

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA Nos: 71 & 74/Ahd/2021
Assessment Years: 2011-12

Hakim Khan Sumergadh Bibalsar, Jalore, Rajasthan-343041 PAN: AGFPH0010C (Appellant)	Vs	The ITO, Ward-3, Palanpur (Respondent)
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Assessee Represented : None Revenue Represented :
Shri N.J. Vyas, Sr.D.R.

Date of hearing : 08-02-2023
Date of pronouncement : 10-02-2023

□□□□/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These two appeals are filed by the Assessee as against separate orders both dated 01.03.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), confirming the levy of penalty under section 271(1)(b) and 271F of the Income Tax Act, 1961 (hereinafter referred

to as 'the Act') relating to the Assessment Year (A.Y) 2011-12. Since common issues are involved in both the cases, the same are disposed of by this consolidated order. Both the appeals are taken up for hearing.

2. The brief facts of the case is that the assessee is an individual having commission (Dalali) Income earned from sale of buffalos. The Assessing Officer received information from the ITD system, that during the Financial Year 2010-11, the assessee made cash deposit to the tune of Rs. 27,51,150/- in the bank account maintained by the assessee with Bank of India. However the assessee has not filed any Return of Income. Hence notice u/s. 148 was issued on 24.03.2008. However the assessee has not filed the Return of Income and the 142(1) notices issued were also not responded by the assessee. Therefore an ex-parte assessment order was passed on 19.12.2018 determining the total income at Rs.

27,51,600/-.

2.1. Following the same, notice u/s. 271(1)(b) was issued as why not to levy of penalty for non-compliance of the notices issued u/s. 142(1) of the Act. The assessee responded vide reply letter dated 18.06.2019 that there is below taxable income, hence was not liable to file the Return of Income. Further because of the bad health of the Accountant on account of prolonged illness, he could not reply to the notices. However the A.O. has not satisfied with the reply form the assessee and thereby levied a penalty of Rs.10,000/- under section 271(1)(b) of the Act.

3. Similarly, the penalty notice under section 271F was issued for non-filing of the Return of Income. The assessee replied vide its letter dated 18.06.2019 that there

is below taxable income, hence was not liable to file the Return of Income. This explanation was not accepted by the Assessing Officer and thereby levied a penalty of Rs.5,000/- under section 271F of the Act.

4. Aggrieved against the above penalty orders, the assessee filed two appeals before the Ld. CIT(A)/NFAC. The assessee submitted before the Appellate Authorities by written submission which are summarized as under:

- i) The Authorized Representative (AR) of the appellant stated that the appellant is a villager, having small earning and was not required to file Return of Income, as the income was below taxable limit.
- ii) The AR further submitted that in the appellant has requested for transfer of case from Palampur to Rajasthan.
- iii) The AR further mentioned that the appellant was not required to file the return of income u/s 139(1) of the Act as the income of the appellant was below the taxable limit.
- iv) Notice could not be complied due to bad health on account of prolonged illness.

4.1. The above explanation offered were not accepted by the Ld. CIT(A) and thereby confirmed the levy of penalty u/s. 271(1)(b) and u/s. 271F of the Act.

5. Aggrieved against the same, the assessee is in appeal before us in ITA No. 71/Ahd/2021 raising the following Grounds of Appeal:

1. The Learned CIT(A) erred in law and on facts in confirming penalty of Rs.10,000/- made by the learned ITO for failure to comply with a notice issued under section 148 or 142(1) within prescribed time limit. The levy of penalty imposed by the learned CIT(A) deserves to be deleted. The same be deleted now because the appellant did not comply any of the notices or make any submission for the reasons beyond his control.
2. The Learned CIT(A) has erred in not property appreciating the facts, various submissions, explanations and information submitted by the appellant during the appeal

proceedings which ought to have been considered in proper perspective before passing the impugned order.

3. The order passed by the learned CIT(A) is illegal, Invalid and bad in law. It be so held now.

5.1. The Grounds of Appeal raised by the assessee in ITA No.

74/Ahd/2021 is as follows:

1. The learned CIT(A) erred in law and on facts in confirming penalty of Rs. 5000/- made by the learned ITO for failure to file the return of income within prescribed time limit. The levy of penalty imposed by the learned CIT(A) deserves to be deleted. The same be deleted now because the appellant did not file the ITR because in his opinion there no taxable income.

2. The Learned CIT(A) has erred in not properly appreciating the facts, various submissions, explanations and information submitted by the appellant during the appeal proceedings which ought to have been considered in proper perspective before passing the impugned order.

3. The order passed by the learned CIT(A) is illegal, invalid and bad in law. It be so held now.

5.2. Today is the 7th time of hearing of the above appeal, none appeared on behalf of the assessee and no written submissions filed by the assessee.

6. The Ld. Sr. D.R. Shri N.J. Vyas appearing for the Revenue supported the orders passed by the Lower Authorities and pleaded to confirm the same and also dismiss the assessee's appeals.

7. We have given our thoughtful consideration and perused the materials available on record. It is seen from the submission made by the assessee that the assessee is a small time commission agent dealing on sale of buffalos and also claimed that the total income is below taxable limit. Hence not filed the Return of Income vide its reply letter dated 18.06.2019.

- 7.1. The imposition of penalties under section 271(1)(b) and under section 271F of the Act are not mandatory, rather it is discretionary, because if the assessee proves that there was a "reasonable cause" for the said failure, then the Assessing Officer ought to have considered the same and then proceed with levying penalties.
- 7.2. A perusal of the above provisions of u/s. 271(1)(b) and u/s. 271F shows that the Parliament has used the words "may" and not "shall", thereby making their intention clear in as much as that levy of Penalty is discretionary and not automatic. The said conclusion is further justified by Section 273B of the Act namely "Penalty not to be imposed in certain cases". A careful reading of Section 273B encompasses that certain penalties "shall" not be imposed in cases where "reasonable cause" is successfully pleaded. It is seen that penalties imposable u/s. 271(1)(b) and u/s 271F are also included therein. By the said provisions, the Parliament has unambiguously made it clear that no penalty "shall be" imposed, if the assessee "proves that there was a reasonable cause for the said failure". As noticed, if the statutory provision shows that the word "shall" has been used in Section 271F, then the imposition of penalty would have been mandatory. Section 273B as mentioned above further throws light on the legislative intent as it specifically provides that no penalty "shall' be imposed if the assessee proves "that there was reasonable cause for the said failure".
8. In the facts of the present case, it is seen that the explanation offered by the assessee have been ignored by the A.O. as well as the Ld. CIT(A)-NFAC but confirmed the levy of penalties u/s. 271(1)(b) and u/s. 271F of the Act without

considering u/s. 273B of the Act. Applying the provisions of Section 273B of the Act, we have no hesitation in deleting the penalties levied u/s. 271(1)(b) and u/s. 271F of the Act since “reasonable cause” is clearly demonstrated by the assessee. Therefore the penalties levied u/s. 271(1)(b) and u/s.

271F are deleted.

9. In the result, the grounds raised by the assessee are hereby allowed and the appeals filed by the assessee are allowed.

Order pronounced in the open court on 10-02-2023

Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER True Copy

Ahmedabad : Dated 10/02/2023

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1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad 6. Guard file.

Sd/-

(T.R. SENTHIL KUMAR)

JUDICIAL MEMBER

By order/□□□□ □□,

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