

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचंद, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ITA Nos. 133 to 135/JP/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Branch Manager, Central Bank of India, Sultanpur, Kota (Raj).	बनाम Vs.	JDIT, (I&CI), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACC 2498 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA).
राजस्व की ओर से / Revenue by : Shri P.P. Meena (CIT)

सुनवाई की तारीख / Date of Hearing : 08/03/2017
उदघोषणा की तारीख / Date of Pronouncement : 10/03/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

These are the appeals filed by the assessee against the common order dated 30/12/2016 of Ld. CIT (A), Alwar, pertaining to the assessment year 2012-13. In all these appeals, there are only one common issue, which is against confirmation of penalty U/s 272A(2)(c) of the Income Tax Act, 1961 (in short the Act) of Rs. 53,000/- each for delay in furnishing information under the various codes asked by

issuing notice by the ITO (Intelligence), Kota U/s 133(6) of the Act read with Rule 114E of the Income Tax Rules, 1962 (in short the Rules).

2. Since, common issues are involved in all the appeals, therefore, all the appeals are being heard together and for the sake of convenience and brevity, common order is being passed.

3. Brief facts of the case are that the ITO (Intelligence), Kota asked for furnishing information under various codes on 18/6/2012. However, there was a delay in compliance of more than 530 days and when the show cause notice was issued for levying penalty U/s 272A(2)(c) of the Act. The assessee submitted that due to promotion of officers and LDC staffs during the year 2012-13, there was a shortage of officers and staffs, therefore, compliance could not be made in time. It was also submitted that in the future no such fault has been accrued. The non-compliance was not deliberate. It was due to bonafide shortage of staffs. It was also submitted that the assessee is a public sector undertaking and the branch office is situated at Sultanpur, Kota, which is a small place. Staff was in shortage, therefore, it was little bit difficult to deduce the information asked from records, which was voluminous. Therefore, it took time to comply with the notices. However, thereafter,

it has been made a point that no delay in furnishing any information would take place in future. The Id AR of the assessee has relied on the various decisions i.e. decision in the case of Syndicate Bank Vs. ACIT, ITA Nos. 1501 to 15013/Hyd/14 dated 26/08/2015, wherein the Hon'ble ITAT has held that when there is a reasonable cause for non-compliance of notice, the penalty could not be leviable. Reliance was also placed on the decision in the case of CIT Vs. Superintending Engineer, P.W.D., Udaipur, (2003), 260 ITR 641 (Raj), wherein the Hon'ble High Court has held that the discretion to levy the penalty U/s 272A(2)(c) of the Act is vested with the authority which has to exercise the same judiciously on considering of all relevant facts and circumstances. A bonafide breach cannot lead to levy of penalty.

4. On the other hand, the Id CIT DR has vehemently supported the orders of the authorities below.

5. We have heard the rival contentions of both the parties, perused the material available on the record and also gone through the orders of the authorities below on this issue. The branch office from whom this information was sought by issuing notice U/s 133(6) of the Act is located in the rural area of Kota district. The branch was having

shortage of officers and staffs, therefore, it took time to deduce the necessary information under the various codes. There is no subsequent breach in compliance. In view of these facts, no penalty could have been levied. Considering the case laws relied by the AR of the assessee including the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Superintending Engineer, P.W.D., Udaipur (supra), wherein the Hon'ble High Court has held as under:-

"The Apex Court in Hindustan Steel Ltd. v. State of Orissa [1972] [83 ITR 26](#) has observed that an order imposing penalty for failure to carry out a statutory obligation is 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 was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. The apex court further observed that penalty will not also be imposed merely because it is lawful to do so. The powers are to be exercised judiciously. The apex court held as follows:

Whether penalty 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 where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

Thus, the penalty under section 272A(2)(c) cannot be levied in a routine manner. The discretion vested with the authority is to be exercised judiciously on consideration of all the relevant circumstances. A bona fide breach cannot lead to a penalty under section 272A(2)(c)."

And the ITAT Hyderabad Bench in the case of Syndicate Bank Vs. ACIT (supra), wherein it has been held:-

"9. *After considering the rival contentions and perusing the case law relied upon by the Ld. Counsel of the assessee, I am of the opinion that there is no need for levy of penalty in the given cases. First of all, the notice issued u/s. 136 is a general notice asking for information which is not in the domain of the ITO, CIB. The CBDT itself has prescribed certain limits for calling for information and Income tax Act also prescribes various limits for furnishing information on a regular basis from the banks in annual returns. The details asked in various codes is neither prescribed by the Act nor supported by the Board's circular. This information is specifically asked by ITO, CIB in a particular format may be on the strength of internal instructions. For example, the Time Deposits exceeding Rs. 2 Lakhs under code No. 003 is*

not to be generally furnished by the banks to the department in the prescribed annual return, likewise, other codes also for which different amounts were prescribed by the Act. This indicates that this information was specifically asked for by the ITO, CIB."

Considering all these factual aspects of the case and also the case laws relied upon, we delete the penalty levied by the Assessing Officer and confirmed by the Id. CIT(A) in all the three appeals.

6. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open court on 10/03/2017.

Sd/-
(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10th March, 2017

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The Branch Manager, Central Bank of India, Sultanpur, Kota (Raj).
2. प्रत्यर्थी / The Respondent- The JDIT, (I&CI), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 133 to 135/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar