

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

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

आयकर अपील सं. / ITA No.274/PUN/2023

निर्धारण वर्ष / Assessment Year : 2012-13

Association of Oral Maxillofacial Surgeons of India, PN 38, S.No.16, Butte Patil Classic, Prabhat Road, Erandwane, Pune 411 004 Maharashtra PAN : AABTA3313P	Vs.	ITO (Exemptions), Ward-1, Pune
Appellant		Respondent

Assessee by
Revenue by

Shri Kishor B. Phadke
Shri Ramnath P. Murkunde

Date of hearing 09-08-2023
Date of pronouncement 14-08-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dated 13-01-2023 passed by the CIT(A) in National Faceless Appeal Centre (NFAC), Delhi confirming the penalty of Rs.2,46,999/- imposed by the Assessing Officer (AO) u/s.271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') Act in relation to the assessment year 2012-13.

2. Tersely put, the facts of the case are that the assessee is an association for Oral Maxillofacial surgeons of India, which was set up several years ago having registered office in Pune. The return

for the year under consideration was not furnished. The AO, on getting information about the assessee having made FDR of Rs.5.00 lakh with State Bank of India, issued notice u/s.148 of the Act. In response, the assessee filed return declaring total income at Rs.7,99,352/-, claiming that it was engaged in promotion of research in Oral and maxillofacial surgery. In the absence of any registration u/s 12A of the Act, no benefit of exemption u/s.11 was claimed. The assessment was completed at the returned income. Thereafter, penalty proceedings were initiated u/s.271(1)(c) of the Act. The AO observed that the assessee was not granted registration u/s.12A of the Act on the date of his passing the order. He, therefore, imposed penalty amounting to Rs.2,46,999/-. The Id. CIT(A) invoked Explanation 3 to section 271(1)(c) of the Act and upheld the penalty. Aggrieved thereby, the assessee has approached the Tribunal.

3. We have heard the rival submissions and gone through the relevant material on record. The Id. AR opened his arguments by urging that the matter be restored to the lower authorities for the reason that the assessee was, in fact, granted registration by means of an order dt. 18-05-2023 passed u/s.12AA, which would apply to the year under consideration as well. If the effect to the registration was granted, the earlier return filed by the assessee without claiming

any exemption u/s.11 and the determination of total income at the declared level, would require downward revision of income because only 15% of the receipts could be taxed by treating remaining 85% as application of income.

4. The order of the Id. CIT(E) dated 18-05-2023 passed u/s.12AA granting registration to the assessee is effective from the A.Y. 2019-20. As such, the assessment year under consideration, namely, 2012-13, is not covered by the express mandate of the registration. Howbeit, it is material to note the command of the second proviso to section 12A(2), that was operative for the year under consideration, which provides that “where registration has been granted to the trust or institution u/s.12AA or section 12AB, then the provisions of section 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which *assessment proceedings are pending* before the Assessing Officer as on the date of such registration.”. It is apparent from the prescription of the proviso that notwithstanding the benefit of registration not having been expressly granted by the Id. CIT(E) in his order u/s.12AA, such benefit gets automatically extended to all the assessment years for which the assessment proceedings are pending on the date of such registration. Adverting to the facts of

the extant case, it is noticed that the assessee had not furnished any return prior to notice u/s.148. The solitary return was filed after the notice on 24-04-2019. The consequential assessment was completed u/s 147 of the Act on 17-12-2019 determining total income equal to the amount of income returned, which attained finality without any challenge thereto. The benefit of proviso can be granted only when the assessment proceedings are pending on the date of grant of registration by the Id. CIT(E). We are confronted with a situation in which the registration was granted by the Id. CIT(E) on 18-05-2023 and the assessment proceedings got concluded, much before that, on 17-12-2019. Notwithstanding that, no benefit of exemption u/s.11 was ever claimed in the return and, as such, there was no question of granting or denying such benefit also. In this view of the matter, the assessee cannot claim the benefit of exemption u/s.11 for the year under consideration in any manner.

5. Now coming to the question of penalty u/s.271(1)(c), it is seen that the assessee furnished the return pursuant to notice u/s.148 and the income declared was assessed as the total income. The Id. CIT(A) has invoked Explanation 3 for confirming the penalty imposed by the AO u/s.271(1)(c) of the Act, which reads as under :

“*Explanation 3.*—Where any person fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148.”

6. A bare perusal of the Explanation brings out that where any person *without reasonable cause* fails to furnish his return within the prescribed time and the AO etc. is satisfied that the assessee has taxable income in respect of such assessment year, the assessee will be deemed to have concealed the particulars of his income in terms of section 271(1)(c) notwithstanding the fact that a return of income has been subsequently furnished pursuant to notice u/s.148. The effect of this provision, to the extent we are concerned, is that if return is not furnished in time; the AO issues notice u/s.148; the assessee files its return declaring certain income; then, the income declared in the return, even if assessed *de hors* any variation, would warrant the imposition of penalty u/s.271(1)(c) of the Act. The prescription of Explanation 3 is to be read in contrast to the mandate

of Explanation 1 to section 271, which specifically states that where a person fails to offer an explanation or the explanation given is found by the AO etc. to be false etc., then the *amount added or disallowed* in computing the total income of such person shall be deemed to represent the income in respect of which the particulars have been concealed. On a conjoint reading of the Explanations 1 and 3, it becomes overt that the making of an addition or disallowance is *sine qua non* for imposition of penalty u/s.271(1)(c) except, where the assessee, not having filed return earlier, files it only pursuant to notice u/s.148. In the cases falling in the exception, even the income declared in the return, sans any addition or disallowance, also gives a foundation for imposition of penalty. Reverting to the facts of the present case, it is seen that, in principle, the Explanation 3 is applicable which has expressly been invoked by the Id.CIT(A) as well, as per the mandate of which, the amount of income assessed is deemed as *concealment* for the purposes of section 271(1)(c) of the Act. As the assessee admittedly did not file any return earlier for the year under consideration, it is covered within the scope of the Explanation 3.

7. It is pertinent to mention that mere assessment of income on the return filed pursuant to notice u/s.148 does not *per se* call for imposition of penalty. The legislature has used the words “*without*

reasonable cause” in the opening part of Explanation 3. The effect of these words is that the mandate of Explanation 3 would be magnetized and the penalty would be levied even on the declared income pursuant to notice u/s.148, only when there was no *reasonable cause* for not filing the return within the time prescribed u/s.153 of the Act. *Au contraire*, if there exists a *reasonable cause* for not filing the return u/s.139, the directive of the Explanation 3 will not be triggered and the case would come out of this Explanation to be considered in terms of the main part of the provision read with other Explanations.

8. We again come back to the factual matrix of the case to examine if there was any *reasonable cause* in not filing the return of income within the stipulated time. The main object of the assessee, consisting of surgeons across the country, is to attain higher Oral Maxillofacial surgical standards and to promote research in Oral and Maxillofacial surgery. The assessee was set up several years ago having and continuing to have its registered office in Pune. It, being an all India body of surgeons, keeps moving its area of operations and the relevant records on a certain frequency from one city to another. A chart has been placed on record at page 48 of the paper book, which shows year-wise place of audit of accounts. For the A.Y. 2012-13 to 2013-14, the operations of the

society were in Mangalore and the audit was conducted by Mr. K. Santha Kumar, Chartered Accountant, Thrissur. Thus, for the year under consideration and the next year, the operations and the records were kept in Mangalore. From the A.Y. 2014-15, there was a shift of operations and the records from Thrissur to Faridabad, which continued up to the A.Y. 2018-19. Name of the auditor who conducted the audit and the date of audit reports have also been given in this chart. Again, its operations came back to Pune with effect from the A.Y. 2019-20. It was during such earlier years, when the operations and records were outside Pune, that the concerned persons at the relevant stations got the accounts audited, but could not co-ordinate *qua* the filing the returns either because of misunderstanding or ignorance. When the operations came back to Pune in the year 2018, the trustees realised that though the accounts were got audited for the earlier years, but neither the registration was sought nor the returns were filed for such earlier assessment years. Immediately, they swung into action and applied for registration u/s.12AA on 07-10-2018 and also furnished the income-tax return for the A.Y. 2019-20. It has been submitted by Id. AR that no return prior to that was ever furnished for the above reasons and the filing of such returns in the year 2018 became impossible of compliance because of the requirement of filing on-line returns and

the Income tax portal not accepting return for the assessment year under consideration. It was stressed that the returns for all the subsequent years are being regularly filed in Pune. This shows that because of the regular shifting of the operations of the assessee-trust from one station to another and the resultant confusion about the correct person responsible for filing return, i.e. whether from the station where the operations were going on and records were kept or the registered office in Pune, the returns could not be filed for any of the assessment years prior to the A.Y. 2019-20. In our considered opinion, this constitutes a *reasonable cause* for which the return for the year under consideration could not be filed within the time prescribed u/s.153 of the Act. Taking a wholistic view of the factual panorama of the case and the circumstances in which the return for the year could not be filed within the stipulated time, we are satisfied that this being a *reasonable cause*, brings the case out of the purview of Explanation 3. If this Explanation fails to apply and we come back to examine the case within the terms of Explanation 1, the *sequitur* is that no penalty can be imposed in the absence of any addition or disallowance in the determination of total income by the AO. We, therefore, order to delete the penalty.

9. In the result, the appeal is allowed.

Order pronounced in the Open Court on 14th August, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 14th August, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	09-08-2023	Sr.PS
2.	Draft placed before author	10-08-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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