

BABA BASUKINATH SHIV MANDIR NYAS SAMITY
BASUKINATH TEMPLE, BASUKINATH,
DUMKA- 814101 (JHARKHAND)
PAN :- AACTB3742N
A.Y. 2016-17

STATEMENT OF FACTS AND GROUNDS OF APPEAL

STATEMENT OF FACTS

The Learned Income Tax Officer (NFAC) has been pleased by imposing penalty of Rs. 5,000/- u/s 271F for non-filing of return u/s 139(1) on mere conjectures & Surmises. We are seriously aggrieved with the order and prefer the Appeal on following grounds amongst others.

GROUNDS OF APPEAL

1. Sir, due to continuous change in the management of the trust, the return of income for the AY 2016-17 could not be filed.
2. That, as per trust Deed, the trust is a body with perpetual succession and the board is responsible for overall charge of the control & management of the temple including all affairs related to temple's administration and other related matters. (Copy of Trust Deed is attached in **Annexure A** for your kind reference)
3. Sir, it is important to note that the governmental authorities like District Magistrate (DM), Deputy Commissioner (DC), Sub-Divisional Officer (SDO), Superintendent of Police (SP) are the members of the Trust and as you may be aware, the person holding the chair is not permanent and changes frequently. This ongoing leadership turnover resulted in the delay in taking up income tax matter and filing the return.
4. Sir, the failure to file the return was not due to any willful default.
5. Sir, there is reasonable grounds for non -filing the return. The administrative issues surrounding the continuous change in leadership contributed to the inability to file the return within the stipulated time.
6. Sir, there is no malafide intention behind the failure to file the return.

7. That the Trust has always intended to comply with the legal obligations, and this situation is solely due to administrative oversight rather than any dishonest or bad faith actions.
8. Sir The Learned ITO should have considered that penalty depends upon whether the default was willful or not.
9. Sir, the AO has not recorded the satisfaction before initiation of the penalty and mere direction to issue penalty notice would not amount to recording of the satisfaction.

In this regard, we would like to draw your kind attention towards the circular issued by the **CBDT vide No. 551 dated 23rd January, 1990**, in which it was pointed out that no satisfaction was recorded in the assessment order for initiation of the penalty and mere direction to issue penalty notice would not amount to recording of the satisfaction.

10. Sir further, it has been held in **the Hon'ble High Court in the case of CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321 (2000) 246 ITR 568 (Del)** in which it was held that in absence of recording of the satisfaction in the assessment order, mere initiation of penalty will not confer jurisdiction in the AO to levy the penalty.
11. Sir further, we would like to draw your kind attention towards the following case held in **Supreme Court**.

Penalty is not imposable if there is no conscious breach of law:-

An order imposing penalty for failure to carry out a statutory obligation in the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will also not be imposed merely because it is lawful to do so. Whether penalty will also should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act or whether the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the Statute – **Hindustan Steel Ltd. vs. State of Orissa [1972] 83 ITR 26 (SC)**.

Further,

12. Sir, as far as the issue of penalty u/s 271F is concerned, **from a perusal of the section 273B**, notwithstanding anything contained in the provisions of clause(b) of Sub-section (1) of section 271, **no penalty shall be imposed 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 reasonable cause for the said failure.** So, it can be understood that penalty cannot be imposed, if the assessee is able to prove that there was reasonable cause for the said failure of not complying with the notice served on them.

13. The meaning of reasonable cause has been discussed in the case of **Woodward Governor India P. Ltd. Vs. CIT and Ors.** 253 ITR 745 (Delhi). The relevant portion, as contained in Para 5 and 6, is reproduced below:-

"What would constitute reasonable cause cannot be laid down with precision. It would depend upon factual background and the scope is extremely limited and unless the conclusions are perverse based on conjectures or surmises and/ or have been arrived at without consideration of relevant material and/ or have been arrived at without consideration leave no scope for interference. Reasonable cause, as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. The expression "reasonable" is not susceptible of a clear and precise definition; for an attempt to give a specific meaning to the word not space. It can be described as rational according to the dictates of reason and is not excessive or immoderate. The word "reasonable" has in law the prima facie meaning of reasonable with regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know (see In re, A Solicitor (1945) KB 368 (CA)). Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary ITA No. 5742 & 5743/Del/2015 Assessment year 2008-09 produce, acting under normal circumstances, without negligence or inaction or want of bona fides."

14. In this connection, we would like to draw your kind attention towards the following case laws.

Shri Inderjeet Singh Damania, Noida vs ACIT, New Delhi on 31 October, 2017

Held: *"it has been submitted that assessment proceedings before the AO were earlier being taken care of by the tax counsel, who, however, stopped attending the proceedings without intimating the assessee as differences had developed between the assessee and the counsel. An affidavit to this effect has also been placed on record which has not been contested by the Ld. Senior Departmental Representative. It is our considered opinion that the failure of the assessee's counsel to attend the assessment proceedings without informing the assessee was a reasonable cause which would fall within the exception as provided in section 273B and, therefore, ITA No. 5742 & 5743/Del/2015 Assessment year 2008-09 under the circumstances the penalty imposed under section 271 (1) (b) deserves to be deleted. Accordingly, we set aside the order of the Ld. CIT (Appeals) and direct the AO to delete the penalty imposed under section 271(1)(b) of the Income Tax Act, 1961."*

(Copy of judgment is attached in **Annexure B**)

15. In the case of **HAKIM KHAN SUMERGADH BIBALSAR, JALORE Vs. ITO (Supra)**, ITAT Ahmedabad Bench has deleted the levy of penalties u/s. 271(1)(b) of the Act by observing as under:

"In the facts of the present case, it is seen that the explanation offered by the assessee have been ignored by the A.O. as well as the Ld. CIT(A)-NFAC but confirmed the levy of penalties u/s. 271(1)(b) and u/s. 271F of the Act without considering u/s. 273B - Applying the provisions of Section 273B we have no hesitation in deleting the penalties levied u/s. 271(1)(b) and u/s. 271F of the Act since "reasonable cause" is clearly demonstrated by the assessee. Therefore the penalties levied u/s. 271(1)(b) and u/s. 271F are deleted. - Appeal of assessee allowed."

16. In view of the above submissions, penalty u/s 271F shall not be levied and penalty imposed is liable to be deleted in toto.

That the other grounds of Appeal will be made at the time of hearing.


(D.N. Dokania)
(APPELLANT
(A/R)

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Encl:- As above