assessing Officer initiated penalty proceedings and served notices to the assessee. The A.O. again issued show cause notice dated 10-09-2021 to the assessee, to submit explanation on or before 13-09-2021, why not to levy penalty u/s. 271(1)(c) for concealment of income. It is thereafter the assessee filed a detailed letter stating that she never received reopening of assessment notice u/s. 148 as well as other notices issued u/s. 142(1) of the Act, since her husband was transferred from Rajkot to Veraval, within short period again transferred back

to Rajkot. Thus in the intervening period, she has not received the notices u/s. 148 and 142(1) of the Act, but after receipt of the show cause notices for levying penalty, she come to know about the exparte assessment order passed in her case. She obtained certified copy from the department and filed appeal before Commissioner of Income Tax (Appeals.). Citing the above reasons the assessee requested the Ld. A.O. not to levy penalty and wait for the outcome of the appeal filed before Ld. CIT(A). However the A.O. levied penalty u/s. 271(1)(c) of Rs. 11,737/- for concealment of income, penalty u/s. 271(1)(b) of Rs.10,000/- not responding to the hearing notice and penalty u/s. 271F of Rs. 5,000/- for not filing the Return of Income.

3. Aggrieved against the above orders, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The above appeals were transferred to National Faceless Appeal Centre (NFAC) and the assessee was issued with notices of the above appeals on 01-08-2022, 26-08-2022 & 15-09-2022 calling the assessee to file her "written submission". Though the assessee sought for adjournment on the ground of collecting the documents, the Ld. NFAC not accepting the above continuous adjournment request and thereby dismissed the assessee appeals.

4. Aggrieved against the same, the assessee is in appeals before us. Ld. Counsel Mr. Mehul Ranpura appearing for the assessee submitted before us copies of the bank statement held by the assessee with State Bank of India, Sadar Bazar, Rajkot. As per the bank statement, the term deposit of Rs. 2,00,000/-, the assessee

received interest of Rs. 29,870/- only and the deposit of Rs. 2,00,000/- is also made out of the savings made by the assessee from time to time. Thus the income of the assessee relating to the Assessment Year 2012-13 is below taxable income and there is no question of filing of Return of Income u/s. 139 of the Act, for the above assessment year. When the assessee was not properly served with notices u/s. 148 and 142(1), thereby she could not reply to the Assessing Officer which resulted in passing exparte assessment order. Only after the issuance of penalty show cause notice dated 10-09-2021, the assessee came to know about the exparte assessment order passed by the Assessing officer and thereby filed appeal before the Ld. CIT(A).

4.1. The Ld. Counsel further submitted that the Assessing Officer by mistake in the show cause notice stated that “the assessee have made cash deposit of Rs. 2,00,000/- maintained with Standard Chartered Bank during the Financial Year 2011-12”. Further Ld. Counsel pleaded that the assessee does not have any account with the Standard Chartered Bank. The only account she has with the State Bank of India wherein statement has already produced before the authorities. Thus pleaded when there is no chargeable income to tax then the reassessment made in the hands of the assessee is liable to be deleted. Further the Ld. NFAC without granting proper opportunity to the assessee, dismissed the appeal in spite of request for adjournment for filing documents before Ld. NFAC. The Ld. Counsel further pleaded in the above circumstances the penalties levied is liable to be deleted.

5. Per contra, the Ld. Sr. D.R. Shri B.D. Gupta appearing for the Revenue fairly admitted to set aside the matter back to the file of the Assessing Officer for verification of the income received by the assessee from the term deposit and the interest income thereon by the Assessing Officer, consequently decide the penalty issues.

6. We have given our thoughtful consideration and perused the materials available on record. It is an admitted fact that the assessee has not responded to the reopening notice and consequent u/s. 142(1) hearing notices because of her change in address during that period. On her husband's employment transferring from Rajkot to Veraval and back to Rajkot within short time. It is after the issuance of the penalty show cause notice on 10-09-2021, the assessee came to know about the exparte assessment order and participated in the hearing before the Assessing Officer. However the income earned by the assessee during the financial year is much less than the taxable income. The assessee also produced before us copy of the bank statement maintained with State Bank of India wherein the term deposit of Rs. 2,00,000/- with interest rate at 8.5% was made on 22-09-2011 only, and the interest thereon cannot be Rs. 93,948/- as determined by the Assessing Officer. As we have been satisfied the reasons stated by the assessee about her change of address and in order to meet the ends of justice, we deem it fit to set aside the matter back to the file of the Assessing Officer to examine the issue afresh by affording opportunity to the assessee. Needless to say that the assessee should cooperate with the Assessing Officer by producing all the details and for passing fresh assessment order.

Thus the appeal filed by the assessee is hereby allowed for statistical purposes.

7. ITA Nos. 282, 283 & 284/Ahd/2022 are penalty appeals as against the orders passed under section 271(1)(c), 271(1)(b) and 271F of the Act, the same becomes infructuous as the main reassessment order is set aside back to the file of the A.O. The Ld. A.O. is directed to proceed the above penalty cases in accordance with law.

8. In the result, the appeals filed by the Assessee are allowed for statistical purposes.

Order pronounced in the open court on 23-06-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 23/06/2023

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