

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 123/Del/2023 : Asstt. Year: 2012-13

Sheel Agarwal, D-7/7, First Floor, DLF Exclusive Floors, DLF Phase-V, Gurgaon, Haryana-122009	Vs	Income Tax Office, Ward-2(3), Faridabad
(APPELLANT)		(RESPONDENT)
PAN No. AHBPA2571N		

Assessee by : Sh. Shikhar Garg, CA

Revenue by : Sh. Ravi Kant Choudhary, Sr. DR

Date of Hearing: 28.06.2023

Date of Pronouncement: 10.07.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 30.11.2022.

2. Following grounds have been raised by the assessee:

"1. On the facts & in the circumstances of the case and in law, CIT(A) order is bad in law as the order passed is a totally cryptic order.

2. On the in the use of the case and in law, CIT(A) order is bad in low penalty u/s 271F of the Act is directory and not mandatory and in view of existence of reasonable cause for not filing the return of income the penalty order passed u/s 271F of the Act is arbitrary, illegal and without Jurisdiction, Appellate being 83 years old and a widow.

3. *On the & in the circumstances of the case and in law, CIT(A) failed to provide direction in consonance with the speaking reasons provided in the impugned order.*

4. *On the facts & in the circumstances of the case and in law, the CIT(A) erred coding in levy of penalty u/s 271F as the Appellant was not required to file her return u/s 139(1) of the Act.*

5. *On the facts & in the circumstances of the case and in law, the CIT(A) erred in confirming in levy of penalty u/s 271F as the notice u/s 148 was not served to the appellant as per the stipulated conditions of rule 127 of the income tax Rules 1962.*

6. *On the facts & in the circumstances of the case and in law, the CIT(A) erred that the Ld. AO fails to appreciate the fact that Appellant has already filed the application u/s 249(4)(b) in form 35 of the quantum appeal that she is not liable to file ROI for the said A.Y.*

7. *The Lower authorities has erred both in law and on facts by framing the impugned assessment order under section 144 r.w.s. 147 of the Act, without complying the mandatory conditions of section 147 to 151 of the Income Tax Act 1961.*

8. *On the facts & in the circumstances of the case and in law, Id. CIT(A) has erred confirming the penalty order passed by Ld. AO by not appreciating the fact that the Appellant has exhibited reasonable cause to explain the non-applicability for filing of the returns."*

3. Heard the arguments of both the parties and perused the material available on record.

4. We have gone through the Assessment Order passed u/s 144 and order u/s 271F of the Income Tax Act, 1961.

5. The order u/s 271F has been passed on 28.02.2022 levying penalty of Rs.5,000/-. Aggrieved, the assessee filed appeal before the Id. CIT(A) who passed the order on 30.11.2022. The order of the Id. CIT(A) is as under:

"Penalty under section 271F is not mandatory. AO may direct to the defaulter to pay a penalty of Rs.5000/-. In this case the appellant is a senior citizen and widow aged 82. The case was done exparte under section 144 r.w.s. 147. The appellant has never filed return income as she is a housewife and had no taxable income. Having looked at her condition, the AO may have waived off the penalty under section 271F."

6. We find that the order of the Id. CIT(A) is approbate and reprobate without any rhyme or reason.

7. The provisions of Section 271F reads as under:

"Penalty for failure to furnish return of income

271F: If a person who is required to furnish a return of his income, as required under sub-section (1) of section 139 or by the 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 five thousand rupees."

8. The assessee is 82 years old widow and never filed return of income as she is housewife and never had taxable income. We hold that provisions u/s 271F are not attracted to the case of the assessee and hence the penalty levied is hereby obliterated.

9. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 10/07/2023.

Sd/-

(C. M. Garg)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 10/07/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR