

Penalty for late filing of ITR couldn't be deleted just because ITR of previous year was filed belatedly

Summary – The Chennai ITAT in a recent case of Himalayan Educational Trust., (the Assessee) held that where penalty proceeding under section 272A(2)(e) is a separate proceeding from assessment of income and, thus, once assessee, liable to file return under section 139(4A), failed to do so within prescribed time period, provisions of section 272A(2)(e) would attract automatically irrespective of income determined in course of assessment

Facts

- For relevant year, the assessee filed its return with a delay of 509 days. The reason assigned for delay was that return for earlier assessment year *i.e.* 2009-10 was also filed belatedly and, thus, return for assessment year in question could also not be filed within prescribed time period under section 139(4A).
- The AO rejected assessee's explanation and passed a penalty order under section 272A(2)(e).
- The Commissioner (Appeals) confirmed said penalty order.
- On second appeal:

Held

- It is an admitted fact that the assessee has belatedly filed the return of income, which attracts application of provisions of section 272A. Accordingly, against the delay of 509 days in filing the return of income for the assessment year under consideration, the Assessing Officer levied penalty under section 272A(2)(e).
- Ignorance of law is not an excuse. A mistake committed by the assessee cannot be a reasonable cause for committing another mistake. The penalty proceeding under section 272A(2)(e) is a separate proceeding from assessment of income and the determination of income has no bearing with the quantum of penalty as long as the assessee is required to file its return of income under section 139(4A). Once the assessee is liable to file the return of income under the provisions of the Act and it fails to do so, then the provisions of section 272A(2)(e) would automatically attract. The penalty levied under section 272A(2)(e) was rightly confirmed by the Commissioner (Appeals). Thus, the ground raised by the assessee stands dismissed.
- The assessee has further contended that the penalty proceedings initiated is beyond the time limit specified under section 275 and is not valid in law. Clause (a) to section 275(1) speaks about appealable assessment, which is not applicable to the case in hand. Clause (b) to section 275(1) speaks about appealable order under section 263, which is also not applicable to the case in hand. Clause (c) to section 275(1) speaks about — in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been

initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later — also not applicable because in this case, penalty proceedings initiated by service of notice under section 272A(2)(e) read with section 274 on 8-12-2015 and the penalty was levied *vide* order dated 2-3-2016, which is well within six months period provided and, thus, clause (c) to section 275(1) also is not applicable. Similarly, sub-section (1)(a) and (2) to section 275 also not applicable. Thus, the issue raised in the written submission by the assessee that the penalty proceeding is barred by limitation has no merits. In the appellate order, the Commissioner (Appeals) has considered all the grounds raised by the assessee and dismissed the appeal filed by the assessee since there was no merit in the grounds raised by the assessee. Thus, there is no reason to interfere with the order passed by the Commissioner (Appeals).

- In the result, the appeal filed by the assessee is dismissed.