

आयकर अपीलिय अधिकरण, चण्डीगढ न्यायपीठ "बी" , चण्डीगढ
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 252/Chd/2023

निर्धारण वर्ष / Assessment Year : 2011-12

Balwinder Singh S/o S. Pishora Singh, Nambardar VPO Nawan Gaon, Tehsil-Moonak, Sangrur 148033	बनाम	The ITO Ward, Sunam
स्थायी लेखा सं. / PAN NO: CHNPS7240G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Dev Ahuja, Advocate
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 30/01/2024
उद्घोषणा की तारीख/Date of Pronouncement : 26/04/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC, sustaining the levy of penalty under section 271F of the Act pertaining to A.Y. 2011-12.

2. Briefly the facts of the case are that the case of the assessee was reopened basis information that there was a cash deposit of Rs. 63,85,000/- in his bank account maintained with State Bank of India (SBI) and notice under section 148 was issued. Thereafter assessment proceedings were completed under section 144 of the Act, wherein the addition of Rs. 34,37,500/- was made in the hands of the assessee and separately penalty proceedings under section 271F were initiated for not furnishing the return of income as required under section 139(1) of the Act, vide notice dt. 25/12/2018. Thereafter, another notice was issued on 14/06/2019 and in absence of any reply filed by the assessee, the AO held the assessee at default under section 271F for not

furnishing his return of income as required under section 139 (1) of the Act and imposed the penalty amounting to Rs. 5,000/- under section 271F of the Act.

2.1 As per the AO, the assessee has earned income during the year under consideration and from his income, he had deposited a sum of Rs. 63,85,000/- in his bank account and which exceeded the maximum amount which was not chargeable to tax in that year and therefore, he was required to file his return of income under section 139(1) of the Act and since assessee has failed to file his return of income, penalty under section 271F was levied.

3. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A).

4. As per the Ld. CIT(A), where the total income of the assessee exceeds the threshold limit for filing the return of income, he is compulsorily required to file the return of income under section 139 of the Act. Referring to the order passed by the AO under section 271F, the Ld. CIT(A) stated that the assessee has deposited Rs. 63,85,000/- in his bank account during the year under consideration and income has been assessed at Rs. 34,37,500/- and therefore the onus to file the return of income lies with the assessee in order to declare true income and disclose the source of cash so deposited and therefore the action of the AO in levy of penalty under section 271F was held to be justified and the appeal of the assessee was dismissed.

5. Against the said findings and the direction of the Ld. CIT(A), the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the Ld. AO has imposed a penalty of Rs. 5000/- vide order u/s 271F dated 19-06-2019 for non-filing the return of income for A.Y. 2011-12 as required u/s 139(1) of the Income Tax Act. The learned AO was requested vide registered letter dated 10-01-2019 to keep the penalty proceedings in abeyance as the assessee was filing appeal before the Ld CIT(A) against the order u/s 143(3) of the Income Tax Act as the last date for filing the appeal was 30-01-2020, however, the learned AO ignored the submissions so made and preferred to impose the penalty.

6.1 Further it was submitted that the appellant is an agriculturist and is residing in a village. The appellant is of rural background. The assessee is not a regular assessee. This is the only year when the appellant received notices from the Income Tax Department. The assessee's only source of income was agricultural income and very nominal interest income from the bank. There was no other income of the assessee during the year except agricultural income. During the year, the assessee sold agricultural land measuring 3 Acre, 2 Kanal and 7 Marie situated in Vill. Nawan Gaon. Teh. Moonak. This land was sold to one Smt. Beant Kaur w/o Sh. Nirnajan Singh s/o Sh. Bhagwan Singh, Safidon Road, Jind (Haryana) on 09-08-2010. This land was sold for a sum of Rs. 53,00,000/- but the sale consideration in the sale deed has been disclosed at Rs.14,82,500/-. The entire sale consideration i.e. Rs. 53,00,000/- was deposited in the saving bank account maintained by the assessee with the State Bank of India, Patran on the same date when the sale of agricultural land was done i.e. 09-08-2010.

6.2 It was submitted that the Ld. AO disregarded the contention of the assessee and out of the deposit of Rs. 53,00,000/- in the bank, Rs. 34,37,500/- has been taken/assessed as unexplained cash u/s 69A deposited in the bank and assessed as assessee's income.

6.3 It was submitted that the assessee was not under an obligation to file the IT return as provided u/s 139(1) of the Income Tax Act, due to his below taxable income as the income of the assessee has been assessed at Rs. 34,37,500/- after making addition of this amount to the nil income as is mentioned in the computation of income in the body of order. The belief of the assessee that he is not under an obligation to file the Income Tax Return due to his below taxable income cannot be said to be a non-bonafide belief. This constitutes bona-fide belief of the assessee that his income is not liable to tax and is below taxable limit and, therefore, he is not under an obligation to file the return. The provisions of section 271F are not absolute as in the said section, the word "may" is used. Section 273B also included section 271F and accordingly to the section 273B, no such penalty will be imposable to a person or an assessee, as the case may be for any failure referred to *inter-alia* in section 271F if he proves that there was a reasonable cause for such failure.

6.4 It was submitted that keeping in view the facts and circumstances of the case as submitted above, it was prayed before the Id CIT(A) that penalty imposed by the learned AO may kindly be deleted. The Ld. CIT(A) has however the confirmed the levy of penalty and dismissed the appeal by observing in his order that-

"As per section 139(1) of the Act, if the total income of the assessee exceeds the threshold limit for filing of income tax return, he/she is compulsorily required to file the return of income. In fact, it is basic requirement of provisions of Income Tax Act, 1961. It is evident from the order of penalty u/s 271F dated 19-6-2019 that the assessee has deposited Rs.63,85,000/- in State Bank of India, during the year under consideration and income has been assessed at Rs.34,37,500/-. Therefore, the onus to file the return of income lies with the assessee in order to declare true income and the disclose the source of cash deposited. Therefore, the AO is justified in levy of the penalty amounting to Rs.5000/- u/s 271F of the Act. The appeal of the appellant is dismissed."

6.5. It was submitted that the explanation offered by the appellant assessee has been ignored by the Ld. CIT(A) and confirmed the levy of penalty u/s 271F. In para 4 , It

was submitted that the assessee was not under an obligation to file the IT return as provided u/s 139(1) of the Income Tax Act, due to his below taxable income as the income of the assessee has been assessed at Rs. 34,37,500/- after making addition of this amount. The belief of the assessee that he is not under an obligation to file the Income Tax Return due to his below taxable income cannot be said to be a non-bona-fide belief. This constitutes bona-fide belief of the assessee that his income is not liable to tax and is below taxable limit and, therefore, he is not under an obligation to file the return. The provisions of section 271F are not absolute as in the said section the word "may" is used. Section 273B also included section 271F and accordingly to the section 273B, no such penalty will be imposable to a person or an assessee, as the case may be for any failure referred to inter-alia in section 271F if he proves that there was a reasonable cause for such failure.

6.6 In the case of Hakim Khan Sumergadh Bibalsar Jalore, Rajasthan Vs. ITO I.T.No.71 & 74/Ahd/2021 A.Y.2011-12, the Tribunal has held that -

"A perusal of the above provisions of u/s. 271(1)(b) and u/s. 271F shows that the Parliament has used the words "may" and not "shall", thereby making their intention clear in as much as that levy of Penalty is discretionary and not automatic. The said conclusion is further justified by Section 273B of the Act namely "Penalty not to be imposed in certain cases". A careful reading of Section 273B encompasses that certain penalties "shall" not be imposed in cases where "reasonable cause" is successfully pleaded. It is seen that penalties imposable u/s. 271(1)(b) and u/s 271F are also included therein. By the said provisions, the Parliament has unambiguously made it clear that no penalty "shall be" imposed, if the assessee "proves that there was a reasonable cause for the said failure". As noticed, if the statutory provision shows that the word "shall" has been used in Section 271F, then the imposition of penalty would have been mandatory. Section 273B as mentioned above further throws light on the legislative intent as it specifically provides that no penalty "shall be imposed if the assessee proves "that there was reasonable cause for the said failure".

In the facts of the present case, it is seen that the explanation offered by the assessee have been ignored by the A.O. as well as the Ld. CIT(A)-NFAC but confirmed the levy of penalties u/s. 271(1)(b) and u/s. 271F of the Act without considering u/s. 273B of the Act. Applying the provisions of Section 273B of the Act, we have no hesitation in deleting the penalties levied u/s. 271(1)(b) and u/s 271F of the Act since "reasonable cause" is clearly demonstrated by the assessee. Therefore the penalties levied u/s. 271(1)(b) and u/s 271F are deleted.

6.7. Reliance was also placed in the case of CIT Vs N. Khan & Bros (1973) 92 ITR 338(All), Budhar Singh & Sons Vs. CIT, (1983) 142 ITR 180 (All), and CIT Vs. Allied Silk Mills, (1983) 140 ITR 428 (Bom) etc.

6.8. It was submitted that keeping in view the above facts and circumstances of the case as explained above, the penalty levied may kindly be deleted.

7. Per contra, the Ld. DR relied on the order of the lower authorities.

8. We have heard the rival contentions and perused the material available on record. Section 271F provides that where a person who is required to furnish his return of income as required under section 139(1) fails to furnish such return of income before the end of the relevant assessment year, the Assessing officer may direct that such person shall pay by way of penalty a sum of Rs 5000 rupees. Section 273B provides that no penalty shall be imposed where the person proves that there was reasonable cause for such failure to file the return of income.

9. Section 139(1) provides that every person where his total income in respect of which he is assessable under the Act during the previous year exceeded the maximum amount not chargeable to tax shall on or before the due date furnish a return of income in the prescribed form and verified in the prescribed manner. In case of **CIT vs N. Khan & Brothers** (*Supra*), a question that arose for consideration before the Hon'ble Allahabad High Court was as to which income is contemplated by this provision, the income which the assessee believes to be his income or which is finally assessed by the ITO. The Hon'ble Allahabad High Court held that at the time when a person is required to file a voluntary return of income, no assessment has yet been made against him and

he is thus guided by what he himself believes to be his income. It was further held that it is possible and happens very frequently that an assessee may not consider a particular item to be his income and yet the ITO may hold otherwise and in such a case, if what he considers to be his income is less than the amount which is not chargeable to income tax, he is not required to file a voluntary return of income even if the income is finally assessed is more than the maximum amount which is not chargeable to tax and the only condition is that the belief of the assessee must be bonafide. The said decision was followed in case of **Budhar Singh and Sons vs CIT** (*supra*) wherein the Hon'ble Allahabad High Court held that the failure to file a return of income without reasonable cause cannot normally be judged by the finding recorded by the Assessing authority in the assessment proceedings and has to be established independently basis bonafide shown by the assessee. The same has been followed by the Hon'ble Bombay High Court in case of **CIT vs Allied Silks Mills** (Supra).

10. In the instant case, the undisputed facts which are emerging from records are that the assessee is an agriculturist and during the year under consideration, he has sold agricultural land and the sale proceeds so received have been claimed to be deposited in the bank account on the same day the sale deed has been registered. It is the belief and understanding of the assessee that the sale proceeds of the agriculture land are not liable to tax and thus, in absence of any other income exceeding the maximum amount not chargeable to tax, he is not liable to file the return of income. The AO has not disputed the fact that the assessee has sold the agriculture land but at the same time, has partially accepted the explanation of the assessee and has held a part of deposits as relatable to sale of agriculture land and the remaining deposits as

not relatable to sale of agriculture land and brought the same to tax, we find that the bonafide of the assessee that he is not liable to file the return of income cannot be doubted and disbelieved as he has established the necessary nexus between the sale of the agriculture land and the deposit in the bank account and in absence of anything to the contrary on record. Therefore, in light of the same, we are of the considered view that the assessee was not under an obligation to file the return of income as so required under section 139(1) of the Act and in view of the same, the levy of penalty u/s 271F is hereby directed to be deleted.

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

Order pronounced in the open Court on 26/04/2024

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar