

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BENGALURU  
BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**ITA Nos.2604, 2605, 2606/Bang/2018  
(Assessment Years: 2012-13, 2014-15 & 2015-16)  
&  
ITA No.357/Bang/2019  
(Assessment Year: 2013-14)**

Shri Rajesh Ajjavara,  
No.65, 3<sup>rd</sup> Main, Prashanth Nagar,  
Bengaluru – 560 079.

The Income Tax Officer (TDS),  
Vs. Ward-5(3)(1),  
Bengaluru.

**[PAN: AGCPA 0752H]**

**(अपीलार्थी /Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से / Appellant by	:	Shri A.Ravish Rao, C.A
प्रत्यर्थी की ओर से/Respondent by	:	Smt. R. Premi, JCIT
सुनवाई की तारीख/ Date of hearing	:	04.12.2019
घोषणा की तारीख /Date of Pronouncement	:	20.12.2019

**ORDER**

**PER D.S. SUNDER SINGH, A.M:**

All the four appeals filed by the assessee are directed against the orders of the Commissioner of Income Tax (Appeals)-5, Bengaluru (hereafter referred as “CIT(A)”) dated 01.05.2018, 19.04.2018 & 31.01.2019 for the Assessment Years (AYs) 2012-13, 2014-15, 2015-16 & 2013-14 respectively.

2. These four appeals are filed by the assessee. Since, the issues involved in all the appeals are identical, these appeals are clubbed, heard together and disposed of by a common order as under:

**ITA NOs.2604, 2605 & 2606/Bang/2018 for Assessment Years 2012-13, 2014-15 & 2015-16:**

3. The brief facts of the case are that the assessee did not file return of income, though he was having taxable income for the relevant assessment years under consideration, therefore, the Assessing Officer (AO) has issued the notice under section 271 of the Income Tax Act, 1961 ("the Act"). The AO issued the show cause notice dated 16.10 2017 for the AYs. 2012-13 to 2015-16 directing the assessee to explain as to why the penalty should not be levied for non furnishing of the returns as required under section 139(1) of the Act. In response to which the assessee filed his reply stating that he was salaried employee working in TCS. During the relevant previous years, he was on assignment outside the headquarters at Bangalore including foreign assignment with periodical intervals which has stretched for months together. Therefore the assessee submitted that he could not focus himself on his legal objects for filing his returns of income which resulted in filing the returns belatedly. The assessee further submitted that he is having only income from salary and the tax was deducted at source by way of Tax Deduction at source(TDS) and always the returns resulted in refund hence, submitted that there was no loss to the Revenue. The assessee requested to treat the return filed under section 139(4) of the Act as return under

section 139(1) and take lenient view for the purpose of penalty and requested to drop the penalty proceedings. The assessee also relied on the decision of Hon'ble Bombay High Court in the case of *Trustees of Tulsidas Gopalji Charitable and Chaleswar Temple Trust vs. CIT [1994] 207 ITR 368 (Bom)*, wherein it was held that the sub s. (1) & (4) to section 139 of the Act have to be read together and on such reading, the inevitable conclusion is that the return made within the time specified in sub section (4) of the Act has to be considered as having made within the time prescribed in sub section (1) & sub section (2) to section 139 of the Act. Thus, submitted that there is no default and requested to drop the penalty proceedings under section 271F of the Act. Not being convinced with explanation of the assessee, the AO levied the penalty of Rs.5,000/- each for the assessment years 2012-13 to 2015-16.

4. Against the order of the AO the assessee filed appeal before the Ld. CIT(A) and reiterated the submissions which were made before the AO. The Ld. CIT(A) considered the submissions of the assessee and allowed the appeal. While allowing appeal, the Ld.CIT(A) relied on the decision of Hon'ble High Court of Bombay in the case of *Trustees of Tulsidas Gopalji Charitable and Chaleswar Temple Trust vs. CIT (supra)*. For the sake of clarity and convenience, we extract the relevant part of the order of the Ld. CIT(A), which reads as under:

*"I have considered the above grounds of appeal, statement of facts and written submissions filed by the appellant and also perused the penalty orders. Penalty u/s 271F levied by the assessing Officer for non filing of return of Income within due dates specified u/s.139( 1) of the IT Act. The*

*appellant submitted that the returns were filed within the time allowed u/s.139(4) of the Income Tax Act 1961 and hence there was delay in filing return of income for which the appellant rendered to liable to interest. further submitted that there was no deliberate or willful omission on the part of the appellant to be subjected to penalty u/s.271 F of the Act. The provisions of Sec.271 F provides that if a person who is require to furnish a return of his income as required under sub-sec.(1) of Sec.139 or by provisos to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty a sum of Rs.5000/-. Whereas the appellant has filed his returns of income u/s.139(4) tor A.Y.2012-13 on 29/03/2014 and for A.Y.2014-15 on 27.03.2016 declaring total incomes of Rs.5,50,074/- and Rs.6,41,498/- respectively: Further, the appellant relied on the Hon'ble Bombay High Court Trustees of Tulsidas Gopalji Charitable and Chaleswar Temple Trust Vs. CIT wherein it was held that on a careful reading of section 139 of the Act, we are of the clear opinion that sub-sections (1) and (4) of section 139 have to be read together and on such reading, the inevitable conclusion is that a return made within the time specified in sub-section (4) has to be considered as having been made within the time prescribed in sub-section (1) or sub-section (2) of Sec.139 of the Act. CIT Vs. Kulu Valley Transport Co. (P) Ltd. (1970) 77 ITR 518 (SC) followed. In view of the factual position and legal matrix of the cases under consideration the penalties u/s.271 F of the Act levied by the Assessing Officer is not justified. Therefore, the grounds of appeals are hereby allowed.”*

5. Subsequently, the AO filed a rectification petition under section 154 of the Act and the Ld. CIT(A) passed the order under section 154 confirming the penalty levied by the AO. We also extract the relevant part of the order of the Ld. CIT(A), which reads as under:

*“3.1 I have carefully considered the submissions made by the appellant and also perused the case relied upon by his Authorised Representative. In respect to the provisions of Section 271 F, the Assessing Officer points out that the appellant has failed to give satisfactory explanation for delay in filing of return of Income and states that as per the provisions of Section 271 F, if a person who is required to furnish his return of income as required under sub section (1) of 139 or by proviso to that sub-section, fails to furnish such return before the end of the relevant assessment year is liable to pay penalty of Rs.5000/-. But, I have held that on careful reading of Section 139 of the Act, we are of the clear opinion that sub-section (1) and (4) of Section 139 have to be read together and on such a reading, the inevitable conclusion is that a return made within the time specified in sub section (4) has to be considered as having been made within the time prescribed as sub section (1) or (2) of Section 139 of the Act relying upon the Hon'ble Bombay High Court Trustees of Tulsidas Gopalji Charitable & Chaleswar Temple Trust Vs. CIT. Judgement.*

*3.2 In this context, it is submitted by the Assessing Officer that the provisions of section 271 F of the Act nowhere mentions that for levying*

*penalty under this section, there should be willful and deliberate omissions on the part of the assessee. Besides, filing of return as per Section 139(4) would not dilute infraction of not furnishing the return of income before the end of the relevant assessment year as per the ratio laid down by the Hon'ble Supreme Court decision in the case of Prakash Nath Khanna Vs.CIT(2004) 135 Taxman 327 (SC). Respectfully following Hon'ble Supreme Court order, the appeals filed by the appellant is hereby treated as dismissed and the appellate orders are amended to this effect. The Review petitions filed for rectification under section 154 of the Income-Tax Act, 1961 stands disposed off."*

6. We have heard the rival submissions and perused the material placed on record. In the instant case, the assessee challenged the order in ground No.5 with regard to validity of order u/s 154. During the appeal hearing, the Ld. AR vehemently pressed this ground stating that once the Ld.CIT(A) has taken conscious decision relying on the decision of Hon'ble Bombay High Court in favour of the assessee and then changed his opinion in rectification proceedings which is not permissible under section 154 of the Act. On the other hand, the Ld.DR supported the order of the Ld.CIT(A).

We considered the rivals submissions and found from the order of the Ld. CIT(A) that the Ld. CIT(A) has taken a decision after considering the law laid down by the Honorable Bombay High Court in the case of *Trustees of Tulsidas Gopalji Charitable and Chaleswar Temple Trust vs. CIT (supra)*, wherein the Hon'ble High Court of Bombay held that sub section (1) & (4) of section 139 of the Act have to be read together and on such reading the inevitable conclusion is that the return made within the time specified in sub section (4) of the Act has to be considered as having been made within the time prescribed time under sub section (1)/(2) of section 139 of the Act. On rectification petition filed by the AO, the Ld. CIT(A) taken a different view

and held that return of income filed under section 139(4) of the Act would not dilute non furnishing the return of income before the end of relevant assessment year as required u/s 139(1) of the act. The Ld.CIT(A) in the rectification order relied on the ratio laid down by the Hon'ble supreme Court in the case of *Prakash Nath Khanna vs. CIT [2004] 135 Taxman 327 (SC)*. From the plain reading of the order u/s. 250 of the Act, dated 19.04.2018 and 16.08.2019, it is clear that the Ld. CIT(A) has taken two different views, placing reliance on the decision of Hon'ble High Court of Bombay allowed the appeal of the assessee and re-visiting s. 271F of the Act and considering the decision of Hon'ble Supreme Court in the case of *Prakash Nath Khanna vs. CIT (supra)* decided the appeal against the assessee. The two decisions apparently contradictory following the different judgements of Honourable Bombay High court and the Supreme Court which are not on the same facts. Therefore, it is clear from the above facts that there are two views are possible on the issue one is in favour of the assessee and the other one is against the assessee. When the two views are possible on the same issue and the issue which needs to be decided after debate and deliberations it is not permitted to make the rectification section 154 of the Act. It is settled issue that under section 154 of the Act, the authorities are permitted to rectify the mistake which is apparent from the record and in the instant case, there was no mistake which is apparent from the record and the issue required to be discussed deliberately and consider various case laws. Therefore, we hold that the order passed by Ld.

CIT(A) u/s 154 is bad in law and unsustainable. Accordingly, we the cancel the order passed under section 154 of the Act and restore the original order dated 19-4-2018 and allow appeal of the assessee.

7. In the result, appeals filed by the assessee in ITA No.2604, 2605 & 2606/Bang/2018 for Assessment Years 2012-13, 2014-15 & 2015-16 are allowed.

**ITA No.357/Bang/2019 for Assessment Year 2013-14:**

8. In this case the assessee did not file the return of income within the due date allowed under section 139(1) of the Act. Therefore, the AO had issued the notice under section 271F of the Act, vide show cause notice dated 16.10.2017. In response to which the assessee filed explanation stating that he could not file the return of income because of preoccupation of the employment. The AO did not convince with the explanation of the assessee hence, levied penalty of Rs.5,000/- under section 271F of the Act. The assessee went on appeal before the Ld. CIT(A) and the Ld. CIT(A) confirmed the penalty. Against which the assessee filed appeal before this tribunal.

9. During the appeal hearing, the Ld.AR reiterated the submission made before the AO which was discussed in ITA Nos. 2604, 2605 & 2606/Bang/2018 for Assessment Years 2012-13, 2014-15 & 2015-16 of this order and requested to drop the penalty. Ld.AR further submitted that the Ld. CIT(A) relied on the *Prakash Nath Khanna vs. CIT (supra)*, the facts of

the case law relied upon by the Ld. CIT(A) are distinguishable and not applicable to the assessee's case. Calling our attention to the decision of Hon'ble Apex Court in the case of *Prakash Nath Khanna vs. CIT (supra)*, the Ld. AR submitted that in the case of *Prakash Nath Khanna* the issue involved was relating to the prosecution and not the levy of penalty u/s 271F. therefore, argued that the decision of Hon'ble Supreme Court has no application in the assessee's case. The AR submitted that the assessee was engaged in the employment which did not permit him to spare time for filing return of income. However he submitted that he filed the return of income within the time limit allowed under section 139(4) of the Act, hence, requested to cancel the penalty and allow the appeal of the assessee.

10. On the other hand, the Ld. DR argued that the assessee is habituate defaulter and not filing returns of income within the time allowed u/s 139(1) of the act, therefore, argued that there is no case for taking a leniency in the case of assessee, hence, argued that it is a fit case for levy of penalty and submitted that there is no reason to interfere with the order of Ld. CIT(A) thus, requested to uphold the order of Ld. CIT(A) and dismiss the appeal of the assessee.

11. We have heard the rival submissions and perused the material placed on record. In the instant case, the assessee is a salaried employee and working with the TCS company. Though the assessee is very busy in his employment, it is obligation of the assessee to comply with the statutory



requirements and to abide by the laws of the land. Being an educated assessee he should not be very casual towards compliance of statutory requirements. The way in which the assessee filed the returns of income for the impugned years, shows his casualness in complying the statutory requirements which cannot be appreciated. However, the assessee has filed the return of income within the time allowed u/s. 139(4) of the Act. The AO also issued show cause notice on 16.10.2017 after filing the return of income. The assessee filed the return of income u/s. 139(4) of the Act before the Department has noticed that the assessee did not file the return of income. Before the filing of the return of income, the department has neither issued the notice u/s. 142(1) of the Act nor reopened the assessment by issuing of notice u/s. 148 of the Act. The assessee has filed return of income voluntarily without any enquiry or verification from the department and explained that he is having only salary income and no other income and the tax was deducted at source from the salary income. Always the income tax returns resulted in refund but not the demand. By filing the return of income belatedly there was no loss to Revenue but there was a loss to the assessee and the assessee was losing the interest to be paid u/s. 244A of the Act. Further, in the earlier AYs, the Ld. CIT(A) by an order dated 19.04.2018 cancelled the penalty following the decision of Hon'ble High Court of Bombay in the case of *Trustees of Tulsidas Gopalji Charitable and Chaleswar Temple Trust vs. CIT* (supra), wherein the Hon'ble High Court of Bombay held that the combined reading of s. 139(1)

& 139(4) of the Act, the conclusion to be drawn is return made within the time specified in sub s. (4) of the Act has to be considered to have been made within the time prescribed sub s. (1) of 139 of the act. The Ld. CIT(A) relied on the decision of *Prakash Nath Khanna vs. CIT (supra)*, which is related to the case of the prosecution and not the penalty u/s 271E of the Act. The department has not made out the case that the assessee required to pay tax which remained unpaid. The income tax return was refund return and the order of Hon'ble ITAT, Kolkata in the case of *Mrs. Manju Kataruka vs. ITO* in ITA No.1955/Kol/2003 dated 7.04.2004, held that when there was a refund due, non filing of return of income within specified time u/s. 139(1) of the Act has to be considered as a bonafide belief and the said bonafide belief is to be treated as reasonable cause for non furnishing the return before the end of the assessment year. Considering the all the facts of the case that the assessee has filed the return of income within time allowed u/s. 139(4) of the Act, the return being refund return, the decision of Hon'ble High Court of Bombay in the case of *Trustees of Tulsidas Gopalji Charitable and Chaleswar Temple Trust vs. CIT (supra)* and the decision of ITAT, Kolkata (supra), we hold that there is no case for levy of penalty u/s. 271F of the Act. Accordingly, we set aside the order of the Ld. CIT(A) and delete the penalty levied u/s. 271F of the Act.

12. In the result, the appeal filed by the assessee in ITA No.357/Bang/2019 for Assessment Year 2013-14 is allowed.

13. In the result, all the four appeals filed by the assessee for the AYs. 2012-13 to 2015-16 are allowed.

*Order pronounced in the open court on 20<sup>th</sup> December, 2019.*

Sd/-

**(N.V. VASUDEVAN)  
VICE PRESIDENT**

Sd/-

**(D.S. SUNDER SINGH)  
ACCOUNTANT MEMBER**

Bengaluru, Dated: 20.12.2019

EDN

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore