

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

BEFORE SHRI INTURI RAMA RAO, AM

**ITA No. 840/Coch/2024
Assessment Year: 2011-12**

Christudanam Yassaya Appellant
Bathel KP 17A Maruthoor, Vattapara P.O.
Thiruvananthapuram 695028
[PAN: ACMPY4412C]

vs.

The Income Tax Officer, Ward-1(1) Respondent
Aayakar Bhavan, Kowdiar
Thiruvananthapuram 695003

Appellant by: ----- None -----
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 04.02.2025
Date of Pronouncement: 10.02.2025

ORDER

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 18.07.2024 for Assessment Year (AY) 2011-12.

2. Brief facts of the case are that the appellant is an individual engaged in the business of executing civil contracts. No regular return of income u/s. 139(1) of the Income Tax Act, 1961 (the Act) for AY 2011-12 was filed by the assessee. The Income Tax Officer, Ward-1(2), Thiruvananthapuram (hereinafter called "the AO") issued a notice u/s. 148 of the Income Tax Act, 1961 (the Act) on 13.06.2017. The appellant

neither complied with the notice u/s. 148 of the Act nor notices issued u/s. 142 of the Act. In the circumstances the AO was constrained to complete the assessment vide order dated 30.12.2018. Against the said assessment order, the appellant preferred revision petition u/s. 264 of the Act before the learned Principal Commissioner of Income Tax, Thiruvananthauram (PCIT). The learned PCIT, vide order dated 26.08.2019, directed the AO to redo the assessment. Pursuant to the directions of the PCIT u/s. 264, assessment was completed by the AO. While doing so the AO had accepted the income from business of Rs. 5,43,948/-. The AO made addition on account of short term capital gain on sale of property at Rs. 32,42,980/-. On the above addition the AO initiated penalty proceedings u/s. 271(1)(c) of the Act. This assessment order was passed u/s. 144 r.w.s. 264 on 29.11.2019 at a total income of Rs. 38,32,110/-.

3. The appellant, in response to the show cause notice u/s. 271(1)(c) of the Act, could not file original return of income as he was under treatment for psychological issues. However, the AO rejected the above explanation and proceeded with levy of penalty of Rs. 9,96,672/- vide order dated 27.09.2021.

4. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the levy of penalty.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. At the outset, I find that there is delay of 9 days in filing the present appeal. The appellant filed an affidavit seeking condonation

of delay stating that the appellant was under constant treatment for heart ailment. Therefore, he could not collect the tax papers from the tax practitioner located at Thiruvananthapuram and entrust the same to a lawyer at Ernakulam in time. Thus, it is submitted that the delay occurred on account of factors and reasons, which are beyond the control of the assessee and, therefore, prayed for condonation of the delay. In the absence of any evidence to the contrary, to disbelieve the averments made in the affidavit, I am of the considered opinion that it is a fit case to condone the delay of 51 days. Accordingly we condone the delay in filing the appeal and admit the appeal for adjudication.

7. When the appeal was called nobody appeared on behalf of the assessee despite due service of notice of hearing. Therefore, we proceeded to dispose of the appeal after hearing the learned Sr. DR.

8. The issue in the present appeal relates to levy of penalty u/s. 271(10)(c) of the Act pursuant to the assessment made. In the present case the appellant had not file return of income voluntarily u/s. 139(1) of the Act. The assessment was finally made pursuant to the notice issued u/s. 148 of the Act. It is the settled position of law that penalty u/s. 271(1)(c) is always levied with reference to the original return of income. Failure of the assessee to furnish return of income u/s. 139(1) for the year under consideration despite having taxable income is deemed to have concealed the particulars of income for that particular assessment year notwithstanding the fact that the assessee filed return of income pursuant to notice u/s. 148 of the Act in terms of provisions of Explanation 3 to

section 271(1)(c) of the Act. Therefore the AO is justified in levying the penalty. Therefore, I find no merit in the appeal filed by the assessee.

9. In the result, the appeal filed by the assessee stands dismissed.

10. Order pronounced in the open court on 10th February, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 10th February, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar
ITAT, Cochin