

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 759 to 762 & 764 to 767/Ahd/2023
(निर्धारण वर्ष / Assessment Years : 2013-14 to 2016-17)

Maheshbhai Prabhudas Gandhi D-404, Dharnidhar Tower, Paldi, Gujarat 380007	बनाम/ Vs.	Ld. AO, CIT(A) NFAC, Delhi NOW Income Tax Officer Ward-5(3)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABDPG8899D		
(Appellant)	..	(Respondent)

Assessee by :	Shri Prakash D. Shah & Shri Saiyam V Shah, A.Rs.
Revenue by :	Shri Sushil Kumar Katiar, Sr. DR

Date of Hearing	01/02/2024 & 08/02/2024
Date of Pronouncement	21/02/2024

ORDER

PER BENCH:

This bunch of eight appeals filed at the instance of the appellant is directed against the orders dated 31.07.2023 & 02.08.2023 passed by National Faceless Appeal Centre (NFAC), Delhi, arising out of the orders dated 26.09.2022 & 29.09.2022 passed by the ITO, Ward-5(3)(1), Ahmedabad, whereby and whereunder the penalty imposed under Section 271(1)(b) & 271F of the Act levied by the ITO has been confirmed for A.Y. 2013-14 to 2016-17; respectively. Since all the appeals filed by the single appellant and

the facts are identical, these are heard analogously and are being disposed of by a common order for the sake of convenience.

ITA No.759/Ahd/2023 for A.Y. 2013-14

2. ITA No.759/Ahd/2023 for A.Y. 2013-14 relates to levied penalty under Section 271(1)(b) of the Act and is taken as a lead case.

3. The brief facts leading to the case is this that during course of assessment proceeding, it was found that the appellant did not comply with the notice issued under Section 142(1) of the Act dated 12.03.2022 fixing the date of hearing on 17.03.2022. Thereafter, the case was transferred from Faceless unit to the Ward-5(3)(1) on 01.08.2022 as per provision of Section 144B(8) of the Act, whereupon, notice was given on 14.09.2022 through ITBA for compliance before 29.09.2022. In response to the show cause notice for initiation of penalty under Section 271(1)(b) of the Act dated 31.03.2022 followed by notice dated 14.09.2022, the appellant duly furnished reply on 13.04.2022 and 22.09.2022. It is the case of the Revenue that as the appellant has not furnished any supporting document in order to establish his claim, the reply was not found to be acceptable. Penalty was, therefore, levied as per provision of Section 271(1)(b) of the Act for default.

4. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

5. Before the First Appellate Authority, the appellant further placed this particular fact on record that the appellant duly made compliance in response to the notice mentioned hereinabove under Section 142(1) of the Act. Moreso,

the signed copy of the reason for the re-assessment and approval under Section 151 of the Act was asked for from the Ld. AO by the assessee by filing the reply dated 17.03.2022, a copy whereof has duly been submitted before us in each of the matter and the contents whereof is as follows:

Acknowledgement Number : 385287311170322

e-Proceedings Response Acknowledgement

INCOME TAX DEPARTMENT

PROCEEDING DETAILS				
PAN/TAN	ABDPG8899D			
Name	MAHESHBHAI PARBHUDAS GANDHI			
Financial Year	2013-14 ✓			
Assessment Year	2014-15			
Proceeding Name	Assessment Proceeding u/s 147			
Notice/Communication Reference ID	100045571908			
Notice Section	142(1)			
Description	[ITBA]Notice u/s 142(1)of Income Tax Act 1961.			
Notice Issue Date	12-Mar-2022			
Due Date for Submission	17-Mar-2022			
Communication Sent date				
Document Reference ID	ITBA/AST/F/142(1)/2021-22/1040656014(1)			
RESPONSE SUBMITTED				
Remarks	Respected Sir/Madam, Thank you for sharing the screenshot of approval. However, we request your good office to provide me the copy of duly signed (DSC or manual) of the reasons for the reassessment and approval under section 151 of the Act and oblige me and if your good office does not have then the proceedings is required to dropped by your good office. Hope your good office will find the above in order and to your satisfaction and if not agreeable, please inform me and oblige. Thanking You, Yours faithfully,			
Hash * Value Of Remarks	7679ee274941a51446aa343239bf40096df7358752d0aa6a3d2482b7dc4b1b5			
Sl No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
		No Records Added		
This is a system generated acknowledgement and does not require signature				
* Hash : This value will uniquely identify the uploaded files and remarks.				

6. We further find that while confirming the penalty imposed by the Ld. AO under Section 271(1)(b) of the Act, the Ld. CIT(A)

took into consideration that as no supporting documents were furnished by the assessee to establish the claim of the appellant by filing the reply to the show cause notice for levy of penalty on 13.04.2022 and 05.08.2022, the Ld. AO passed orders levying penalty of Rs.10,000/- under Section 271(1)(b) of the Act on 26.09.2022.

7. Further that, though the assessee made a request for supplying the signed copy for the reason of re-assessment and approval under Section 151 of the Act alongwith the response to the notice under Section 142(1) of the Act, penalty was imposed under Section 271(1)(b) of the Act by the Ld. AO and was confirmed by the Ld. CIT(A). A bare appreciation of the records, one cannot overlook sight of the above fact. It is also evident that as the quantum appeal was pending before the First Appellate Authority, the assessee prayed for the penalty proceeding to be kept in abeyance till the finalization of such appeal. The Ld. DR also failed to controvert the same.

8. Having regard to the documents, particularly, the e-Proceedings Response Acknowledgement establishing the above fact of reply made by the assessee, the conduct of the assessee cannot be treated as assessee-in-default and penalty of the impugned amount of Rs.10,000/- levied for A.Y. 2013-14 under Section 271(1)(b) of the Act is, therefore, not found to be sustainable in the eye of law and hence quashed.

9. In the result, appeal filed by the assessee is allowed.

10. The decision in ITA No. 759/Ahd/2023 for A.Y. 2013-14 shall also apply mutatis mutandis in ITA Nos. 760 to 762/Ahd/2023 for A.Ys. 2014-15 to 2016-17.

ITA No.764/Ahd/2023 for A.Y. 2013-14

11. The instant appeal is directed against the order dated 02.08.2023 passed by NFAC, Delhi arising out of penalty order dated 29.09.2022 under Section 271F of the Act passed by the Ld. AO, Ward-5(3)(1), Ahmedabad. The appeal was migrated to the NFAC in terms of the CBDT Notification No. 76/2020 dated 25.09.2020.

12. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

13. The fact remains that the impugned penalty under Section 271F of the Act was levied for non-filing of the return of income under Section 139(1) of the Act by the assessee; the income for the year under Section was determined under Section 144 r.w.s. 147 of the Act vide order dated 31.03.2022. The case of the assessee is this that as the income of the assessee for the year under consideration was below the taxable limit, there was no requirement to file return under Section 139(1) of the Act. Relevant to note that the estimated income of the assessee is

Rs.2,00,000/- for A.Ys. 2013-14 & 2014-15. On the contrary, as per the assessment of the Ld. AO, the assessee as deposited considerable amount of cash in different banks, the assessee must have income above the taxable limit and therefore bound to file his return of income for the year under consideration under Section 139(1) of the Act and also to pay due taxes within time. On this premise, the penalty under Section 271F of the Act was levied, which was further confirmed by the First Appellate Authority.

14. It is a trite law that the basis of determination of income in the assessment order cannot be said to be the basis for filing of return of income under Section 139(1) of the Act. As estimated income for the year under consideration was Rs.2,00,000/- as per the assessee for A.Ys. 2013-14 & 2014-15 and Rs.2,50,000/- for A.Ys. 2015-16 & 2016-17, the assessee was of the firm belief that return of income is not required to be filed under Section 139(1) of the Act.

15. In this regard, the appellant had filed the following reply:

“1. That for the levy of the penalty under section 271F of Act for non-filing of the return of income, it is most respectfully submitted that the assessee estimated income was below taxable limit and therefore, return under section 139(1) was not applicable. The estimated income for the AY 2013-14 & 2014-15 was Rs.2,00,000/- and for the AY 2015- 16 & 2016-17 it was Rs.2,50,000/-That the basis determination of income in the assessment order cannot be basis for the filing of the return of income under section 139(1) of the Act. Accordingly, the appellant has reasonable cause for non filing of the return of income.

2. That from the perusal of the impugned order, the learned AO has not issued any other notice after first notice dated 1/4/2022 (the notice

dated 1/4/2022 was duly replied on 26/4/2022 for keeping the proceeding in abeyance) and levied penalty on 29/9/2022 and the same is against the natural justice also.

3. That the learned Jurisdictional Assessing officer has passed the impugned penalty order though Faceless Penalty Scheme 2021 has been introduced vide CBDT Notification 03/2021 dated 12/1/2021 and according to it, the penalty can be levied by FAO and not JAO, except it has been transferred to JAO by the authority and therefore the order passed by the learned JAO is bad in law and required to be quashed.

4. That the penalty has been levied after the very long period of 6-9 years, after the failure of filing of the return income under section 139(1) of the Act and which is bad in law.

5. That Video Conference requested by the appellant to the Ld. Appellate Authority (NFAC). the learned NFAC has not allowed the same and the which is against the natural justice and therefore the order passed by the learned AO is required to be quashed.”

16. The provision of Section 271F of the Act clearly speaks of requirement of furnishing return of income as required under Section 139(1) of the Act or by the provisos of that sub-Section. Precisely, the return of income is to be filed on the basis of the total income of any person in respect of which he is assessable under the Act during the previous year, exceeded the maximum amount which is not chargeable to tax, and in this particular case as the estimated income of the assessee is only Rs.2,00,000/- i.e. below the taxable limit, the assessee was, therefore, of the firm belief of not being required to file return under Section 139(1) of the Act. Thus under this fact and circumstance of the matter, levy of penalty seems not only harsh but also not sustainable in the eye of law under Section 271F of the Act and hence quashed.

17. In the result, appeal filed by the assessee is allowed.

18. The decision in ITA No. 764/Ahd/2023 for A.Y. 2013-14 shall also apply mutatis mutandis in ITA Nos. 765 to 767/Ahd/2023 for A.Ys. 2014-15 to 2016-17.

19. In the combined result, all appeals preferred by the assessee are allowed.

This Order pronounced on 21/02/2024

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 21/02/2024

S. K. SINHA

True Copy

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-

(MADHUMITA ROY)

JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad