

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.2318/Del/2023
[Assessment Year : 2012-13]**

Pratibha Bisht, A-5-4, Plot 5C, Pragatisheel Bairwa, Sector-11, Dwarka, Delhi-110075. PAN-AHSPB0980D	vs	ITO, Ward-70(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Saurav Rohtagi, CA	
Respondent by	Shri Baldev Singh Negi, Sr.DR	
Date of Hearing	02.11.2023	
Date of Pronouncement	16.11.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 11.07.2023 for the assessment year 2012-13. The assessee has raised following grounds of appeal:-

1. *“That the penalty order is barred by limitation.*
 2. *That the penalty initiated vide notice dtd.12.12.2019 is illegal, bad in law and without jurisdiction.*
 3. *That under the facts and circumstances, no penalty u/s 271(1)(c) for Rs.3,50361/- should have been levied.*
 4. *That under the facts and circumstances of the case, no penalty should have been levied on the returned income.”*
2. The effective ground raised in this appeal relates to the penalty notice being illegal and the penalty order barred by time.

3. Facts giving rise to the present appeal are that the assessment was re-opened by the Assessing Officer (“AO”) on the basis that the assessee had not filed return of income despite having received salary income. In response to the notice issued u/s 148 of the Income Tax Act, 1961 (“the Act”), the assessee had filed return of income. The AO assessed the income at INR 16,30,520/- and also initiated penalty proceedings u/s 271(1)(c) of the Act. Thereafter, the AO imposed penalty u/s 271(1)(c) of the Act and levied penalty of INR 3,50,361/- to the assessee.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Before us, Ld. Counsel for the assessee has challenged the validity of the notice u/s 271(1)(c) of the Act. The contention of the assessee is that the assessee did not file return of income under wrong conception that *“where the tax is deducted by the employer, there is no need of filing of return of income.”* Ld. Counsel for the assessee reiterated the submissions. For the sake of clarity, the relevant contents of the written facts and submissions are reproduced as under:-

1. G.N. 1

“I would like to submit that in this case assessment order under section u/s, 143(3)/147 of the IT Act. 1961.was passed on 12.12.2019 at 04.51 P.M. and notice under section 274 read with section 271(1)(C) was issued at 12.12.2019 at 04.56 P.M. i.e. after the closing of assessment proceedings.

The AO has not issued any notice to the assessee u/s, 271C of the I.T. Act. 1961 during the pendency of the assessment proceedings. The show cause notice was issued only after the therefore, hence the penalty in dispute is bad in law.

ITAT Delhi In ITA No. 1861/DEL/2017 relied on the order of ITAT, Mumbai Bench in the case of Keshu Ramsay vs JCIT reported at 5 SOT 9 (Mum):

"wherein, it has been held that "Where no proceedings relevant to that assessment year is pending when penalty notice was issued, is bad in law. In view of above the penalty notice issued after completion of assessment proceedings may be held as illegal"

2. G.N. 2. TO 4

The appellant is a Salaried women. Details of Salary received by two Employers during the A.Y. 2012-13 and TDS deducted by those Employers of the assessee is as follows:

S.No.	Particulars	Amount(Rs.)
1.	Income chargeable under the head salary (01.04.2011 to 04.07.2011) by BA Continuum India Pvt.Ltd.	4,22,847
2.	Income chargeable under the head salary (25.07.2011 to 31.03.2012) by RBS Business Services Pvt.Ltd.	14,33,628
	Total Salary received under the head salary	18,56,475
3.	TDS Deducted by BA Continuum India Pvt.Ltd.	24,802
4.	TDS deducted bBS Business Services Pvt.Ltd.	2,06,091
	Total TDS Deducted	2,30,893

Further Interest Received during the year from HDFC Bank of Rs. 44049 and TDS of Rs. 4259 was deducted thereon.

Assessee did not file the Return of Income in the perception that both the Companies have deducted required Tax on the Salary Income as well HDFC bank has also deducted the Tax on Interest Income.

After receiving notice under Section 148 from Income Tax Department, the Assessee filed the return of income for the relevant assessment year on 28-04-2019 vide acknowledgement number 468563720280419.

The appellant declared income of Rs.1630520 after claiming Deduction under Chapter VI-A and under section 24 of the Act. Assessee further paid self assessment tax of Rs. 249440 on 30-08- 2019. It is kindly to be noted

that all the returned income was already subjected to TDS and proper TDS returns were filed by the relevant deductors.

The assessment for the year was completed u/s 143(3) of the act on 12-12-2019 with demand of Rs. 336710 including interest under Section 234-B and 234-C of Rs. 218850. The Assessee paid balance demand of Rs. 87270 on 19-02-2020.

3) The Income Tax officer has also issued notice u/s 271(1)(c) read with section 274 of the Income Tax Act, 1961 on 23-03-2021 and fixed hearing for 05-04-2021 for submission of reply for not imposing penalty u/s 271 and the assessee has submitted his reply on 02-04-2021. (Refer Para- 2 of the Assessment order under Section 271(1)(c) Page No.....)

4) The Income Tax Officer did not appreciate the contention of the assessee and her adherence to full fill the compliance towards Income Tax department after receiving the Notice under section. 148 and under section 143(2) of the Act and erred by imposing penalty u/s 271(1)(c) of Rs.3,50,361/- for the assessment year 2012-13 vide its order dated 29/12/2021.

5) ITA No. 512/JP/2013 Assessment Year:2006-07 Associated Stone Industries (Appellant) vs ACIT (Respondent) Date of Order: 08-01-2016, ITAT, Jaipur held that:

"In our considered view penalty provision for not filing a return are different i.e. sec 271(1)(a) and not 271(1)(c). Besides in original return or notice u/s 148 assessee did not conceal any income or furnished inaccurate particulars."

(for your kind reference Penalty under section 271F has been imposed in the case of assessee)

Further, ITAT, Jaipur held that:

Hon'ble Supreme Court in the case of Hindustan Steels (supra) has held that penalty should not be imposed merely because it is lawful to do so. Besides technical or venial breach of law can not be visited with stringent penalty proceedings u/s 271(1)(c)..... A technical default for which

provisions of sec. 271(1)(a) may be attracted cannot be made a basis for penalty under 271(1)(c).

6) All Case laws referred by Ld. AO in support of imposition of penalty under section 271(1)(c) are irrelevant to the case of the Assessee:

I pray to your good-self to kindly look the reason and subject matter of penalty in following case laws:

(1) Para 5 f of Asstt. Order: M/s. A. M. Shah & Co. vs. CIT 108 Taxman 137 (Asst. yr. 1971-72)

"The assessee is a firm which, at the relevant time, carried on business in purchase and sale of ball bearings, mill stores, etc., on retail basis. For the asst. yr. 1970-71, the assessee had disclosed the sales of Rs. 2,78,426 with gross profit of 23 per cent. The ITO subjected the books of account of the assessee to a detailed scrutiny and as a result, found that there were substantial discrepancies by way of manipulation of stocks, omission of sales, Inflation of purchases, making out of bogus bills, etc. He accordingly brought to tax a sum of Rs. 1,72,775 by his assessment order..... The ITO, by that order, Initiated action for imposition of penalty under s. 271(1)(c) of the Act.

(ii) Para-5: Sir Sadilal Sagar & General Mills case. (A.Y. 1958-59)

The assessee company, which derived its income from the manufacture and sale of sugar and confectionery, was assessed for the years 1958-59 by the Income Tax Officer under the Income Tax Act, 1922 by making additions of Rs.48,500 for cane cost, Rs.67,500 for shortage in cane. Later in the year 1963 the Income Tax Officer issued notice under s. 274 read with s. 271 of the Income Tax Act, 1961 in respect of the assessment year 1958-59.

(1) Para 5d: Union of India vs. Dharmendra Textiles Processors:

The question which arises for determination in all these appeals is whether Section 11AC of the Central Excise Act, 1944 (in short the 'Act') Inserted by Finance Act, 1996 with the Intention of imposing mandatory penalty on persons who evaded payment of tax should be read to contain

mensrea as an essential ingredient and whether there is a scope for levying penalty below the prescribed minimum. Before the Division Bench, stand of the revenue was that said section should be read as penalty for statutory offence and the authority imposing penalty has no discretion in the matter of imposition of penalty and the adjudicating authority in such cases was duty bound to impose penalty equal to the duties so determined. The assessee on the other hand referred to Section 271(1)(c) of the Income Tax Act, 1961.

7) In this case of assessee there is no concealment of Income or submitting inaccurate particulars, substantial discrepancies by way of manipulation, omission, inflation, making out of bogus documents, doing shortage/manipulation.

In our case the assessee did not file the ITR only due to perception that all income is under the preview of Income tax department since the TDS return has been filed by all three Income sources after deducting the applicable Tax and issuing the certificates for the same to the Assessee.

Assessee filed the return as soon as received the notice for filing the same, paid the balance tax liability as assessed by the department, paid further the Interest on delayed payment of Income Tax for entire delayed period.

In view of the above it is the humble request to consider all facts, kindly accept my appeal and delete the demand.”

7. On the other hand, Ld. Sr. DR opposed these submissions and supported the impugned order. He contended that the assessee failed to file return of income. Therefore, the AO was justified in treating the non-filing of return of income by the assessee as concealment of particulars of income. He contended that case laws as relied by the assessee are distinguishable on the facts of present case. He therefore, submitted that the grounds raised by the assessee deserve to be dismissed.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. There is no dispute with regard to the fact that the assessee had failed to file her return of income despite having received salary income from two sources and income from other sources. On this basis, assessment was re-opened by the AO. The impugned notice issued by the Assessing Authority states that *“it appears that you have concealed the particulars of income”*. However, the case of the assessee is that it had filed return of income in response to the notice issued u/s 148 of the Act and disclosed the particulars of income. Merely because the assessee failed to file return of income under a wrong conception of law, should not be the basis for imposing the penalty. In this regard, the assessee relied upon the decision of Tribunal in the case of ***Associated Stone Industries vs ACIT in ITA No.512/JP/2013 [Assessment Year 2006-07] dated 08.01.2016***. Further it is stated that the impugned notice was issued subsequent to the passing of assessment order therefore, it is bad in law.

9. The issue in this appeal is whether the salary disclosed in the Income tax Return in response to section 148 of the Act, can be treated as concealed income. The undisputed facts are that the employer have deducted the tax on the salary and deposited in the bank accounts. So far the employer is concerned, there is no default reported by the lower authority. The default on the part of the assessee is regarding non-filing of the Income Tax return. The factum of receipt of salary came into notice of AO through 26AS. The explanation regarding non-filing of income tax return is stated that the assessee was under impression that if the tax is deducted at source, she is not

required to file income tax return. But when she received notice u/s 148 of the Act, she duly filed her income tax return and disclosed all her income.

10. In our considered view, the levy of penalty is not automatic. If the assessee makes out a case that the default was due to reasonable cause in that case, no penalty would be called for in terms of section 273B of the Act. For the sake of clarity, section 273B of the Act is reproduced as under:-

Penalty not to be imposed in certain cases.

273B. "Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FAB, section 271FB, section 271G, section 271GA, section 271GB, section 271H, section 271-I, section 271J, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure."

11. The Hon'ble Supreme Court in the case of ***Motilal Padmavat Sugar Mills Co.(P.) Ltd. vs State of Uttar Pradesh & Ors. 1979 AIR 621 dated 12.12.2018*** observed that *"it must be remembered that there is no presumption that every person knows the law."*

12. Looking to the peculiarity of facts, the assessee has demonstrated reasonable cause for the default. We hold accordingly. The AO is hereby,

directed to delete the impugned penalty. Grounds raised by the assessee are accordingly, allowed.

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

Order pronounced in the open Court on 16th November, 2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI