

No penalty under sec. 271F if there is reasonable cause for belated filing of return in search cases

Summary – The High Court of Madras in a recent case of S. Jayanthi Shri, (the Assessee) held that Where a cause is found to be reasonable for non-filing of return immediately in response to notice issued under section 153A, such cause can also be construed as a reasonable cause, while considering as to whether penalty has to be levied under section 271F

Facts

- A search was carried out in case of assessee. Thereupon, a notice under section 153A was issued asking assessee to file her return of income.
- The first respondent finding that assessee failed to file return at appropriate time, passed a penalty order under section 271F.
- The assessee filed instant petition challenging validity of penalty proceedings.

Held

- Section 271F deals with penalty for failure to furnish the return of income, it states that if a person, who is required to furnish the return of his income, as required under section 139(1) or by the provisos to that 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 five thousand rupees; section 273B deals with penalty not to be imposed in certain cases, it states that notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, etc., no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision, if he proves that there was a reasonable cause for that failure. Section 271F was inserted in section 273B by the Finance Act, 1997, with effect from, 1-4-1997, which is much prior to the assessment years in question.
- In the background of the above, if one examines the case on hand, one fact which strikes the eye is that the assessee had been approaching the department for furnishing of copies of the documents, which were seized during the search. The representation in this regard was submitted by the assessee's husband. Subsequently, a request was made by him under the RTI Act and he has also preferred an appeal to the Central Information Commission.
- The first respondent informed the assessee's husband that they have not filed return of income in response to the notice under section 153A issued for the relevant assessment years, consequent to search under section 132. Referring to the assessee's letter stating that due to ill-health and consequent surgery, she could not file returns and requested for taking Photostat copies of the

documents seized/impounded in their case. The first respondent admitted that this was facilitated and the assessee has taken copies of all required books and documents seized/impounded in her case.

- Thus, the fact that the assessee has not filed the return of income was well within the knowledge of the first respondent, even at the time, when notice under section 153A was issued. It is not as if, immediately thereafter, proceedings under section 271F were initiated, but in the interregnum, the assessee's representation was taken note of. The first respondent records in her order that in the representation, it was specifically stated that they could not file their return due to ill-health and consequent surgery.
- That apart, the first respondent records that there is a request for furnishing the photocopies of the documents, which were seized/impounded during the search. This request was complied with. Thus, the fact that the assessee could not file return of income was found to be acceptable by the first respondent, and there is no finding that the representation is false, while entertaining the request for furnishing the Photostat copies of the seized/impounded documents. Therefore, if for such purpose, the cause pleaded by the assessee was found to be reasonable and consequently their plea that they were unable to file return of income due to certain factors, this yardstick can also be made applicable and extended while considering a proposal to levy penalty under section 271F.
- Therefore, if a cause is found to be reasonable for non-filing of return immediately in response to notice under section 153A, such cause can also be construed as a reasonable cause, while considering as to whether penalty has to be levied under section 271F. Therefore, the cause expressed by the assessee is found to be a reasonable cause and the explanation merits acceptance.
- For all the above reasons, the writ petition is allowed and the impugned orders levying penalty under section 271F is set aside.