

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

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 88/JPR/2023
निर्धारण वर्ष / Assessment Years : 2011-12

Sakku Devi Indian Technology B3 Siddhi Vinayak Complex, Near Nagar Nigam Stadium Guru Gorakh Colony Snganer, Jaipur.	बनाम Vs.	Income Tax Officer Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: EPLPD 0233 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Yogesh Kumar Sharma (Adv.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 25/05/2023
उदघोषणा की तारीख / Date of Pronouncement : 22/08/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre, Delhi [hereinafter referred to as "NFAC/CIT(A)"] arising from penalty order passed U/s. 271F of the Income Tax Act, 1961 (in short the "Act") dated 31.12.2022 for the assessment year 2011-12.

2. The assessee has raised the following grounds:-

"1. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt.31.12.2022 whereas no proper opportunity was given.

2. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 31.12.2022 and in accordance to the Assessment order points whereas the Ld. Appellant authority has not considered the Grounds and facts as mentioned in the Form 35.

3. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 31.12.2022 that neither appellant had taxable income during the considering year nor liable to file income tax return during the considering year.

4. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 31.12.2022 that the Return of income for the F.Y. 2010-11 was not filed by the appellant due to income was below taxable limit.

5. That on the facts and in the circumstances of the case, the Ld. Commissioner Of Income Tax (Appeals) has erred in sustaining the levy of penalty U/S 271F whereas the Ld. ITO has not given notice u/s 274 rws 271 to impose the penalty as show cause.

6. That the appellant in this sale deed, was only involved as a confirming party, who confirm the sale without any making claim on the sold agricultural land. In other words, it was only a declaration that" I confirm to this sell of agricultural land and I will not desire any suit/claim/share in respect of the sold agricultural land against the seller or purchaser being a sister of seller/part of the family as daughter/sister. While I got marriage and I had no interest in this property being a monetary terms."

7. That being a sister/Daughter, the appellant had put my signature on the sale deed without any expectation of single rupees. Moreover, Neither appellant have received earlier any consideration or payment against such sold agricultural land, nor

at the time of sale of the property from the seller or purchaser. The above confirmation was without cost and without benefit. Hence she is not connected with the assessment proceeding of the said property and appellant is not liable to pay any penalty.

8. Further, that the appellant being an agriculturist and illiterate; facing financial and family problems; under the impression that That being a sister/Daughter, the appellant had put my signature on the sale deed without any expectation of single rupees. Moreover, Neither appellant have received earlier any consideration or payment against such sold agricultural land, nor at the time of sale of the property from the seller or purchaser. The above confirmation was without cost and without benefit. Hence she is not connected with the assessment proceeding of the said property and appellant is not liable to pay any penalty. Furthermore, in these situation, such transfer of agricultural land not chargeable to tax.

9. When we consider the entirety of the facts and circumstances obtaining in this case, it becomes apparent that there was reasonable cause on the part of the assessee in not filing return u/s.139(1) of the Act, against which the penalty has been imposed and confirmed u/s.271F of the Act. Section 273B provides that no penalty shall be imposed, inter alia, u/s.271F where the assessee establishes a reasonable cause for failure referred to in said section. This being the position, the case gets covered u/s 273B of the Act. Reliance on the Judgment/Order of "Arjun Dada KharateVs DCIT (ITAT Pune)2020"

10. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt.31.12.2022 by stating that that penalty proceeding u/s 271F is distinct from the issue involved in quantum of appeal, where the penalty proceeding u/s 271F is arises due to assessment proceeding u/s 144. Further, appeal against the order u/s 144 is also pending till today. Furthremore, such order u/s 271F is distinct from the issue involved in quantum of appeal, During the

considering year no such liability of tax hence there was Nil INCOME i.e. below taxable limit to file return of income.

11. The caption noticed in the order as below, "I have carefully considered the facts of the case, assessee's submissions, penalty order and find that in this case penalty was levied as the assessee failed to file the return of income within the prescribed time. The AO held that the total income of the assessee was determined at Rs 19,24,266/- which is more than the minimum income chargeable to tax and the assessee was required to file his return u/s 139 (1) of the Act."

3. Brief facts of the case as emerges from the AO's penalty order dated 23-04-2019 are that the assessee had not filed the return u/s 139(1) of the Act for the period under consideration. The AO on possession of information regarding sale of capital assets during the year by the assessee, reopened the case and notice u/s 148 of the Act was issued on 15-03-2018 after recording necessary reasons and obtaining necessary approval. Ultimately the case of the assessee was assessed u/s 144/147 of the Act as ex-parte on 31-10-2018 at a total income of Rs.19,24,266/- by making addition of entire amount on account of undisclosed long term capital gain. Since the assessee has not filed return of income u/s 139(1), therefore penalty proceedings u/s 271F was initiated and accordingly notice was issued on 31-10-2018 but the compliance of the same was not made by the assessee. Further a show cause notice dated 18-04-2019 was issued by the AO fixing the case for hearing on 18-04-2019 but the same

remained uncomplished with by the assessee. The AO noted that the assessee was liable to file the return of income for the relevant period but she failed to do so. Thus considering the facts and circumstances of the case, the AO was satisfied that the assessee had failed to furnish the return of income before the end of the relevant assessment year and had not complied with the provision, the AO thus imposed penalty of Rs.5,000/- u/s 271F of the Act.

4. In first appeal, the ld. CIT(A) confirmed the action of the AO by observing at para 4 of his order as under:-

“4. I have carefully considered the facts of the case, assessee's submissions, penalty order and find that in this case penalty was levied as the assessee failed to file the return of income within the prescribed time. The AO held that the total income of the assessee was determined at Rs 19,24,266/- which is more than the minimum income chargeable to tax and the assessee was required to file his return u/s 139 (1) of the Act.

The reply furnished by the assessee is considered and the explanation given by him is not found to be acceptable, as penalty proceeding u/s 271F is distinct from the issue involved in quantum of appeal. It is mandatory to file ITR voluntarily within due date when she had substantial taxable income.

Considering the above facts and material on record, it is held that the then assessing officer has imposed penalty on merits considering facts of the case. Hence the appeal of the assessee is dismissed.”

5. After hearing both the parties and perusing the materials available on record, it is observed that the assessment order was made on 1-12-2016 as ex-parte in the case of the assessee but the same was received on her behalf of on 03-10-2019. It is also noted from the submissions of the assessee that apart from the issue involved in the quantum of appeal, income of the assessee was below from basic exemption limit to file the return of income for the year under consideration. The ld. AR submitted that return of income for the assessment year 2011-12 was not filed by the assessee because it was below taxable limit or nil income. The ld. DR relied upon the orders of the lower authorities. Even without discussing the merit of the case, we find force in the arguments of the ld. AR of the assessee that the assessee sold the agricultural land as power of attorney holder. Though this contention of the assessee is not under adjudication before us yet plausible view is considered for levy of penalty. Therefore, we are of the considered view that in case the assessee has a reasonable cause for not filing the income return as she has sold the property as power of attorney holder. Therefore, considering that view of matter and without discussing the merit of the case, we find force in the plausible view of the matter and we hold that the assessee being an illiterate lady has reasonable cause for not filing the ITR as she has sold the property as

power of attorney holder and except this even the revenue has not found any other income chargeable to tax. Thus considering this aspect of the matter, we delete the penalty levied u/s 271F amounting to Rs.5,000/-. Thus the penalty imposed by the AO and confirmed by the Id. CIT(A) amounting to Rs.5,000/- u/s 271F of the Act is deleted.

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

Order pronounced in the open Court on 22 /08/2023.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 22 /08/2023.

***Mishra**

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

1. अपीलार्थी / The Appellant- Sakku Devi, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 88/JPR/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar