

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE
(Through – VIRTUAL COURT)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील स० / ITA Nos.1609 to 1614/PUN/2017
निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12

Smt. Rupali Sanjay Bedmutha,
Prop. : M/s. P.B. Enterprises,
Manke Compound, S.P. Road,
Manmad – 423 104.

..... अपीलार्थी /
Appellant

PAN : AGVPB6729Q.

बनाम v/s

The Income Tax Officer,
Ward – 3, Malegaon.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Sanjeev Mutha.

Revenue by : Shri Anand Bhaskar.

सुनवाई की तारीख / Date of Hearing : 15.09.2020
घोषणा की तारीख / Date of Pronouncement : 16.09.2020

आदेश / ORDER

PER BENCH :

These appeals preferred by the assessee emanates from the respective orders of the ld. CIT(Appeals) – 1, Nashik dated 05.04.2017 under Sections 271(1)(b) and 271F of the Act, for the relevant assessment years 2009-10 to 2011-12 as per the grounds of appeal on record.

2. Except in ITA No.1612/PUN/2017 in all the remaining five appeals, the solitary grievance of the assessee is the confirmation of the penalty u/s 271(1)(b) of the Act for Rs.10,000/-. That for the other appeal i.e., I.T.A.No.1612/PUN/2017, the assessee is aggrieved with the confirmation

of the penalty levied u/s 271F of the Act. At the time of hearing, both the parties herein agreed that the facts and circumstances are common in all these appeals and the issues are also similar. Therefore, all these appeals were heard together and are disposed of vide this consolidated order.

3. Briefly stated relevant facts regarding the imposition of penalty u/s 271(1)(b) of the Act is that the assessee is an individual engaged in the business of trading in building material, steel binding work etc. During the course of assessment proceedings, the learned Assessing Officer noticed that assessee did not comply with the notice issued u/s 142(1) of the Act requiring the assessee to furnish certain information. The learned Assessing Officer initiated penalty proceedings u/s 271(1)(b) of the Act and show cause notice was issued along with notice u/s 142(1) of the Act. That there was no response to the show cause notice issued and the learned Assessing Officer imposed penalty of Rs.10,000/- u/s 271(1)(b) of the Act in the hands of the assessee. The Id. CIT(Appeals) confirmed the penalty as imposed / levied by the learned Assessing Officer. It is the case of the assessee that the said notice could not be complied since the assessee was suffering from acute depression and was in psychosomatic condition. The assessee was under the continuous medical treatment and the assessee also produced medical certificates issued by Dr. Manoj Dashpute in support of her problem before the learned Assessing Officer. These were not found sufficient reason by the revenue authorities for non-compliance to the notice issued by the learned Assessing Officer and hence, the penalty was confirmed by the Id. CIT(Appeals). At the time of hearing, the learned Authorised Representative submitted that on the identical facts and circumstances in assessee's own case for A.Y. 2009-10 in ITA

No.1608/PUN/2017, on this very issue, the Pune Tribunal has given relief to the assessee. The learned Authorised Representative prayed that since the facts and circumstances are identical for all these appeals relating to 271(1)(b) of the Act, the findings for A.Y. 2009-10 in assessee's own case (supra) may be followed and relief provided therein may also be given in these appeals.

4. Per contra, the learned Departmental Representative placed strong reliance on the order of the sub-ordinate authorities and contended that the assessee has not co-operated with the departmental proceedings. Therefore, the penalty levied is justified.

5. We have heard the rival contentions, perused the case records and considered the judicial pronouncements placed before us. That on the similar facts and circumstances, in assessee's own case for A.Y. 2009-10 (supra), we have held as follows :

"7. We have perused the case records and analyzed the facts and circumstances in this case. This is a case where penalty u/s. 271(1)(b) has been imposed on the assessee for Rs.10,000/- for non-compliance of notice u/s. 142(1) of the Act. It is evident from the facts on record that the assessment was completed. Thereafter, informations were received by Assessing Officer from Sales Tax Department, Maharashtra and after which he had issued notice u/s. 148 of the Act to the assessee for which there was no compliance. Thereafter, the Assessing Officer had issued another notice u/s. 142(1) of the Act. Again there was non-compliance and the Assessing Officer proceeded to impose penalty u/s. 271(1)(b) of the Act stating that there was no reasonable cause demonstrated by the assessee for nonattendance on the given date as per the said notice. The penalty was confirmed by the ld. CIT(A) upholding the findings of Assessing Officer. When we peruse the penalty order at para 5 it is crystal clear that the assessee has submitted before the Assessing Officer a medical certificate from Dr. Majoj Dashpute stating that the assessee was under his treatment for depression with anxiety disorder for the last two years. The Assessing Officer still levied the penalty saying that this is not sufficient reason for non-compliance of notice and therefore the Assessing Officer in our considered view has absolutely overlooked the facts on record which are genuine. Neither the Assessing Officer nor the CIT(A) has brought on record anything against the evidences furnished by the assessee regarding his ill-health. We are of the considered view that this is not a fit case for imposition of penalty u/s.

271(1)(b) of the Act and we therefore, delete the penalty and allow the appeal of assessee without going into the merits of the case.”

6. The learned Departmental Representative also could not bring out any evidence nor could establish that the facts in assessee's own case in A.Y. 2009-10 was something different as compared to these appeals of the assessee before us. Nor he could place any decision of the Higher Forum on this issue in support of the Revenue. Since the facts are identical, we do not find any justification to deviate from our own view which we have already taken for A.Y. 2009-10 and therefore, following our own decision for all these appeals regarding penalty u/s 271(1)(b) of the Act, we are of the considered view that these are not fit cases for imposition of penalty under the said provision and therefore we delete the penalty and allow the appeals of the assessee i.e., in ITA No.1609 to 1611/PUN/2017, ITA No.1613/PUN/2017 and ITA No.1614/PUN/2017 without going into the merits of the case.

7. In the result, the appeals of assessee in ITA No.1609 to 1611/PUN/2017, ITA No.1613/PUN/2017 and ITA No.1614/PUN/2017 are allowed.

8. Regarding ITA No.1612/PUN/2017, the assessee had received notice u/s 271F of the Act dt.12.03.2015 for A.Y. 2011-12 for non-filing of return of income u/s 139(1) of the Act. It is the case of the assessee that she was suffering from depression and was under the treatment of Dr. Manoj Dashpute since 2010 and in support of her medical condition, medical certificates and prescriptions were provided to the Department and it was submitted that due to ill-health, the requirement of the provisions for filing return could not be complied with. We are of the considered view that in

the entire scheme of the Income-Tax Act concerning penal provisions specifically Sec.139(1) read with Sec.271F of the Act, the facts and circumstances and the reasonableness has always to be considered. Here is the case, where the genuineness of the problem faced by the assessee is not disputed by the Department since the facts on record are clear that the assessee was suffering from depression, medical illness and was under the treatment of a Doctor. The Department in their respective orders has not made out a case wherein the provisions of Sec.271F of the Act are so stringent that word by word, if Section 139(1) of the Act is not complied with, the penalty will be levied irrespective of any practical or reasonable situations brought on record. The superior courts have held the Income Tax Act to be a welfare legislation, meaning thereby that the tax-payer practical circumstances have to be looked into by the quasi judicial authority while undertaking assessment proceedings and penal proceedings. In this case, in the entire order of the learned Assessing Officer as well as the ld. CIT(Appeals), the penalty has been levied u/s 271F of the Act for non-filing of return but the Revenue has failed to conduct any specific enquiry as regards the facts stated by the assessee whether they are correct or not. There is no finding to that effect. In our considered view, the facts are on record and they have not been disputed by the Department. Considering the totality of the facts and circumstances, we do not find this as a fit case for imposing penalty u/s 271F of the Act. We therefore delete the penalty imposed u/s 271F of the Act from the hands of the assessee. In the result, the appeal of the assessee in ITA No.1612/PUN/2017 is allowed.

9. In the combined result, all the appeals of the assessee i.e., ITA Nos.1609/PUN/2017 to ITA No.1614/PUN/2017 are allowed.

Order pronounced on 16th day of September, 2020.

Sd/-
(R. S. SYAL)
VICE PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 16th September, 2020.
Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A) – 1, Nashik.
4. Pr.CIT-1, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” / DR,
ITAT, “A” Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.