

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
MS.KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA NO.4497/MUM/2023 TO ITA NO. 4499/MUM/2023
ASSESSMENT YEAR : 2016-17

Shri Kunal Gupta,
6 Thapar Co Op Hsg Soc Ltd.
Opp. Basant Cinema, Chembur,
Mumbai 400 074.
PAN: AABPG-8277-A

---- Appellant

Vs.

The CIT(A) -56,Mumbai./
ITO-IT-2(3)
Mumbai.

--- Respondent

Appellant by : None
Respondent by : Shri P.D.Chougule, Sr.AR
Date of Hearing : 06/05/2024
Date of Pronouncement : 13/05/2024

ORDER

PER BENCH :

The assessee has filed all these three appeals and they pertain to penalty levied u/s 271F, 271(1)(b) and 271(1)(c) of the Act for assessment year 2016-17.

2. None appeared on behalf of the assessee. Hence we proceed to dispose of the appeal ex-parte, without the presence of the assessee. Since all the three appeals filed by the assessee relate to the same year, all of them are being disposed of together, for the sake of convenience.

3. We heard Ld D.R and perused the record. The facts of the case are that the assessee is a non-resident and he was deriving interest income of Rs.30.83 lakhs during the financial year relevant to AY 2016-17. Since the assessee did not file return of income, the AO reopened the assessment by issuing notice u/s 148 of the Act. In response to the same, the assessee

filed return of income declaring income of Rs.30.80 lakhs. However, the assessee did not respond to the notices issued by the AO during assessment proceedings and hence the AO completed the assessment to the best of his judgement on the basis of available material, wherein he determined the total income of the assessee at Rs.30.83 lakhs.

4. (a) Since the assessee had not filed the return of income within the time prescribed in sec.271F of the Act, the AO initiated penalty proceeding u/s 271F of the Act and imposed penalty of Rs.5,000/- upon the assessee.

(b) Since the assessee did not respond to four notices issued, the AO initiated penalty proceeding u/s 271(1)(b) of the Act and imposed a penalty of Rs.40,000/- @ Rs.10,000/- for each of the failure.

(c) Since the assessee filed his return of income for the first time in response to the notice issued u/s 148 of the Act, the AO treated the entire assessed income as concealment and accordingly initiated penalty proceedings u/s 271(1)(c) of the Act and imposed minimum penalty of Rs.7,72,691/-.

5. The assessee challenged all the three penalty orders passed by the AO by filing appeals before Ld CIT(A). The assessee also filed written submissions before him. However, the Ld CIT(A) confirmed all the three penalties and hence the assessee has filed these appeals before the Tribunal.

6. We heard Ld D R and perused the record. With regard to the penalty levied u/s 271F of the Act, we notice that the assessee has simply stated that he has filed return of income in response to the notice issued u/s 148 of the Act, while the penalty is levied u/s 271F of the Act for not filing return of income within the time prescribed in that section. Since the assessee did not show any reasonable cause for not filing return in time, we are of the

view that the Ld CIT(A) was justified in confirming the penalty of Rs.5,000/- levied u/s 271F of the Act.

7. With regard to the penalty of Rs.40,000/- levied by the AO for non-compliance of notices issued by him, we notice that the AO has issued the notices through ITBA portal, which were not checked by the assessee. It is further stated by the assessee before the Ld CIT(A) all the notices were sent to his old e-mail id. Since the assessee is a non-resident, it is quite possible that the assessee was not aware of the notices issued by the AO. Accordingly, we are of the view that there was reasonable cause for the assessee in not responding to the notices issued by the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the penalty of Rs.40,000/- levied u/s 271(1)(b) of the Act.

8. With regard to the penalty levied u/s 271(1)(c) of the Act, we notice that the AO was constrained to pass an ex-parte order, since the assessee did not appear before him. Though the assessee filed written submissions before Ld CIT(A), the first appellate authority noticed that the assessee had filed return of income only in response to the notice issued u/s 148 of the Act and accordingly took the view that the penalty u/s 271(1)(c) should be sustained. We notice that the Ld CIT(A) did not address to the various explanations given by the assessee. Under these set of facts, we are of the view that the assessee may be provided with one more opportunity to present his case properly before the AO. Accordingly, we set aside the order passed by Ld CIT(A) and restore the same to the file of the AO for examining it afresh. The assessee is also directed to furnish all information and explanations before the AO. After providing adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with law without being influenced by the observations made by the Ld CIT(A) in the impugned order. We also direct the assessee to fully co-operate with the AO for expeditious completion of the proceedings.

9. In the result,

(a) the appeal No. 4497/Mum/2023 is dismissed.

(b) the appeal No.4498/Mum/2023 is treated as allowed.

(c) the appeal No.4499/Mum/2023 is allowed.

Order pronounced in the open court on 13th May , 2024.

Sd/-

(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER
Mumbai, Date : 13th May, 2024

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "E" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai