

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA Nos.1291 to 1296/Hyd/2017
(Assessment Years: 2010-11 to 2015-16)

The Nizamabad District Cooperative Central Bank Ltd, Nizamabad
PAN:AACAT3615K
(Appellant) Vs Director of Income Tax (I&CI), Hyderabad
(Respondent)

For Assessee : Shri K.C. Devdas
For Revenue : Smt. U. Minichandran, DR

Date of Hearing: 15.05.2018
Date of Pronouncement: 23.05.2018

ORDER

Per Bench:

All these appeals are filed by the assessee for the A.Ys 2010-11 to 2015-16. In all these appeals, the assessee is challenging the order of the DIT (I&CI), Hyderabad, passed u/s 271FA of the Act, dated 11.4.2017.

2. It is seen that these appeals are the first appeals filed by the assessee directly. At the time of hearing, the learned DR has brought to our notice the decision of the Coordinate Bench of the Tribunal in ITA No.687/Hyd/2017, dated 10.11.2017 in the case of the Citizen Cooperative Society Ltd, Hyderabad vs. DIT (I&CI), wherein, after considering the provisions of the Act, the

Tribunal has held that ITAT is not the forum to entertain the appeal. Relevant paragraphs are reproduced as under:

"2. Since the provisions of Section 253 of the Act does not specify the order of penalty u/s. 271FA as an appealable order before the ITAT, the assessee was asked to show cause why the appeal not be dismissed as not maintainable. In reply, the assessee has submitted the following in support of the contentions that appeal is maintainable:

"8. ADMISSIBILITY OF APPEAL BY THE HON'BLE ITAT:

8.1 The Hon'ble ITAT issued a DEFICIENCY MEMO dt. 20-07-2017 directing the assessee-appellant to explain as to whether such order under Sec. 271FA is an appealable order before the Hon'ble ITAT; and covering the same, a detailed reply dt. 28-07-2017 was filed with the Hon'ble Tribunal and a copy of the same is annexed in the form of PAPER BOOK for ready reference.

The substance of such reply as under:

(1) The even the Authority levying the above penalty under Sec. 271FA, Viz., the Director of Income tax recorded in the ANNEXED Demand Notice in Form No.7 to the effect that appeal could be preferred to the CIT (A);

(2) When the Office of the above Directorate was contacted by the assessee-appellant by deputing its G.M., seeking clarification as to how the appeal could be filed with an authority who is parallel to the Hon'ble Director, such clarification was not given by the Directorate;

(3) However, taking notice of the fact that penalty under Sec. 271FA was also referred to in Sec. 273B of the Act, it is felt by the assessee-appellant that such levy is not MANADOTRY as in the case of levy of Int. under Sec. 234-A & 234B etc., and that such levy is only DISCRETIONARY and hence there lies an appeal against the order under Sec. 271FA as per the provisions of Law.

(4) That as per the provisions contained in clause "6" appended to Sub Sec. 1 of Sec. 253 of the Act, an order passed by the Principal CIT/CIT under Sec. 271 of the Act is also construed to be an order which could be appealed against before the Hon'ble ITAT.

(5) That the above legal provisions also came up for consideration of the Hon'ble ITAT on the last date of hearing which took place on 23-08-2017 And for the above submissions, it is requested that the above appeal may kindly be admitted for adjudication of the issue involved therein.

9. VALIDITY OF ORDER under Sec. 271FA of the Act:

9.1 As per Rule 114E of LT. Rules, the information referred to in AIR read with Sec. 285BA of the Act, only a BANKING COMPANY AND COOP. BANK are bound to furnish the above information whereas the assessee's case, being a COOPERATIVE SOCIETY, is not covered by Sec. 285BA of the Act. It is submitted that the assessee came into existence originally w.e.f. 31-05-1997 as a Mutually Aided Cooperative Credit Society having been registered under Sec. 5 of Andhra Pradesh Mutually Aided Coop. Societies Act., 1995 with Registration No. AMC/RR/DCO/97 by the Registrar of Mutually Aided Coop. Societies., R.R. Dist., Later on, it got registered under the Multi State Coop. Societies Act, 2002 in terms of Certificate Dt. July 26,2005 issued by CENTRAL REGISTRAR OF COOPERATIVE SOCIETIES, Krish Bhavan, New Delhi.

9.2 Though the issue pertaining to the claim under Sec. 80P(2)(a)(i) of the Act is pending adjudication in the form of appeals on different Judicial Forums for different assessment years, viz., before the Hon'ble AP High Court (for the A.Ys. 2006-07, 2007-08 and 2008-09); before the Hon'ble ITAT, Hyderabad (for the A.Ys. 2010-11,2011-12 and 2013-14 and 2014-

15) yet the Hon'ble ITAT, B-Bench, Hyderabad allowed the assessee's claim under Sec. 80(2)(a)(i) of the Act for the A.Y. 2012-13 - vide order in ITA. No. MA No. 31/Hyd/2016 in ITA No. 1295/Hyd/2015 dt 04-03-2016 read with order dt 15-07-2016 identifying its status as COOP. SOCIETY not falling within the scope of BANKING REGULATION ACT referred to in Sec. 80P (4)of the Act;

9.3 Even the Hon'ble Supreme Court held in its latest order in Civil Appeal No. 10245/2017, dt 08-082017 to the effect that the assessee is not a Cooperative Bank Vide para 24 thereof. However, the Hon'ble S.C. denied such claim under Sec. 80P(2)(a)(i) of the Act on some other grounds holding to the effect that the assessee is also rendering services to NOMINAL MEMBERS and a M.A. against such finding is pending adjudication before the Hon'ble Supreme Court.

9.4 However, the fact remains in the instant case is that the assessee's Status cannot be regarded as a COOP. Bank as per the decisions of the Hon'ble ITAT in assessee's same case for the A.Y. 2012-13 and even as per the latest order of the Hon'ble Supreme Court for the A.Y. 2009-10 as envisaged above. Thus the provisions contained in Sec. 285BA read with Rule 114E of the Act are not applicable to the assessee's case and thus the LEVY UNDER SEC. 271FA may be VOID ABINITIO. Hence, it is prayed that the impugned PENALTY UNDER SEC. 271FA may be ordered to be SET ASIDE treating the same as NON EST. IN LAW".

3. Assessee's Counsel, Shri D.L. Narasimha Rao, appeared and explained that appeal is maintainable and DIT being a parallel authority, his order cannot be subjected to an appeal before the Ld.CIT(A). Therefore, assessee choose to file an appeal before this forum.

4. Ld.CIT-DR, however, objected to file an appeal directly when statute does not provide.

5. We have considered the rival contentions and perused the provisions of the Act. Section 271FA is a penalty which is leviable by the prescribed Income Tax authority. The order of the DIT indicates that he is nominated to be by the Income Tax authority for accepting the returns to be filed u/s. 285BA(1). Therefore, it seems the DIT has invoked the powers of 271FA for levying of penalty. Even though there is no specific provision for appeal before this forum, nor before the CIT(A), Ld.DIT specifically gave the option to assessee to file the appeal before the Ld.CIT(A). Assessee, however took its own opinion, in the absence of clarification sought from DIT(I&CI) and preferred the appeal before this forum.

5.1. In the course of arguments, assessee's counsel was advised to prefer an appeal before the Ld.CIT(A) as directed by the DIT(I&CI) after levying the penalty in the demand notice. If the order has been passed by the Ld.CIT(A), this forum can entertain the appeal on such an order. Otherwise, assessee can choose to file a Writ Petition before the Hon'ble High Court, as this forum is only a statutory authority constituted under the Income Tax Act and the right of appeal on every order has to be statutorily provided either to the CIT(A) or to the ITAT as the case may be. Since a penalty order u/s. 271FA is not directly appealable order before this forum, the appeal preferred by assessee is liable to be dismissed.

6. However, before concluding it is not out of place to state that the Paper Book furnished before this forum indicates that assessee did in fact file statement u/s. 285BA(1) before the Income Tax authorities so the penalty levied for not filing u/s 271FA does not arise. Vide a letter dt.27-10-2016, the ITO, HQrs., in the Office of DIT(I&CI) informed the assessee that in about 120 number of transactions, PAN was not mentioned. It was further informed that "it may be noted that furnishing of incomplete and incorrect information is liable for penalty u/s. 271FAA of the Act". Assessee was asked to update the data by quoting PAN by 04-11-2016. However, the DIT(I&CI) issued a show cause notice dt. 31-10-2016 (i.e., within the time given to assessee for rectifying the return) as to why a penalty u/s. 271FA should not be levied. As placed on record, an explanation was indeed filed by assessee on 06-12- 2016, asking for a fortnight time and further another letter was filed on 28-12-2016 explaining the factual and legal position with reference to levy of penalty u/s. 271FA. There is no mention

of these replies given by assessee in the penalty order passed by the DIT. Not only that the penalty order refers to a show cause letter dt. 29-01-2016, whereas show cause issued by the ITO, HQrs., is dt. 27-10-2016. The first sentence of the penalty order indicates that 'assessee is a person covered as a Registrar or Sub-Registrar appointed u/s. 6 of the Registration Act, 1908'. However, as seen from the facts, assessee is not a Registrar or Sub-Registrar appointed under sub-clause (6) of the Registration Act, but claiming status of a banking company, which is also yet to be adjudicated finally, as stated in reply before this forum. Even calculation of 557 days for levy of penalty at Rs. 100/- is not verifiable, given the dates involved. It seems to be a case where show cause notice was issued u/s. 271FAA (for furnishing inaccurate statement) but penalty was levied u/s. 271FA for non-filing of statement. Assessee did indeed file a return/statement in time and if the deficiencies are not rectified, within the time allowed it has to be treated as 'invalid return' under section 285BA(4). No such action seems to have been taken by the Income Tax authority before levy of penalty u/s. 271FA. Not only taking the status of assessee but also the dates involved along with the fact that assessee did file a return as per the provisions indicates that there is no application of mind by the DIT(I&CI) before levy of penalty. There may be merit in assessee's contentions that penalty is not warranted on the facts of the case. However, as this forum cannot entertain the appeal itself, without considering the merits of the contentions, appeal memo is dismissed as infructuous".

3. The facts and circumstances before us being the same, we dismiss the assessee's appeals *in limini* with liberty to the assessee to approach the relevant forum with appropriate applications for condonation of delay, if any, in filing of the appeals.

4. In the result, assessee's appeals are dismissed.
Order pronounced in the Open Court on 23rd May, 2018.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 23rd May 2018.
Vinodan/sps

Copy to:

- 1 Chief Executive Officer, The Nizamabad Distt. Coop. Central Bank Ltd, Head Office, Yellammagutta, Nizamabad, Telangana 503001
- 2 Director of Income Tax (Intelligence & Criminal Investigation), 4th Floor, Aaykaar Bhavan, Basheerbagh, Hyderabad
- 3 The DR, ITAT Hyderabad
- 4 Guard File

By Order