

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA R. KAMBLE, JUDICIAL MEMBER

**ITA No. 948/Ahd/2023
Assessment Year: 2015-16**

Shri Shankar Prasad, Flat No.15, Anupam Apartment, MB Road, Near Traffic Court, Opp. Saket, Delhi-110068 PAN : AADPP 4358 D	Vs	DCIT, Circle 1(1)(1), Vadodara
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Vinay Jalan, AR
Revenue by :		Ms. Saumya Pandey Jain, Sr DR

सुनवाई की तारीख/**Date of Hearing** : 04/01/2024
घोषणा की तारीख /**Date of Pronouncement** : 12/01/2024

ORDER

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 26.10.2023 passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short], confirming the penalty imposed by the Assessing Officer u/s 271F of the Act vide order dated 24.09.2022, for the Assessment Year 2015-16.

2. The grounds raised by the assessee read as under:-

"1. Under the facts and circumstances of the case the Ld. CIT(A) erred in confirming the levy of Penalty u/s 271F amounting to Rs. 5,000/- when the Return was filed u/s 148 and at that time no penalty proceedings were initiated for non filing of Original return making the penalty so confirmed, bad in law.

2. Under the facts and circumstances of the case the Ld. CIT(A) erred in confirming the penalty so imposed without appreciating the facts of the case and without understanding the reasonable cause for not filing the original return."

3. The assessee had not filed his return of income for the Assessment Year 2015-16 u/s. 139(1) of the Act. As per the provisions of Section 271F of the Act, if a person who is required to furnish a return of income, as required under sub-section (1) of Section 139 or by the proviso to that sub-section, fails to furnish such return before the

end of the relevant assessment year i.e. on or before 31.03.2016, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of Rs.5000/-. The assessee did not file his return of income which was required to file by 31.03.2016. The assessee's case was reopened u/s. 147 of the Act for scrutiny and order u/s. 147 r.w.s. 144B of the Act was finalized on 25.03.2022 at an assessed income of Rs.60,32,779/-. Notice u/s. 271F of the Act was issued on 25.03.2022 and served upon the assessee. The assessee filed his reply and after taking cognizance of the same, the Assessing Officer was satisfied that the assessee committed the default of failure to furnish the return of income before the end of the relevant assessment year i.e. on or before 31.03.2016 for AY 2015-16 and imposed penalty of Rs.5000/- u/s 271F of the Act.

4. Being aggrieved by the penalty order, the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The ld. AR submitted that the intention of the Department should not be to harass the assessee and there was no intention of hiding the tax on behalf of the assessee. In the present case, the assessee has filed return of income in response to the notice u/s 148 of the Act and, therefore, Section 271F of the Act will not be applicable in the present case. The ld. AR further submitted that after issuing the notice u/s 148 of the Act, the Assessing Officer cannot impose penalty u/s 271F of the Act. In fact, the notice is issued belatedly and, therefore, the penalty order should have been quashed.

6. The ld. DR relied upon the penalty order, order of the CIT(A) as well as the assessment order. The ld. DR further submitted that the Assessing Officer has power to levy the penalty when the assessee/person fails to furnish return of income as required under sub-section (1) of Section 139 of the Act or by the proviso to that sub-section. In the present case, it is not the intention of the Department to harass and not the intention of hiding of tax is involved, but it is the failure on the part of the assessee for furnishing return of income which is mandatory to the assessee.

7. Heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the assessee failed to furnish return of income as required under sub-section (1) of Section 139 of the Act; but the penalty was initiated after passing of assessment order u/s. 147 of the Act. The Assessing Officer has initiated the penalty u/s. 271F of the Act after the completion of assessment order u/s 147 of the Act. Though there is no time limit prescribed under the Act, it has to be within the stipulated or reasonable time that the penalty should have been initiated. No doubt, the assessee has failed to furnish the return of income u/s 139(1) of the Act, but when the assessee received the notice u/s 148 of the Act, the assessee duly filed the return of income. But the assessee has not given any reason as to why he has not filed original return of income u/s. 139(1) of the Act on or before 31.03.2016. Therefore, the assessee is liable to pay the penalty u/s. 271F of the Act. The appeal of the assessee is dismissed.

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

Order pronounced in the open Court on this 12th day of January, 2024.

Sd/-

(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 12th day of January, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

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Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad