

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA NO.744/MUM/2024
Assessment Year :2012-13

Mrs. Sonal Sunil Thakkar,
B-104, Mrud Kishore Bldg.,
Behind Gokul Shopping Center,
Datta Pada Road, Borivali West,
Mumbai – 400 092
PAN: AHHPT-4628-D

---- Appellant

Vs.

National Faceless Assessment Centre,
ITO 42(1)(5), Kautilya Bhavan,
Bandra East,
Mumbai – 400 051

--- Respondent

Assessee by : Shri Tejas Shah
Revenue by : Shri Surendra Meena
Date of Hearing : 13/06/2024
Date of Pronouncement : 18/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 06-08-2022 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2012-13. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the penalty of Rs.15,690/- levied by the AO u/s 271(1)(c) of the Act.

2. The assessing officer reopened the assessment of the year under consideration u/s 148 of the Act. In response thereto, the assessee filed return of income declaring a total income of Rs.3,42,360/- and the same was accepted by the AO. The AO initiated penalty proceedings and imposed a penalty of

Rs.15,690/- u/s 271(1)(c) of the Act on the reasoning that the return of income has been filed by the assessee for the first return in response to the notice issued u/s 148 of the Act.

3. Before Ld CIT(A), the assessee submitted that she had earlier filed her return of income u/s 139(1) of the Act on 23.3.2013 for the year under consideration declaring very same total income of RS.3,42,360/-. Accordingly, the assessee contended that the AO was not right in observing that the return of income filed in response to the notice u/s 148 of the Act was her first return. The Ld CIT(A), however, noticed that the income tax acknowledgement filed by the assessee disclosed that the assessee has not paid the self assessment tax due for this year. Since there was no evidence for payment of self assessment tax and since the assessee did not furnish copy of intimation issued u/s 143(1) of the Act, the Ld CIT(A) held that the assessee should be considered as not filed any return of income earlier. Accordingly, he confirmed the penalty levied by the AO. Hence the assessee has filed this appeal.

4. The Ld A.R submitted that the AO has, in fact, accepted the fact of filing of return of income u/s 139(1) of the Act in the order dated 16-09-2021 passed u/s 271F of the Act. Hence the Ld CIT(A) was not right in ignoring the above said order passed by the AO and giving a wrong finding. He further submitted that the assessee had paid the self assessment tax subsequently. Since the assessee had filed original return of income and since the very same income was declared in the return of income filed in

response to the notice issued u/s 148 of the Act and since the said income has been accepted by the AO in the reassessment proceedings, the Ld A.R contended that the impugned penalty levied u/s 271(1)(c) of the Act is liable to be deleted.

5. We heard ld D.R and perused the record. We notice that the AO himself has accepted that the assessee has filed return of income u/s 139(1) of the Act in the order dated 16-09-2021 passed u/s 271F of the Act. The assessee has also furnished copies of acknowledgement issued by the department for filing return of income u/s 139(1) and also u/s 148 of the Act. From the same, we notice that the assessee has declared very same total income of Rs.3,42,360/- in the original return as well as in the return filed in response to the notice issued u/s 148 of the Act. The AO has also accepted the same in the reassessment proceedings without making any addition. Hence, we are of the view that there is no concealment of particulars of income which would lead the levy of penalty u/s 271(1)(c) of the Act. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the penalty levied by him u/s 271(1)(c) of the Act in the year under consideration.

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

Order pronounced in the open court on 18th June, 2024.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER
Mumbai, Date : 18th June, 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, " F" Bench, Mumbai
- 5) Guard file

By Order

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