

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 294/JP/2023
निर्धारण वर्ष/Assessment Year : 2011-12

Shri Mukesh Pathak 90, Vasundhara Colony, Tonk Road Jaipur – 302 018	बनाम Vs.	The ITO Ward 6(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AKLPP 7944 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Jain, Advocate
राजस्व की ओर से / Revenue by: Shri Anoop Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 06/07/2023
उदघोषणा की तारीख / Date of Pronouncement: 13/07/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 14-03-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 raising therein following grounds of appeal.

“1. That the NFAC has further erred in law and facts in confirming penalty amounting to Rs.5,000/- u/s 271F whereas the assessee was not required to file his return of income as per Section 39(1).

2. That the NFAC has further erred in law and facts in confirming tax Rs.311/- imposed (ITR accepted) by the AO but TDS of Rs.585/- has not been considered as per form 26A.

2.1 Apropos Ground No. 1 and 2 of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

“5. Decision :

5.1 The statement of fact, ground of appeal and the submission made by the appellant have been perused carefully. Brief facts of the case is that the income of the appellant was assessed at Rs.1,63,020/- on 03-10-2018 u/s 147/144 of the Act. Further, penalty amounting to Rs.5,000/- was imposed by the ITO, Ward 6(2), Jaipur on 29-03-2019 for failure to furnish return of income within the prescribed limit as per provision of Section 139(1) of the Act. The appellant vide submission dated 23-02-2023 has requested for relief on the ground that he is not liable for payment of any tax.

“As per return assessee has total income Rs.1,63,020/- and claimed TDS Rs.585/- and refund of Rs.270/- therefore, you are requested to drop the penalty u/s 271F for Rs.5,000/- as the assessee is not liable to pay tax.”

5.2 It is found from the ready reckoner that basic limit for taxation for the AY 2011-12 was Rs.1,60,000/- only. As income of the appellant exceeds the basic limit, he was mandatorily required to file return of income irrespective of the fact that TDS was already deducted and the appellant was not liable to pay any further tax. Therefore, penalty levied u/s 271F is upheld and the appellant appeal is dismissed.

6. In the result, the appeal is dismissed.”

2.2 During the course of hearing, the ld. AR of the assessee reiterated the same arguments as made before the lower authorities and thus prayed to delete the penalty

2.3 On the other hand, the ld. DR supported the orders of the lower authorities.

2.4 The Bench has heard both the parties and perused the materials available on record. From the records, it is noticed that the assessee was required to file the return of income u/s 139(1) of the Act which he failed to do so. Therefore, after the initiation of reopening proceedings and while passing order of assessment the AO was of the opinion that the assessee was liable for penalty. In first appeal, the ld. CIT(A) found from the ready reckoner that basic limit for taxation for the year under consideration i.e. A.Y. 2011-12 was amounting to Rs.1.60 lacs and the income of the assessee was assessed at Rs.163,020/- on 3-10-2018 by the AO u/s 144/147 of the Act. Therefore, according to the Revenue, the assessee is liable for penalty. In this regard, the ld. AR of the assessee reiterated the same arguments as was raised by him before the lower authorities and further submitted that he was under bona fide belief that he was not required to file the return as his income was below the basic limit. Apart from this, it was also submitted that the assessee had claimed TDS of Rs.585/- and refund of Rs.270/-. Thus, in this way, there is no loss to revenue on account of bona fide mistake on the part of the Revenue by not filing the return. After having gone through the facts of the case meticulously and

keeping in view the defence put forth by the assessee and taking into consideration the bona fide mistake as explained and also considering the fact that there was no loss to the revenue as proper tax has already been deposited by the assessee. Therefore, taking the liberal view of the matter in the peculiar circumstances, the penalty of Rs.5,000/- u/s 271F is set aside and consequently, the appeal of the assessee allowed.

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

Order pronounced in the open court on 13 /07/2023.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13 /07/2023

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Mukesh Pathak, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 6(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 294/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar