

आयकर अपीलीय अधिकरण
पटना पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री रakesh मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 361/PAT/2024
Assessment Year: 2017-18**

Pradeep Kumar Patel	Vs.	Commissioner Appeal, New Delhi
(Appellant)		(Respondent)
PAN: APSPP3773L		

Appearances:

Assessee represented by : None.

Department represented by : Ashwani Kumar, Sr. DR.

Date of concluding the hearing : January 27th, 2025

Date of pronouncing the order : February 5th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2017-18 dated 21.09.2023, which has been passed against the penalty order u/s 271B of the Act, dated 21.01.2022.

2. It is observed that the appeal is delayed and an application for condonation of delay has been filed by the assessee which is as under:

“The Appellant is Mr Pradeep Kumar Patel, from Vill & P.O AKHILASPUR BHABHUA, I was suffering from Spondylitis pain and ortho issues. As a result of this condition, it is medically advised to Pradeep Kumar Patel for complete Bed rest for three months.

Spondylitis is a chronic inflammatory condition affecting the spine, resulting in significant discomfort and pain for the patient. In my case, the severity of the symptoms necessitates strict adherence to bed rest to alleviate pain, prevent further complication, and aid in the recovery process.

During this period of bed rest from December 2023 to March 2024, it is imperative that I have to avoid strenuous activities, including lifting heavy objects, prolonged sitting or standing, and any movements that exacerbate their pain. Bed rest will facilitate the reduction of inflammation, provide relief from discomfort, and promote healing.

Hence, it is prayed that the Honourable Tribunal may be pleased to condone the delay in filing the appeal. All that is stated above are true and correct to the best of my belief.”

2.1 Considering the reasons mentioned, which are found to be sufficient cause, the delay is condoned and the appeal is admitted for adjudication.

3. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. Unintentional Non-compliance: The non-compliance with income tax filing for the Assessment Year 2017-18 was unintentional and occurred due to a lack of awareness and understanding of tax filing requirements. As an individual engaged in a gas cylinder distribution business in an area, I did not have adequate knowledge or resources to fulfil my tax obligations accurately and in a timely manner.

2. Failure on Part of the Chartered Accountant (CA): It is important to note that although I had my books of accounts audited, there was a failure on the part of my Chartered Accountant (CA) in filing the tax return and uploading the audit report. This failure was beyond my control. However, after the completion of assessment, I have been proactive in seeking guidance from a tax practitioner and obtaining have been proactive in seeking guidance from a tax practitioner and obtaining knowledge from

various sources about income tax laws. Since then, I have been consistently filing my returns without any defaults.

3. Exceptions to the rule "Ignorance of laws has no excuse": The old theory that Ignorance of law is no excuse does not hold good in view of the complexity of laws in modern days as it is impossible to anyone to know all the technicalities of all the laws. A mere breach of law which is venial in character will not lead to the inference that the assessee want only committed the default thereby making himself liable for the penal consequences. Thus, one must judge the matter by taking into account the totality circumstances.

Whether the ignorance of law may or may not constitute a valid excuse for justifying with a provision of statute will depend upon the nature of default. Because levy of penalty would necessarily implies existence of some guilty intention on part of the defaulter or the offender. In order to determine the existence or absence of guilty intention on part of the assessee, one will have to consider all the surroundings facts and circumstances."

4. Brief facts of the case are that during the assessment proceedings, the assessee's total turnover was detected at Rs. 7,29,23,212/-. Since, the assessee failed to furnish any tax audit report and get its account audited u/s 44AB of the Act, the Ld. AO levied penalty u/s 271B of Rs. 1,50,000/- being minimum of 0.5% of the turnover or Rs. 1,50,000/-. The Ld. CIT(A) upheld the penalty order. Before the Ld. AO the assessee submitted that he was not aware of the legal provisions and the relevant extract from the penalty order is as under:

"6. The assessee has placed reliance on the Judgement of the Hon'ble Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. vs State of Uttar Pradesh and Others. wherein the court held that there is no presumption that every person knows the laws. The assessee stated that he operates business in local area from village and completely unaware about the applicability of income taxes and their procedural part on him. The assessee also stated that he has not filed appeal against the assessment order and paid taxes on it.

7. In this connection, this is to state that the maxim 'Ignorantia legis neminem excusat' was considered by the Apex Court in a different context where it was held that "waiver as to a person's right can operate only when person granting it has full knowledge of his right and intentionally abandons it, either expressly or impliedly". Therefore, 'legis neminem

excusat' or ignorance of law is no excuse states that merely because a person is not aware of any law cannot escape liability under that law for not knowing its contents. It applies to all types of laws, civil, criminal as well as statutory laws. Therefore, even in the absence of any intention to evade taxes, the person can escape criminal liability but not the liability to pay the taxes.

8. Further, the assessee's claim that he is completely unaware of the Income Tax till the completion of assessment proceedings is not tenable. The assessee is holding the PAN_APSP3773L issued by the Income Tax Department. The assessee is engaged in business of gas cylinder distributorship in the name and style of M/s Maa Durga Indane, Mohania. The assessee deposited cash received from sales of the business in his bank accounts and subsequently made payments through the banking channels to M/s IOC Limited. Therefore, the claim of the assessee that he was completely ignorant of provisions of Income Tax Act is not acceptable."

5. Thus, the Ld. AO did not find the submissions as acceptable and imposed the penalty u/s 271B of the Act considering 0.5% of the turnover of Rs. 7,29,23,212/- and imposed the minimum penalty of Rs. 1,50,000/-. However, in the penalty order, the Ld. AO is mentioning that maximum penalty leviable u/s 271B of the Act is Rs. 1,50,000/- and in the next sentence mentions that being Rs. 1,50,000 minimum, the same is leviable as Penalty u/s 271B of the Act. The Ld. CIT(A) dismissed the appeal and did not accept the contention that although he got his books of account audited by a CA, however, the same could not be uploaded due to failure on the part of the CA. The Ld. CIT(A) held that the contention of the assessee is not tenable on the fact as the responsibility of filing of the tax audit report and getting the accounts audited is upon the assessee and since the assessee failed to do so, the penalty levied by the Ld. AO u/s 271B was justified and was sustained in appeal.

6. Before us, the assessee has mentioned that he belongs to a remote area i.e. Mohania, which is a Nagar Panchayat with limited access to information and resources related to income tax filing and compliance

requirements and due to the lack of awareness regarding the filing procedures and the complexities of the Income Tax Act, he unintentionally failed to comply with the provisions of the Income Tax Act. Further submissions in this regard are as under:

"In our case assessee operate business in local area (Nagar Panchayat) from village and completely unaware about the applicability of income taxes and their procedural part on him.

In support of my case, I would like to refer to the following case laws that demonstrate a lenient approach when unintentional non-compliance is proven:

Further Supreme Court in the case of MOTILAL PADAMPAT SUGAR MILLS Co. LIMITED VERSUS STATE OF UTTAR PRADESH AND OTHERS (1978 (12) TMI 45-SUPREME COURT) held that

"It must be remembered that there is no presumption that every person knows the laws. It is often said that everyone is presumed to know the laws, but that is not a correct statement: there is no such maxim known to the law. Over a hundred and thirty year ago, Maulla J. pointed out in Martindale v. falkner (1846) "there is no presumption in this country that every person known the law: it would be contrary to common sense and reason if it were so. Scutton L. J. also once said:" it is impossible to know all the statutory laws, and not very possible to know all the common laws. "But it was lord Atkin who, as in so many other sphere, put the point in its proper context when he said in Evans v. Bartlam" the fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of law does not excuse, a maxim of very different scope and application. "it is therefore, not possible to presume, in the absence of any material placed before the court, that the appellant has full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right.

Further In section 271B, it has been explained that "However, the penalty can be waived if the taxpayer can demonstrate reasonable cause for the failure to comply with the tax audit requirements. Examples of reasonable cause could include illness, absence from the country, or any other circumstances beyond taxpayers control. The taxpayer must provide evidence to support their claim of reasonable cause, and the decision to waive the penalty is at the discretion of the tax authorities."

Prayers:

Considering the circumstances and the aforementioned case laws, I kindly request you to review my case with a lenient approach and take into account the unintentional nature of the non-compliance. I sincerely apologize for the oversight and assure you of my full cooperation in rectifying the situation.

I am willing to attend a personal hearing to provide any additional information or clarification to support my case. Kindly inform me of the date, time, and location of the hearing.”

7. We have considered the submissions made. Section 273B specifies that notwithstanding anything contained in the provisions of sections mentioned therein including section 271B, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was a reasonable cause for the said failure. The assessee belongs to a remote area where the facilities of a consultant may not be readily available. It is stated that the assessment was made for the first-time u/s 144 of the Act and prior to that the assessee was not aware about the applicability of Income-tax Act. As regards non-filing of the audit report, it was stated before the Ld. CIT(A) that although he got his books of account audited by a CA, however, the audit report could not be uploaded due to failure on the part of the CA. Being in a remote area there was a default. Before the Ld. CIT(A), it was claimed in the grounds of appeal that the books of account were already audited on 18.09.2017 but a mistake happened on the part of the CA that the return and the audit report had not been filed and uploaded respectively for the said year. A copy of the audit report was filed during the course of the appeal proceeding before the Ld. CIT(A). Thus, the assessment being made for the first-time and the assessee remaining in a remote area where the facility for such consultant may not be available, we are of the view that the assessee should not be penalised on account of the default committed by the CA as he is a small and first-time taxpayer and the default occurred due to



lack of adequate guidance from the professional he had engaged. Hence, the penalty levied u/s 271B of the Act is cancelled and the appeal is allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 5th February, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 05.02.2025

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Pradeep Kumar Patel, S/o Raghav Sharan Sigh, Vill & PO Akhilaspur, Bhabhua, Dist-Kaimur, Bihar, 821101.**
2. **Commissioner Appeal, New Delhi.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata