

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 198/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Guru Nanak Educational Board VPO Dhesian Sang, The Phillaur Dist: Jalandhar	बनाम	The CIT(Exemption) Chandigarh
स्थायी लेखा सं. / PAN NO: AABAG2668J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : None
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 23/09/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 27/09/2024

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 Delhi dt. 23/02/20023 pertaining to Assessment Year 2017-18.

2. In the present appeal, the Assessee has raised the following grounds of appeal:

"1. That the order passed U/s 272A(2)(e) by the Ld. AO is against law and facts of the case as it is passed without the approval of Joint Director or the Joint Commissioner.

2. That the penalty u/s 272A(2)(e) has been wrongly imposed by AO and confirmed by CIT(A)

3. That the assessee requests to add or amend the grounds of appeal before the same is heard or disposed off."

3. Briefly the facts of the case are that the assessment order in this case was passed under section 143(3) dt. 24/12/2019 by the ACIT, Exemption Circle- 1, Chandigarh determining total income at Rs. 52,49,214/- and the penalty proceedings under section 272A(2)(e) were also initiated for failure to furnish return of income as required under section 139(4A)/139(4C) within due date/ time allowed. A show cause was issued on

12/11/2021 by NaFAC as to why the order imposing penalty should not be made under section 272A(2)(e) of the Act. Thereafter considering the submissions of the assessee but not found the same acceptable, the NaFAC, Delhi held that the assessee has failed to furnish any reasonable / bonafide explanation regarding non-submission of ITR within due date prescribed under section 139(4A) of the Act. Therefore, he recorded his satisfaction that the assessee has without any reasonable cause failed to comply with the provision of Section 139(4A) of the Act and it is a fit case for levy of penalty under section 272A(2)(e) of the Act. Thereafter he computed delay in filing the return of income by 109 days and levied the penalty of Rs. 10,900/- for failure to file return of income within prescribed due date which was 31/10/2017 wherein the assessee filed its return of income on 17/02/2018.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) and it was submitted that due to ill health of his accountant and the negligence of the C.A, the return of income could not be filed in time. It was further submitted that the assessee was under bonafide and genuine belief that its income was exempt from Income Tax and even if the return of income is filed late, there were no tax consequences. In this regard, it was submitted that the AO assessed the income of the assessee without giving benefit of registration under section 12AA as the Ld. CIT(E) had rejected its application. However on appeal, the same was granted by the ITAT vide its order dt. 21/06/2019 in ITA No. 188/Asr/2018. It was accordingly submitted that the delay was caused due to exceptional circumstances as the Accountant was not physically well and due to negligence on the part of the C.A and secondly the assessee was under genuine and bonafide belief that its income was exempt from Income Tax. It was accordingly submitted that there was a reasonable cause for not filing of the return of income and therefore in terms of Section 273B, the penalty levied by the AO be directed to be deleted.

5. The submissions so filed by the assessee were considered but not found acceptable to the Ld. CIT(A). As per the Ld. CIT(A), the reasons so provided by the assessee do not constitute reasonable cause within the meaning of Section 273B of the Act and it was the duty of the assessee to ensure compliances to the statutory time limit

as so prescribed under the Act and it was accordingly held that the AO was justified in imposing penalty under section 272A (2)(e) of the Act and the appeal so filed by the assessee was dismissed.

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

7. None has appeared on behalf of the assessee, however an adjournment application has been filed by the Counsel of the Assessee dt. 20/09/2024 and on perusal of the same, we find that there is no reasonable cause for not attending the appellate proceedings which have been pending since 2023 and considering the fact that the matter has been adjourned from time to time and there has been complete non-compliance / non-appearance on behalf of the assessee, it was decided to reject the adjournment application and proceed to decide the matter based on material available on the record.

8. The Ld. Sr. DR is heard who has relied on the order passed by the lower authorities. It was submitted that one of the ground of appeal taken by the assessee relates to the facts that the penalty has been imposed without seeking the necessary approval from the Joint Director / Joint Commissioner. In this regard, our reference was drawn to the penalty order which has been digitally signed by Mr. Amaninder Singh Dhindsa on 01/01/2022, who was Additional Commissioner of Income Tax at the relevant point in time and it was submitted that where the penalty order has been passed by the officer of the rank of the Additional CIT, the order so passed is in compliance with the mandate of the statute in terms of section 272A(3)(C) of the Act. It was accordingly submitted that there is no merit in ground of appeal so taken by the assessee. On merits, it was submitted that no reasonable cause has been shown by the assessee and the order so passed by the Add.CIT be confirmed.

9. We have heard the Ld. DR and perused the material available on record. We agree with the contention of the Id Sr DR that where the penalty order has been passed by the officer of the rank of the Additional CIT, the order so passed is in compliance with the mandate of the statute in terms of section 272A(3)(C) of the Act and there is

thus no infirmity in the order so passed as so claimed by the assessee in terms of not seeking the approval of the Joint Director or the Joint Commissioner.

10. Now, coming to the explanation of the assessee and as to whether the same can be construed as reasonable cause for the delayed filing of return of income. It has been submitted before the Id CIT(A) that the delay was caused due to the fact that the Accountant was not physically well and due to negligence on the part of the C.A, the return couldn't be filed in time. We find that the said explanation is not corroborated and there is nothing on record in terms of nature and period of illness of the accountant and secondly, the communication between the assessee and the chartered accountant to hold the later accountable and negligent as so claimed.

11. In this regard, we further note that the assessee had moved an application seeking registration u/s 12AA on 17/08/2017 before the Id CIT(E) well before the due date of filing of the return of income on 31/10/2017. During the course of proceedings before the Id CIT(E), the Counsel of the assessee vide reply dated 07/11/2017 submitted that the income tax return has not been filed by the assessee society since its inception. Vide subsequent reply dated 17/02/2018, the Counsel submitted copy of return of income filed on 17/02/2018 for A.Y 2016-17 and 2017-18. The said application happened to be rejected by the Id CIT(E) on 26/02/2018 and in his order, the Id CIT(E) has recorded a finding that no ITR was filed earlier and the same was filed after a specific query was raised vide questionnaire dated 16/02/2018. In light of the said findings of the Id CIT(E) as well, we find that the explanation of the assessee that the delay in filing of the return of income was caused due to ill-health of the Accountant and negligence on the part of the C.A is not borne out of records and is self-contradictory and deserve to be rejected.

12. In terms of another explanation, it was submitted that the assessee was under genuine and bonafide belief that its income was exempt from Income Tax. We find that similar explanation was submitted before the Id CIT(E) while seeking registration u/s 12AA and which was not accepted by the Id CIT(E) due to change in law as regard mandatory filing of return of income under Section 139A(4C) of the Act. On appeal, the Coordinate Bench vide its order dated 21/06/2019 in ITA No. 188/Asr/2018 upheld

the said findings and held that the assessee was under misconception for not filing of return of income being covered under the exemption u/s 10(23C)(vi) of the Act as so claimed by the assessee. At the same time, given that the assessee had subsequently filed the return of income for A.Y 2016-17 and 2017-18 on 17/02/2018, the Coordinate Bench held that this objection of the Id CIT(E) doesn't come in the way of the assessee society claiming registration u/s 12AA and thereafter, the Id CIT(E) was directed to grant registration to the assessee society.

13. A misconception is a conclusion that's wrong because it's based on faulty thinking or facts that are wrong or the legal position that has been completely ignored. The fact that there is genuine belief that the income was exempt under section 10(23C)(vi) of the Act inspite of no approval sought and on record from the prescribed authority as so mandated in the statute, the fact that the income was exempt and no need to file return of income even though there is change in law regarding mandatory filing of the return of income which has been brought on the statute way back by the Finance Act, 2002 w.e.f 1/04/2003 has been completely ignored by the assessee society which has been in existence for past many decades cannot be accepted. There is nothing on record that the findings and order so passed by the Coordinate Bench have been challenged by either of the parties or reversed/stayed by the Higher Appellate Courts and therefore, the same not just binds the assessee as well as the Revenue but the judicial discipline requires that the same is followed by us. Following the same, we find that a belief based on misconception of facts and law cannot be a ground of reasonable cause for seeking exemption from mandatory filing of return of income or for that matter, delayed filing of return of income and the explanation so submitted by the assessee therefore cannot be accepted.

14. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, we don't finding any infirmity in the order so passed by the Add. CIT levying penalty of Rs. 10,900/- u/s 272A(2)(e) of the Act and which has been rightly upheld by the Id CIT(A) holding that the reasons so provided by the assessee do not constitute reasonable cause within the meaning of Section 273B of the Act and that the AO was

justified in imposing penalty under section 272A(2)(e) of the Act. In the result, the grounds of appeal taken by the assessee are dismissed.

15. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 27/09/2024.

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

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