

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1669/Bang/2024
Assessment Years: 2015-16

H Venkatesh Reddy, No.150, Hosur Road, Singasandra Village, Bengaluru – 560 068.  <b>PAN – AERPV 4031 M</b>	Vs.	The Income Tax Officer, Ward – 4(3)(2), Bengaluru.  .
APPELLANT		RESPONDENT

Assessee by	:	Shri Abhilash, Advocate
Revenue by	:	Shri V Parithivel, JCIT (DR)

Date of hearing	:	29.11.2024
Date of Pronouncement	:	28.01.2025

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 30/06/2024 in ITA No. ITBA/NFAC/S/250/2024-25/1066275823(1) for the assessment year 2015-16.

2. The only effective issue raised by the assessee is that the learned CIT(A) erred in confirming the levy of penalty under section 271(1)(c) of the Act.

3. The brief facts of the case are that the assessee is an individual who did not file his return of income as required under the provisions of section 139 of the Act. However, the department received information indicating that he had income from certain sources such as rent, time deposits, and other miscellaneous receipts. Consequently, the case of the assessee was reopened under section 147 of the Act, and a notice under section 148 of the Act was issued on March 27, 2021. In response to the notice issued under section 148 of the Act, the assessee filed his return of income, declaring a total income of ₹ 41,15,380/- only. Subsequently, in response to a notice issued under section 142(1) of the Act, the assessee furnished his bank statement, rental agreement, details of fixed deposit receipts (FDRs), and other relevant documents for the year under consideration.

4. After verifying the documents submitted by the assessee, the Assessing Officer (AO) accepted the returned income of the assessee and framed the assessment order dated March 9, 2022, under section 147 of the Act without making any further addition. However, the AO initiated penalty proceedings in the assessment order and issued a show-cause notice for levying a penalty under section 271(1)(c) of the Act. The assessee filed a reply contending that he had not concealed any particulars of income and had furnished all the required information and documents during the assessment proceedings under section 147 of the Act. He further stated that the AO, after verifying the documents, had accepted the returned income. The assessee explained that he was unable to file his income tax return within the prescribed time under section 139 of the Act due to severe ill health and repeated hospitalizations during the relevant period. He also submitted a medical

certificate issued by the doctor of Shri Vinayak General Hospital to substantiate his claim.

4.1 However, the Assessing Officer rejected the explanation, asserting that had the proceedings under Section 147 of the Act not been initiated, the assessee would not have disclosed the correct income for taxation. Consequently, the AO by invoking the provisions contained under explanation 3 to section 271(1) of the Act imposed a penalty 100% of the amount of tax sought to be evaded.

5. Aggrieved by the order imposing the penalty, the assessee filed an appeal before the Learned CIT(A)/NFAC. Before the Ld. CIT(A)/NFAC, the assessee made similar submissions as those provided in response to the notice issued under Section 274 read with Section 271(1)(c) of the Act. After considering the submissions, the NFAC/Ld. CIT(A) held that the assessee's arguments lacked merit and concluded that the assessee had willfully concealed particulars of his income. Consequently, the penalty under Section 271(1)(c) of the Act was upheld.

6. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

7. The learned AR before us reiterated the contentions raised before the authorities below. As per the Ld. AR, there was reasonable cause which prevented the assessee from filing the return of income.

8. On the other hand, the Ld. DR before us vehemently supported the finding of the authorities below.

9. We have heard the rival contentions of both parties and have perused the materials on record. From the preceding discussion, we note that the assessee was required to file his return of income under the provisions of section 139 of the Act but failed to do so. The return of income was filed only after the issuance of a notice for income escaping assessment under section 148 of the Act. The return filed in response to Section 148 was accepted without any variation, addition, or disallowance. However, the lower authority levied a penalty for concealment of income in accordance with the provisions of section 271(1)(c) read with explanation 3 to section 271(1) of the Act. For ready reference, the relevant provision of explanation 3 to section 271(1) of the Act is extracted below:

*Explanation 3.—Where any person fails, without reasonable cause, to furnish within the period specified in sub-section (1) of [section 153](#) a return of his income which he is required to furnish under [section 139](#) in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of [section 142](#) or [section 148](#) and the Assessing Officer or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under [section 148](#).*

9.1 From the above provision, it is transpired that if an assessee who is required to file a return of income under Section 139 of the Act fails, without any reasonable cause, to do so before the expiry of the time limit specified under section 153(1) of the Act, and no notice under section 142(1) or 148 of the Act is issued during that period, then if the AO or the CIT(A) is satisfied that the assessee has taxable income, the assessee shall be deemed to have concealed particulars of income, even

if the income is declared in response to a notice under Section 148 of the Act is filed after the expiry of the time limit prescribed under section 153(1) of the Act. Turning to the facts of the case on hand, the assessment year (AY) in dispute is AY 2015–16, and the time limit under Section 153(1) of the Act for that year (i.e., “21 months from the end of the assessment year 2015–16”) expired on December 31, 2017. The assessee did not file his return of income by December 31, 2017, and no notice under Section 142(1) or section 148 of the Act was issued during that period. In fact, the reopening notice under Section 148 of the Act was issued on March 27, 2021, only after which the assessee filed his return of income, thus bringing him within the scope of Explanation 3 to section 271(1) of the Act. The question that arises, therefore, is whether there was a genuine or reasonable cause preventing the assessee from filing the return of income within the specified time. In this regard, the assessee claimed before the lower authorities that he was severely ill, and due to this illness, he was unable to file the return on time. The lower authorities, in the penalty proceedings under section 271(1)(c) of the Act, did not accept this explanation as reasonable cause. However, from the materials on record, it appears that in the assessment order, the AO has also initiated penalty proceedings under section 271F of the Act for the assessee’s failure to file a return of income under Section 139(1) of the Act. The assessee furnished the same explanation of severe illness during the proceedings under section 271F of the Act, and in that proceeding, the AO accepted that the illness genuinely prevented him from filing his return of income in a timely manner. Consequently, no penalty under section 271F of the Act was levied by the AO holding that the failure to file a return within the stipulated time was due to a

reasonable cause. The relevant finding of the AO in the order under Section 271F of the Act is extracted below:

*The assessee submitted his reply enclosing a certificate issued by doctor of Vinayaka General & Maternity Hospital stating that he was suffering from severe ill health repeatedly hospitalized during that period. Assessee also enclosed certificate issued by doctor of Vinayaka General & Maternity Hospital, in medical certificate doctor written that he was suffering from bilateral leg neuropathy and arthrosis fever since 2014-15. The reply of assessee has been accepted as assessee was could not file his return of income as required u/s 139(1) of the Income Tax Act, 1961 due to health conditions. In view of the above, it is clear that there was reasonable cause that prevented the assessee from filing the return of income within due date. Hence, Penalty u/s 271F of Income tax Act, 1961 is not levied in this case."*

9.2 Having carefully considered the facts that the AO in the proceedings under section 271F of the Act, unequivocally accepted the assessee's explanation—namely, that he was suffering from severe illness—as genuine and bona fide, thereby constituting a "reasonable cause" for the delay in filing his return of income. It logically follows that the same explanation cannot be rejected by the AO in the penalty proceedings under Section 271(1)(c) on the grounds that it is not reasonable. When the AO himself acknowledges and accepts the validity of the assessee's cause in one penalty proceeding, it would be inconsistent and contrary to the principles of natural justice to discredit the very same cause in another proceeding arising out of the same factual matrix. Accordingly, we hold that the penalty under section 271(1)(c) of the Act is not sustainable on the ground that the explanation has already been accepted as reasonable under section 271F of the Act, and we therefore direct the AO to delete of the penalty levied under section 271(1)(c) of the Act. Hence, the ground of appeal of the assessee is hereby allowed.

10. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in court on 28<sup>th</sup> day of January, 2025

Sd/-

Sd/-

**(KESHAV DUBEY)**  
Judicial Member

**(WASEEM AHMED)**  
Accountant Member

Bangalore  
Dated, 28<sup>th</sup> January, 2025  
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore