

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI
BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.2980/Del/2023
निर्धारणवर्ष/Assessment Year: 2012-13

Namita Tiwari 2D/2004, Dreams Complex, LBS Road, Bhandup West, Mumbai, Maharashtra.	बनाम Vs.	ITO, Ward-2(1), Faridabad, Haryana.
PAN No.ALFPT5029A		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारितीकीओरसे / Assessee by	Ms. Namita Tiwari, AR
राजस्वकीओरसे / Revenue by	Shri Om Parkash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	14.03.2024
उद्घोषणाकीतारीख/ Pronouncement on	29.05.2024

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals) - NFAC, Delhi dated 25.08.2023 for the AY 2012-13 in sustaining the penalty of Rs.5,000/- u/s 271A of the Act. The assessee filed concise grounds of appeal as under: -

"1. On the facts and circumstances of the case, the learned CIT(A), NFAC, Delhi erred in confirming penalty under section 271F particularly when, the quantum appeal of the appellant is pending with CIT(A).

2. On the facts and circumstances of the case the learned CIT(A) has also erred in confirming penalty of Rs. 5,000/- particularly when, the appellant has proved that investment in flat was made by her husband by producing his bank statements and other details and the appellant's income was less than Rs.5,00,000/- as per CBDT Notification No.9/2012 dated February 17, 2012.”

2. Ld. Counsel for the assessee, at the outset, submits that the Assessing Officer levied penalty of Rs.5,000/- u/s 271F of the Act for non-furnishing of return of income by the assessee u/s 139(1) of the Act. Ld. Counsel submits that assessee is an individual deriving income from salary and during the FY 2011-12 relevant to the assessment year i.e. 2012-13 the assessee derived income from salary which was less than Rs.5 lakhs and in view of the CBDT Notification No.9 of 2012 dated 17.02.2012 an individual whose total income for the relevant AY i.e. 2012-13 does not exceed Rs.5 lakhs and consists of only income chargeable to tax under the head “salaries” and “income from other sources” by way of interest from a savings bank account not exceeding Rs.10,000/- are exempt from filing return of income. Therefore, since the assessee derived only income from salary less than Rs.5 lakhs in view of the CBDT Notification the assessee was not required to file return of income and, therefore, there is no justification in levying penalty of

Rs.5,000/- u/s 271F of the Act for non-furnishing of return of income.

3. On the other hand, the Ld. DR supported the orders of the authorities below.

4. Heard rival submissions. In this case, the assessee an individual deriving income from salary did not file her return of income u/s 139(1) of the Act for the year under consideration. In response to notice u/s 148, the assessee filed her return of income on 30.04.2019 declaring income of Rs.3,41,650/- under the head “salaries”. The reassessment was completed u/s 143(3) r.w.s. 147 of the Act determining the income at Rs.70,81,650/- which includes income from salary of Rs.3,41,650/-. The AO further made an addition of Rs.67,40,000/- as unexplained investment in purchase of property. The AO passed order u/s 271F of the Act for non-furnishing of return on the ground that the assessment of the assessee was completed u/s 143(3) r.w.s. 147 of the Act by making an addition under head “unexplained investment” even though the assessee contended that she is not required to file return of income in view of the CBDT Notification no. 9 of 2012 dated 17.02.2012. The penalty levied by the AO was sustained by the Ld.CIT(A).

5. Heard both sides, perused the orders of the authorities below.

It is noticed that for the AY 2012-13 the CBDT issued following notification:

09/2012 : Notification 9 Date of Issue 17/2/2012 17 February 2012

Section 139 of the Income-tax Act, 1961 - Return of Income Exemption to specified persons from requirement of furnishing a return of income under section 139(1) for assessment year 2012-13

NOTIFICATION NO. 9/2012 [F. No 225/283/2011-ITA(II)], dated 17-2-2012

S.O..... (E). - In exercise of the powers conferred by sub-section (1C) of section 139 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby exempts the following class of persons, subject to the conditions specified hereinafter, from the requirement of furnishing a return of income under sub-section (1) of section 139 for the assessment year 2012-13, namely:-

1. Class of persons. -An individual whose total income for the relevant assessment year does not exceed five lakh rupees and consists of only income chargeable to income-tax under the following head,-

(A) 'Salaries'; ✓

(B) 'Income from other sources', by way of interest from a saving account in a bank, not exceeding ten thousand rupees.

2. Conditions.- The individual referred to in para 1,-

(i) has reported to his employer his Permanent Account Number (PAN);

(ii) has reported to his employer, the incomes mentioned in sub-para (B) of para 1 and the employer has deducted the tax thereon;

(iii) has received a certificate of tax deduction in Form 16 from his employer which mentions the PAN, details of income and the tax deducted at source and deposited to the credit of the Central Government;

(iv) has discharged his total tax liability for the assessment year through tax deduction at source and its deposit by the employer to the Central Government;

(v) has no claim of refund of taxes due to him for the income of the assessment year, and

(vi) has received salary from only one employer for the assessment year.

3. The exemption from the requirement of furnishing a return of income tax shall not be available where a notice under section 142(1) or section 148 or section 153A or section 153C of the Income-tax Act has been issued for filing a return of income for the relevant assessment year.

4. This notification shall come into force from the date of its publication in the Official Gazette.

6. As could be seen from the above, an individual deriving income from salaries and income from other sources and whose total income for the relevant assessment year does not exceed Rs.5 lakhs is exempt from furnishing return of income u/s 139(1) of the Act for the AY 2012-13. In the assessee's case, the assessee is an individual deriving income from salary and did not file return of income for the AY 2012-13 u/s 139(1) of the Act as she is exempt from filing return of income. However, subsequently in response to notice u/s 148 the assessee filed return of income on 30.04.2019 declaring income of Rs.3,41,650/- under the head "income from salaries". The contention of the assessee that she derives income from salary and is less than Rs.5 lakhs is corroborated by the action of the assessee through the return filed by the assessee in response to 148, wherein income of Rs.3,41,650/- was declared under the head "salary" which was also assessed by the AO in the reassessment proceedings. In view of the notification of the CBDT the assessee is not required to file the return of income for the AY 2012-13 as she derived only income from salary which is less than Rs.5 lakhs. Therefore, the question of levy of penalty u/s 271F of the Act for non-furnishing of return for the Ay 2012-13 does not arise. Thus, the penalty levied u/s 271F of the Act is deleted.

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

Order pronounced in the open court on 29/05/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 29.05.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi