

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.10.2016

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
27.09.2016	04.10.2016

Coram

The Hon'ble Mr.Justice **T.S. SIVAGNANAM**

W.P.No.23794 of 2016 &
W.M.P.No.20394 of 2016

S.Jayanthi Shri

... Petitioner

Vs

1.The Assistant Commissioner of Income Tax,
 Central Circle-I, Coimbatore,
 63, Race Course Road,
 Coimbatore – 18.

2.The Deputy Director of Income Tax (Inv) Unit-I,
 67-A, Race Course Road,
 Coimbatore -18.

3.The Commissioner of Income Tax,
 63, Race Course Road,
 Coimbatore -18.

... Respondents

Prayer :-This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records pertaining to the Penalty in proceedings, dated 27.06.2016 in PAN No.AIQPJ9025N with the notice of demand dated 27.06.2016, in PAN

No:BBHPM6439 passed by the first respondent against the petitioner for Ays 2008-09 to 2014-15 on the file of the Assistant Commissioner of Income Tax, Central Circle-I, Coimbatore and quash the same.

For petitioner .. Mr.A.E.Chelliah Senior counsel for
Mr.K.Ramanujam

For Respondents .. Mr.T.Pramod Kumar Chopda
Standing counsel for the respondents

ORDER

Heard Mr. A.E.Chelliah learned Senior counsel for Mr.K.Ramanujam, learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda learned Senior Standing counsel appearing for the Revenue.

2. The petitioner Smt.S.Jayanthi Shri., wife of Mr.D.Ramagopal, has filed this Writ Petition challenging an order passed by the first respondent, Assessing Officer, under Section 271F of the Income Tax Act, 1961, (Act), levying penalty of Rs.5,000/- for non-filing of the returns at the appropriate time for the assessment years 2008-09 to 2014-15.

3. The following facts would be relevant for disposal of the Writ Petition. The petitioner and her husband Mr.D.Ramagopal had approached this Court on an earlier occasion by filing W.P.Nos.11225 & 11226 of 2016, wherein they sought for a direction upon the Commissioner of Income Tax to withdraw the income tax assessment proceedings of the petitioners from the first respondent (Ms.Kalpalatha Rajan, I.R.S.,) and entrust the job to some other officer of the same cadre. The Writ Petitions were elaborately heard and were dismissed by a common order dated 23.06.2016. It appears that the said order has become final and the petitioners have preferred an appeal as against the assessment order before the Appellate Authority.

4. Earlier, the first respondent initiated penalty proceedings under Section 271F of the Act on 30.12.2015, by issuing a notice under Section 271F of the Act. In response there to, the petitioner/assessee filed her return of income for the relevant assessment years admitting income under different levels for the respective assessment years. When the earlier Writ Petitions were pending before this Court, the petitioner made a representation to the respondent stating that she has filed the return of income and

assessment orders have been passed and, hence the penalty proceedings initiated may be dropped. Though the representation dated 23.05.2016 was given to the Assessing Officer, it appears that no action was immediately taken and the impugned orders were passed after the earlier Writ Petitions were dismissed by order dated 23.06.2016.

5. Mr.A.E.Chelliah learned Senior counsel for the petitioner submitted that the impugned proceedings is unfair and tainted with *malafide* and the first respondent ought to have considered that the petitioner and her husband filed the Writ Petitions, questioning the manner in which, the Officer was functioning and after the dismissal to pass such an order, is unjust. It is further submitted that search was conducted on 27.11.2013, and notice under Section 153C was issued on 03.11.2015, served on the petitioner on 18.12.2015, insisting upon the petitioner to file return of income on 22.12.2015, which could not be done on account of the fact that all records were taken away during the search and therefore, there is no wilfulness on the part of the petitioner in not filing the returns and without considering the fact that the petitioner is a lady, the first respondent mechanically passed the order. It is further submitted that in terms of Section 132(8) of the

Act, the documents cannot be retained for more than a month and the petitioner had been put to lot of struggle, before she/her husband could obtain copies of the documents. A detailed request was made to the said effect to second respondent on 26.02.2014. There was a query made under the Right to Information Act (RTI Act) on 01.04.2014 and an appeal before the Appellate Authority under the RTI Act on 01.06.2015. Ultimately by intimation dated 30.09.2015, the first respondent stated that furnishing of photostat copies to documents seized/impounded from the petitioner/husband was facilitated and, all the documents and copies and books were taken on 02.06.2015. Further, it is submitted that the Assessing Officer has not passed any penalty order before completing the assessment. The learned counsel referred to the representation given to the second respondent dated 26.02.2014, the letter sent by the first respondent to her husband dated 30.09.2015 and submitted that the impugned order levying penalty is wholly unjust and not tenable.

6. Commenting upon the counter affidavit filed by the first respondent, it is submitted that the counter is not by the first respondent, but by some other officer and the first respondent did not take any stand either accepting or denying the specific averments

made by the petitioner against her. In that regard, the learned Senior counsel referred to the averments set out in the rejoinder filed by the petitioner to the counter in which elaborate averments have been made stating as to how the decisions relied on by the first respondent in the counter affidavit are not applicable to the facts of the present case.

7. Mr.T.Pramod Kumar Chopda, learned counsel appearing for the Revenue submitted that the petitioner did not file the returns and therefore, penalty proceedings under Section 271F was initiated and it is only thereafter the petitioner filed her return of income admitting taxable income for the above referred assessment years. It is further submitted that Section 275 of the Act imposes the time period for imposing penalties and the petitioner's case falls under Section 275(1)(c), as it has to be completed by the end of the financial year in which the proceedings, in the course of which, action for imposing of penalty was initiated or within six months from the end of the month, from which the action of penalty is initiated. It is therefore, submitted that penalty proceedings were initiated by issuing notice dated 30.12.2015, and the time period for completing the same expires on 30.06.2016 and accordingly, the impugned order was passed on

27.06.2016 and this has got nothing to do with the dismissal of the Writ Petition. Further, it is submitted that the Writ Petition is not maintainable, as there is an alternate remedy available to the petitioner and in support of such contention reliance was placed on the decision in the case of ***Nivaram Pharma Private Ltd., vs. CEGAT & Anr.***, reported in ***2005-2-MLJ-246*** and ***Collector of Central Excise vs. Dunlop India Ltd.***, reported in ***AIR 1985 SCC 330***. It is submitted that subsequent filing of return and completion of assessment does not absolve the petitioner from penalty proceedings initiated for non-filing of return and both are separate and independent proceedings. Further, it is submitted that the allegations of *malafide* are all incorrect and in the counter affidavit, the same has been sternly denied in paragraph 4.1. With regard to the allegation that the first respondent has not filed counter affidavit, it is fairly admitted that in the first page of the counter affidavit, it is stated that it is the counter of the first respondent, but the jurisdictional Assessing Officer of the petitioner in the place of the first respondent has filed the counter affidavit and description in the first paragraph is a *bonafide* mistake.

8. In reply, the learned Senior counsel referred to the rejoinder affidavit more particularly paragraphs 4 & 5, with regard to the averments of *malafides*. With regard to the maintainability of the Writ Petition, it is submitted that the petitioner is not challenging a levy of tax, it is only a penalty and the petitioner has been penalised, because she came before this Court earlier and the decision relied on by the Revenue have no application to the case of the petitioner and there is absolutely no nexus or link to the findings recorded in those decisions. Further, it is submitted that mere existence of alternate remedy is not an absolute bar and even in the decisions relied on by the Revenue, the Hon'ble Supreme Court has held, when there are good grounds, this Court can interfere under Article 226 of the Constitution. The belated filing of the return was on account of genuine reasons, as the copies of the records seized in 2013, were given to the petitioner/husband only on 02.06.2015, as accepted by the first respondent in the intimation dated 30.09.2016.

9. Heard the learned counsels appearing for the parties and perused the materials placed on record.

10. Section 271F of the Act 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) of the Act 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 Finance Act, 1997, w.e.f., 01.04.1997, which is much prior to the assessment years in question.

11. Therefore, it has to be seen as to what would be reasonable cause for being entitled to the protection under Section 273B. The meaning of the expression "reasonable cause" could be culled out from

certain decisions, which arises under Section 271 of the Act. In ***CIT vs. Padmanabhan. S.***, reported in ***2006-284-ITR-535 (Kar)***, where the return was filed pursuant to seizure of the fixed deposits during search, the explanation of the assessee was that he was under *bona fide* belief that interest was not taxable. The findings of all the authorities was that the explanation was reasonable and no finding that the explanation was false and it was held that there was no question of levy of penalty.

12. In ***Jyoti Laxman Konkar vs. CIT*** reported in ***2007-292-ITR-163 (Bom)***, there were discrepancies in stock noticed during survey and the assessee meanwhile filed a revised return admitting the value of such discrepancy, it was held that no concealment of income in the original return was established, so that no penalty was exigible.

13. In ***CIT vs. Kanubhai Muljibhai Patel*** reported in ***2008-306-ITR-129 (Guj)***, it was held that where the assessee had not declared capital gains in the light of the then prevailing law, non-filing of return in time cannot justify penalty. Thus, the facts of each case have to be gone into to examine as to whether there was reasonable cause on the part of the assessee in not filing the return on time.

14. In the background of the above legal position, if we examine the case on hand, one fact which strikes the eye is that the petitioner/husband had been approaching the department for furnishing of copies of the documents, which were seized during the search, conducted on 27.11.2013. The representation in this regard was submitted by the petitioner's husband on 26.02.2014. Subsequently, a request was made by him under the RTI Act and he has also preferred an appeal to the Central Information Commission on 30.05.2014.

15. The first respondent by proceedings dated 30.09.2015, informed the petitioner'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 of the Act. Referring to the petitioner's letter dated 19.05.2015, stating that due to ill-health and consequent surgery, he 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 petitioner/husband has taken copies of all required books and documents seized/impounded in the petitioner's case on 02.06.2015.

16. Thus, the fact that the petitioner 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 of the Act was issued. It is not as if, immediately thereafter, proceedings under Section 271F were initiated, but in the interregnum, the petitioner's representation dated 19.05.2015, 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.

17. 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 made by the petitioner's/husband's letter dated 19.05.2015, was complied with on 02.06.2015. Thus, the fact that the petitioner could not file return of income for reasons given in the representation dated 19.05.2015, 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 petitioner 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 was found to be reasonable and for non-filing of return immediately in response to notice under Section 153A, this Court finds that 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 petitioner is found to be a reasonable cause and the explanation merits acceptance.

18. With regard to the other allegations made by the petitioner as against the officer in her personal capacity, does not merit acceptance, as it appears to be vague allegation, in any event those allegations are not germane for deciding the legal issue in the instant case. Therefore, all such allegations stand eschewed.

19. The other issue pointed out by the learned Senior counsel for the petitioner is that the counter affidavit has not been sworn to by the first respondent. In the first paragraph of the counter affidavit, the officer has clearly stated that she is the jurisdictional Assessing Officer of the petitioner and it is fairly admitted in the title to the counter, it

has been wrongly mentioned as counter of the first respondent, when it should have been mentioned as counter affidavit on behalf of the first respondent and this appears to be a bonafide mistake, the explanation offered by the learned counsel for the Revenue is acceptable.

20. For all the above reasons, the Writ Petition is allowed and the impugned orders levying penalty under Section 271F, for all the assessment years, are set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

04.10.2016

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Index :Yes
Internet :Yes

To

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T.S.SIVAGNANAM, J.
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Pre-Delivery O r d e r in

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