

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.436/Vizag/2017
(निर्धारण वर्ष / Assessment Year: 2006-07)

Jupalli Ramachandra Rao Sons & Co.,
Eluru
[PAN No.AABFJ7189E]
(अपीलार्थी / Appellant)

ITO, Ward-1,
Eluru
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G.V.N. Hari, AR
प्रत्यार्थी की ओर से / Respondent by : Shri M.N. Murthy Naik, DR
सुनवाई की तारीख / Date of hearing : 04.07.2018
घोषणा की तारीख / Date of Pronouncement : 11.07.2018

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the assessee is directed against order of the
Commissioner of Income Tax (Appeals)-2, Guntur, Camp:
Visakhapatnam {CIT(A)} vide Appeal No.212/2011-12 dated 14.3.2017
for the assessment year 2006-07.

2. All the grounds of appeal are related to the levy of penalty u/s 271FB of the Fringe Benefit Tax (FBT). The A.O. issued notice u/s 271FB (hereinafter called as 'the Act') on 2.12.2010 directing the assessee to explain as to why penalty should not be levied against the assessee for failure of the assessee to file the FBT return for the A.Y.2006-07. The said notice could not be served on the assessee, since the assessee firm has discontinued the business, hence the A.O. served the notice by affixture on 22.6.2011 in the residential premises of the Managing Partner Mr. S. Rama Krishna Rao and there was no response from the assessee. Therefore, the A.O. imposed penalty of ₹ 1,79,300/- @ ₹ ₹100/- per day from 1.8.2006 to 28.6.2011 for a total period of 1793 days of default.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and made written submission stating that the assessee has carried on the business during the previous year relevant to the assessment year 2006-07 and subsequently closed the business due to unfavorable conditions. Fringe Benefit Tax Act was introduced in the year 2006-07 and FBT payable works out to ₹ 542/- against which the penalty levied was ₹ 1,79,300/- and the same is beyond the capacity of the assessee. Assessee filed written submissions before the CIT(A) stating as under:

1. The appellant was a wholesale tobacco merchant, The firm did business till the assessment year 2007-08 and closed its business due to unfavourable conditions. Thereafter the place of business was surrendered to its owner and all the partners left the place and settled permanently at Hyderabad.

2. Fringe Benefit Tax (FBT) was introduced from the assessment year 2006-07.. In view of the first year, the filing of FBT return was not done by inadvertence. For the assessment year 2007-08 FBT return was filed and tax was paid. The FBT amount paid was Rs 377 or the assessment year 2007-08. For the asst. year 2006-07, FBT payable comes to Rs 542 as per the following calculation.

Expenditure	Amount	Rate	Fringe Benefit
Telephone	₹ 3,445	@ 20%	689
Travelling	₹ 18,417	@ 5%	921
	Total		1610
		FBT @ 30%	483
		Add: SC @10%	48
		Add: Cess@ 2%	11
	Total Payable		542

3. As the firm was closed and the partners left the place, notice u/s 274 read with sec 271FB, dated 0212201-0 was not served on the appellant or Its partners. Hence, a penalty of Rs 1,79,300/- (@ Rs 100 per day for 1,793 days) was levied for failing to furnish FEY return within the time prescribed u/s 115 WD(1).

4. Appellant submits that in view of the circumstances mentioned, it could not file the return of FBI as it was the first year of introduction Of FBT and the implications were not fully understood. The appellant had no Intention to avoid taking notices but the notice could not be served as all the partners left the place for Hyderabad permanently after closing the business. The return for the last business year 2007-08 and the FBT return were filed and taxes were duly paid in time. During the entire period of its existence appellant cooperated with the Department and there were no tax arrears any time earlier, Appellant also submits that the penalty levied of Rs. 1,79,300 was very huge compared to the FBT payable of Rs.542. It is hence prayed that it may be kindly treated to have been prevented by a reasonable cause as per provisions of sec 273B in not filing the return within the time prescribed

The case was posted for hearing by the CIT(A) but none appeared before the CIT(A). Hence, the CIT(A) upheld the penalty.

5. Aggrieved by the order of the CIT(A), the assessee filed appeal before this Tribunal. During the appeal hearing, the Ld. A.R. argued that the assessee had carried on the business during the year 2006-07 and the FBT payable was ₹ 542/-. The firm was closed subsequently. Since, it was the first year of introduction of FBT, the assessee was not understood the provisions of FBT fully and there was no willful intention to evade or not to file the return. Since the amount involved is very paltry amount of Rs.542/- and the penalty imposed was ₹ 1,79,300/- which is highly unjustified, the Ld. A.R. requested to cancel the penalty imposed by the A.O. The Ld. A.R. also argued that the A.O. has issued penalty notices after lapse of 5 years of time from the due date of filing the return which resulted in increased quantum of penalty.

6. On the other hand, the Ld. D.R. relied on the orders of the lower authorities.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, the assessment year involved is 2006-07 and the penalty u/s 271FB of the Act was initiated by the A.O. by issue of notice u/s 271FB

on 2.12.2010 after the lapse of 3 years and the notice was served on 22/06/2011 i.e after the lapse of 4 years which resulted in increase of quantum of penalty. Had the AO woke up in time and issued the notice requiring the assessee to file the FBT return as required under section 115WD(2), the situation would not have worsened like this. Inaction of the assessing officer coupled with the ignorance of the assessee resulted in levy substantial amount of penalty on the tax payer.

As per the provisions of section 115WD of the Act, the assessee required to file the FBT return before the due date i.e. 31st July of the assessment year and in case the return was not filed before the due date the assessee is allowed to file the return within one year from the end of the relevant A.Y. as provided in section 115WD(3) of the act. In case the A.O. is of the opinion that the assessee is responsible for paying the FBT and has not furnished the return under sub-section (1) of section 115WD of the Act, the AO required to issue the notice after the due date of filing the FBT return calling for the return. In the instant case, the due date was 31st July of 2006 for filing the return of FBT and the A.O. required to issue notice calling for the return and the A.O. has not issued any notice requiring the assessee to file the FBT return as required under sub-section (2) of section 115WD of the Act. For imposing the penalty, the A.O. should give a finding that the assessee is

liable for payment of FBT and required to file the FBT return by initiating proceedings for non-furnishing of the FBT return and for non-payment of FBT. In this case, the A.O. neither initiated proceedings for non filing of the return nor for payment of FBT and there was no finding with of the A.O. with regard to the liability for FBT of the assessee. In the absence of any proceedings against the assessee for the assessee's liability for FBT, there is no case for initiation of penalty proceedings and for non furnishing the FBT return.

8. Further, the Ld. A.R. has produced a copy of penalty notice issued by the A.O. u/s 271FB of the Act dated 2.12.2010, which was served by an affixture on 22.6.2011 fixing date for hearing on 13.6.2011. The notice was served on the assessee after the date of hearing was over, hence the notice issued on 02/12/2010 is invalid and there is no valid notice issued by the Department calling for the explanation of the assessee for the assessee's failure to file the FBT return. Hence, penalty levied on in valid notice is unsustainable and accordingly, we cancel the penalty imposed on the assessee u/s 271FB.

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

The above order was pronounced in the open court on 11th Jul'18.

Sd/-
(वी. दुर्गाराव)
(V. DURGA RAO)

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 11.07.2018

VG/SPS

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

1. अपीलार्थी / The Appellant – Jupalli Ramachandra Rao Sons & Co., C/o Jupalli Ramakrishna Rao, Flat No.302, Dwaraka Castle, Opp. KPTD High School Road, Ashok Nagar, Eluru-534 005, W.G. Dist.
2. प्रत्यर्थी / The Respondent – The ITO, Ward-1, Eluru
3. आयकर आयुक्त / The Pr. CIT, Rajahmundry
4. आयकर आयुक्त (अपील) / The CIT (A) The CIT(A)-2, Guntur, Camp: Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /
DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM

Sl. No.	Description	Date	Initials
1.	Date of dictation by the Author	05.07.2018	Sr.PS
2.	Draft placed before the Dictating Member	06.07.2018	Sr.PS
3.	Draft placed before the Second Member		Sr. PS
4.	Draft approved by the Second Member		Sr. PS
5.	Date of approved order comes to the Sr. PS		Sr. PS
6.	Date of pronouncement of order		Sr. PS
7.	Date of file sent to the Bench Clerk		Sr. PS
8.	Date on which file goes to the Head Clerk		Hd. Clk
9.	Date of dispatch of order		Sr. PS