

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. 271 & 272/Rjt/2022
Assessment Year: 2011-12**

Rajnikant Hargovinddas Sandaia, Sidhdi Apts Block No. 2, 10 Junction Plot, Rajkot-360001, Gujarat PAN No: AGGPS6160F (Appellant)	Vs	The ITO, Ward-2(3)(5), Rajkot (Respondent)
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Assessee Represented: None
Revenue Represented: Shri B.D. Gupta, Sr.D.R.

Date of hearing : 04-07-2023
Date of pronouncement : 07-07-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These appeals are filed by the Assessee as against the Appellate order dated 02.12.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC") confirming the levy of penalty u/s. 271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and Appellate order dated 21.09.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre, Delhi, (in short referred to as “NFAC”) confirming the levy of penalty u/s. 271F of the Act relating to the Assessment Year (A.Y) 2011-12.

2. The brief facts of the case is that the assessee is an individual and did not file his Return of Income for the Assessment Year 2011-12. As the income chargeable to tax was escaped from assessment, the A.O. initiated reassessment proceedings by issuing notice u/s. 148 of the Act. In response, the assessee filed his Return of Income on 20-12-2018 at the fag end of the assessment proceedings declaring total income of Rs. 5,13,890/-. The Assessing Officer completed the reassessment determining the total income at Rs. 14,42,470/- vide order dated 26-12-2018.

2.1. Since the assessee has failed to comply with the notice issued u/s. 142(1) dated 18-12-2018 in spite of service of notice to the assessee, the A.O. initiated penalty proceedings u/s. 271(1)(b) of the Act. The Assessing Officer issued a show cause Notice u/s. 274 r.w.s. 271(1)(b) of the Act calling for explanation from the assessee why not to levy penalty. In response, the assessee furnished a written submission dated 02-01-2019 requesting to keep the penalty proceedings in abeyance till disposal of his quantum appeal pending before First Appellate Authority. Since, the outcome of the quantum appeal has no bearing on the default of not responding to a notice issued u/s. 142(1), the Assessing Officer observed that the penalty proceedings cannot be kept in abeyance. However the Ld. A.O. given another letter dated 01-04-2019 why not to levy penalty u/s. 271(1)(b) of the Act. Again the assessee reiterated pendency of

the quantum appeal and to keep the penalty proceedings in abeyance till the disposal of the quantum appeal.

2.2. The Assessing Officer rejected the same as no explanation is offered by the assessee for non-compliance of notice issued u/s. 142(1) and not sought for any adjournment of the hearing. Further the assessment was also passed *exparte* under section 144 r.w.s. 147 of the Act because of the non-cooperation of the assessee. Considering the facts of the case, deliberate and conscious disregard shown by the assessee to the statutory notice issued, thereby the Ld. A.O. levied a penalty of Rs.10,000/- u/s. 271(1)(b) of the Act.

2.1. Similarly, the assessee failed to file Return of Income as per the provisions of section 139(1) of the Act, when the total income of the assessee was Rs. 5,13,890/- relating to the Assessment Year 2011-12. Hence Ld. A.O. initiated penalty proceedings u/s. 271F of the Act for non-filing of Return of Income. When a show cause notice was issued for levying penalty u/s. 271F, the assessee replied to keep the penalty proceedings because of his quantum appeal pending before the First Appellate Authority. The same was also rejected by the A.O. as it has no relevance for the levy of penalty u/s. 271F of the Act and thereby levied a penalty of Rs. 5,000/- for non-filing of Return of Income and no explanation offered by the assessee.

3. Aggrieved against the Penalty orders, the assessee filed appeals before Ld. National Faceless Appeal Centre (NFAC). The assessee

failed to offer any explanation for non-compliance of notice u/s. 142(1) of the Act and not filing the Return of Income u/s. 139(1) of the Act. Therefore the Ld. CIT(A)-NFAC, confirmed the penalties levied u/s. 271(1)(b) and u/s. 271F of the Act observing as follows:

U/s. 271(1)(b):-

“I have considered the Statement of Facts and perused the relevant records. The only issue in this appeal, is imposition of the penalty u/s. 271(1)(b) of the Income Tax Act, 1961, amounting to Rs.10,000/-. The penalty was imposed due to non-compliance to notices u/s. 142(1) of the Income Tax Act, issued to the appellant on 21.12.2018. The appellant has not submitted any explanation for non-compliance. The Assessing Officer was perforce to pass the assessment order u/s.144 read with section 147 due to intransigence of the appellant. However, in response to show cause notice under section 274 read with section 271(1) (b), the appellant has submitted, that as he was in appeal against assessment order passed under section 144 read with section 147; penalty proceedings should be kept in abeyance. There is no merit in the submission of the appellant. The penalty was imposed for non-compliance to notices under section 143(1) and not for suppression of income, which was subject to adjudication by the appellate authorities. Therefore, considering the factual matrix of the case, I find no merit to interfere with the order of the Assessing Officer imposing penalty of Rs. 10,000/- u/s. 271(1)(b) of the Income Tax Act, 1961. These grounds of appeal fail and are therefore not allowed.”

U/s. 271F:-

“I have considered the submission of the appellant and perused the relevant records. Appeal hearing notices u/s 250 of the I.T. Act, 1961 were issued on 02.02.2021, 20.05.2022 and 14.09.2022 fixing hearing on 09.02.2021, 26.05.2022 and 20.09.2022. In response of the said notices, the appellant had stated that he had opted for Vivad Se Vishwas scheme. The A.O. had imposed penalty amounting to Rs.5,000/- u/s 271F for failure to furnish return of income before the end of the relevant assessment year. From perusal of records, it was found that the assessment was completed u/s 144 r.w.s. 147. Show cause notices u/s 274 r.w.s. 271F were issued. In response to that notices the appellant requested to keep penalty proceedings in abeyance till disposal of quantum appeal. Subsequently, he had opted for Vivad Se Vishwas Scheme-2020 for quantum addition made u/s 144 r.w.s. 147. However, this will not grant the appellant immunity from imposition of penalty u/s 271F.

As per section 3 of Vivad Se Vishwas Act, 2020, the declarant would be provided immunity only for penalty levied on disputed tax, in case he opts

for Vivad Se Vishwas scheme. In this case, as mentioned above, penalty was levied for a technical default i.e. filing return after due date. Therefore considering the factual matrix of the case, I find no merit to interfere with the order u/s 271F passed by the A.O. Penalty u/s 271F amounting to Rs. 5,000/- is confirmed.”

4. Aggrieved against the Penalty orders, the assessee is in appeal before us. Today is the 5th time of hearing of the above appeals. The assessee has not appointed any Authorized Representative to represent his cases. The assessee sought for repeated adjournments for 10 to 15 days to collect some important details, but however none of the hearings, he produced any such details. This Bench was accepting the request of the assessee by adjourning the above cases from 13-03-2023 to 11-04-2023 then to 11-05-2023, 01-06-2023 and finally to 04-07-2023. Even today the assessee sent adjournment letters repeating the same reasons to adjourn the cases only for 10 to 15 days as well as on his ill-health reasons also, but without any supporting medical certificates. We do not find any good reason to adjourn the above cases, further since five opportunities already given to the assessee to produce the important details, which are not produced so far, but the assessee again seeking repeated adjournment only. Hence the request for adjournment is hereby rejected.

4.1. From perusal of the record that the assessee has failed to give any explanation before the Assessing Officer for non-compliance of the statutory notice issued u/s. 142(1) of the Act and also not offered any explanations for non-filing of Return of Income u/s. 139(1) of the Act. Even though the assessee is liable to file the Return of Income having taxable income.

5. Ld. Sr. D.R. Shri B.D. Gupta appearing for the Revenue submitted that the assessee neither adduced reasons for not filing reply to the statutory notices nor filed the Return of Income within the statutory time limit u/s. 139(1) of the Act. Further mere pendency of the quantum appeal has no relevance for the non-compliance of the notice and non-filing of the Return of Income. Therefore the levy of penalties u/s. 271(1)(b) and u/s. 271F by the Assessing Officer does not require any interference and the assessee is also not cooperative in conducting the above appeals. Therefor the same are liable to be dismissed.

6. We have given our thoughtful consideration and perused the materials available on record. It is undisputed fact for the Assessment Year 2011-12 assessment was completed exparte by passing Best Judgment Assessment u/s. 144 r.w.s. 147 by the Assessing Officer. For non-compliance of notice u/s. 142(1), the A.O. has levied penalty of Rs. 10,000/- u/s. 271(1)(b) of the Act. The assessee neither offered any explanation for non-compliance of the notice issued u/s. 142(1) nor sought for any adjournment of the hearing of the case. Therefore we do not find any reasons to interfere with the levy of penalty u/s. 271(1)(b) of the Act. Thus the grounds raised by the assessee are devoid of merits and the same is hereby dismissed.

7. In the result, the appeal filed by the Assessee in ITA No. 271/Rjt/2022 is hereby dismissed.

ITA No. 272/Rjt/2022 for A.Y. 2011-12

8. Similarly the assessee failed to file regular Return of Income for the Assessment Year 2011-12 u/s. 139(1) of the Act. However assessee has filed the Return of Income after issuance of notice u/s. 148 of the Act, even though the taxable income of the assessee is higher, who is liable to file regular Return of Income u/s. 139(1) of the Act. The assessee offered no explanation before any of the lower authorities for non-filing of regular Return of Income. Therefore the assessee is liable to levy of penalty u/s. 271F of the Act. Thus the grounds raised by the assessee are devoid of merits and the same are rejected.

9. In the result, the appeal filed by the Assessee in ITA No. 272/Rjt/2022 is hereby dismissed.

Order pronounced in the open court on 07-07-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 07/07/2023

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