

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

डा० 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. 283/JP/2023
निर्धारण वर्ष / Assessment Years : 2011-12

Uma Mandal 754, Lodho Ka Maohall M.D. Road, Ward No. 34, Jaipur	बनाम Vs.	Income Tax Officer, Ward-5(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: APSPM 2419 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Smt Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 13/09/2023
उदघोषणा की तारीख / Date of Pronouncement: 21/09/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 03/03/2023 [here in after referred as Id. CIT(A)/(NFAC)] for assessment year 2011-12 which in turn arise from the order dated 18.06.2019 passed under section 271F of the Income Tax Act, by the ITO, Ward 5 (2), Jaipur.

2. The assessee has marched this appeal on the following grounds:-

“1. On the facts and circumstances of the case, the Id. CIT(Appeals) grossly erred in law and facts by approving the action of the Id. AO of levying penalty u/s 271F on the basis of income assessed on estimation basis. Thus, the penalty so levied is hereby prayed for being deleted.

2. On the facts and circumstances of the case, the Ld. CIT(Appeals) grossly erred in law and facts by approving the action of Id. AO of assuming jurisdiction under this section on the basis of a vague and invalid notice. It is thus hereby prayed for quashing the notice as well as proceedings in pursuance thereof.

3. The appellant craves leave to add, delete, amend or abandon any or all grounds of this appeal at the time or before the actual hearing of the case.”

3. Succinctly, the fact as culled out from the records is that the assessee had not filed return of income for A. Y. 2011-12. The case was selected for scrutiny by issuing notice dated 26.03.2018 u/s. 148 of the Act. In response thereto, assessee has filed return of income on 27.11.2018 and declared total income of Rs. 24,883/-. Scrutiny assessment was completed on 04.12.2018 u/s. 147 r.w.s. 143(3) of the Act and the income was assessed at 4,97,650/-. As per the provisions of section 139(1) of the Act, the assessee was required to file the return of income by due date. The assessee has not filed the return u/s. 139(1) of the Act, therefore, notice u/s. 271F of the Act was issued on 04.12.2018. In response the assessee has not filed any response but filed a reply on 10.06.2019 in response to final show cause. As the income under in the year under consideration has been assessed based on the decision of an appeal in the A. Y. 2010-11 the

income has been assessed in the year under consideration at Rs. 4,97,650/-. Considering these facts on records the Id. AO levied the penalty u/s. 271F of the Act.

4. Aggrieved from the order of the Id. AO levying penalty of Rs. 5,000/- u/s 271F of the Income Tax Act. The assessee has preferred an appeal before Id. CIT(A)/NFAC. The relevant finding of the Id. CIT(A)/NFAC recorded in para 4 of his order and the same is reproduced herein below.

“4. CIT's decision:

All the grounds of appeal are clubbed together and decided together for the sake of convenience.

4.1 The AO, in the order has stated that the appellant has not filed return of income u/s 139(1) of the IT Act for AY 2011-12. Subsequently the case was reopened u/s 147 of the Act and notice u/s 271F was issued on 04.12.2018.

During the penalty proceedings, the appellant has not complied before the AO. Further, the AO has also stated as under in the penalty order.

"Apart from the above, the case of assessee was selected for scrutiny in AY 2010-11 on the same reasons and assessed at Rs. 20,37,281/- In this year. assessee's appeal was dismissed by the Ld CIT(A)-II. Jaipur vide ITA No 11280/17- 18 dated 22-02-2019. In view of the above, it is established that in AY 2011-12, the income assessed at Rs 4.97,650/- which is 5% of total credit received of Rs. 99,53,036/- in the bank account, which is true income for the year under consideration Accordingly, the reply of the assessee is not accepted"

Thereafter, the AO levied penalty of Rs.5000/- u/s 271F

During the appellate proceedings, the appellant has submitted that the husband of the assessee in anticipation of some work and commission allowed one Mr.Sitaram Khandelwal to use her account. This account was opened by that person only taking assessee with him to bank. The assessee intimated the department about the details of said persons that were known to her but she was

not aware of the present day whereabouts of said person. Further, the assessee was completely unaware and ignorant about the quantum and nature of transactions that were routed out through her account. Further, the appellant has relied upon certain judicial decisions.

I have considered the findings of the AO as per penalty order as well as the written submission filed by the appellant. The contention of the appellant that the appellant is not aware of the facts and the transactions involved and the appellant has followed the advise of her husband to have done this activity is not a satisfactory explanation. For the acts of the appellant, it is only the appellant who is held responsible. Here in the case under consideration, as stated by the AO as per assessment order, the income is assessed is Rs.4,97.650/- and hence the appellant was required to file the return of income u/s 139(1) and having not complied, penalty u/s 271F is leviable. The facts of the case under consideration are different and distinguishable from the judicial decisions relied upon by the appellant.

After considering all the facts and circumstances of the case under consideration, I am of the opinion that the AO has rightly levied the penalty of Rs. 5,000/- u/s 271F of the IT Act. Therefore, the penalty levied of Rs. 5,000/- u/s 271F of the IT Act, 1961 is hereby confirmed. Accordingly, the grounds of appeal are dismissed.”

5. As the assessee did not find any positive result from the order of the Id. CIT(A), the assessee prefers the present appeal on the grounds as sets and reiterated herein above para 2 above. In support of the appeal the assessee neither appeared in response to the seven opportunities granted nor filed any written submission and therefore, bench feels that the assessee has nothing to say in the matter and the matter is decided based on the merits of the case and material available on record.

6. Per conta, the Id. DR relied upon the order of the lower authorities and submitted that the assessee even though made heavy turnover in the

accounts has not filed the compulsory return of income u/s. 139(1) of the Act and therefore, the levy of penalty u/s. 271F is automatic and the same is required to be sustained.

7. We have perused the arguments of the assessee made before the lower authorities, gone through the orders of the lower authorities and heard the Id. DR representing the revenue. The bench noted that the assessee has deposited cash into the bank account and also made a turnover aggregating to Rs. 99,53,036/-, even though the assessee has not filed any return of income u/s. 139(1) of the Act. The finding of the Id. CIT(A) while confirming the penalty u/s. 271F observed that:

I have considered the findings of the AO as per penalty order as well as the written submission filed by the appellant. The contention of the appellant that the appellant is not aware of the facts and the transactions involved and the appellant has followed the advise of her husband to have done this activity is not a satisfactory explanation. For the acts of the appellant, it is only the appellant who is held responsible. Here in the case under consideration, as stated by the AO as per assessment order, the income is assessed is Rs.4,97.650/- and hence the appellant was required to file the return of income u/s 139(1) and having not complied, penalty u/s 271F is leviable. The facts of the case under consideration are different and distinguishable from the judicial decisions relied upon by the appellant.

The assessee in support of the grounds neither filed any written submissions controverting the findings of the Id. CIT(A) nor appeared in the seven opportunities granted to the assessee. The bench noted from the

records that the assessee has made turnover in her bank account to the extent of Rs. 99,53,036/-and has not filed the return of income and the assessed failed to establish before as to how the levy of penalty of Rs. 5,000/- is not sustainable and thus we do not find any infirmity in the order of the Id. CIT(A) and thus the same is sustained.

In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 21/09/2023.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 21/09/2023

*Ganesh Kumar, PS

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

1. The Appellant- Uma Mandal, Jaipur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward 5(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 283/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar