

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, 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.Nos.355-360 /Viz/2018
(निर्धारण वर्ष/ A.Ys: 2011-2012 to 2016-17 respectively)

M/s Guntur District Co-operative
Central Bank Ltd.
PB No.6, Bose Road
Near Veda Deluxe Theatre
Tenali

Vs. Director of Income Tax
(Intelligence & Criminal
Investigation)
Hyderabad

[PAN : AAATT6101H]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri G.V.N.Hari, AR

प्रत्यर्थी की ओर से/ Respondent by

: Smt Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

: 17.01.2019

घोषणा की तारीख/Date of Pronouncement

: 25.01.2019

आदेश /ORDER

Per Bench:

These appeals are filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Guntur dated 21.05.2018 for the Assessment Years (A.Ys.) 2011-12 to 2016-17. The grounds raised in these appeals are common, hence the appeals are

clubbed, heard together and disposed off in common order for the sake of convenience as under.

2. In this case, the assessee is required to file Annual Information Return (AIR) u/s 285BA of the Income Tax Act (hereinafter called as 'Act'). For the Financial Years (F.Ys) 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 (relevant to the A.Ys 2011-12 to 2016-17) the AIR has to be filed by 31st August of the succeeding financial year. For example, AIR for the F.Y 2010-11 required to be filed on or before 31st August 2011. In the instant case, the assessee did not file the AIR for the F.Y. 2010-11 to 2015-16 relevant to the A.Ys 2011-12 to 2016-17 before the due date. Therefore, the Director of Income Tax (Intelligence & Criminal Investigation) [DIT (I&CI)] (in short 'DIT'), Hyderabad had issued notice u/s 274 r.w.s. 271FA of the Act and called for explanation from the assessee as to why penalty should not be levied for the assessee's failure to file AIR before the due date. The assessee filed explanation, but not being convinced with the explanation offered by the assessee, the DIT imposed penalty u/s 271FA for the F.Y. 2010-11 to 2015-16 as under :

F.Y.	A.Y.	Penalty (Rs.)
2010-11	2011-12	2,08,000
2011-12	2012-13	1,71,400
2012-13	2013-14	1,34,900

F.Y.	A.Y.	Penalty (Rs.)
2013-14	2014-15	98,400
2014-15	2015-16	61,900
2015-16	2016-17	27,800

3. Aggrieved by the order of the Ld.DIT, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the penalty imposed by the Ld.DIT. The Ld.CIT(A) relied on the decisions of Joint Sub Registrar, Sangat (51 taxmann.com 197 and Sub-Registrar, Bhiwani (88 taxmann.com 582).

4. Aggrieved by the order of the Ld.CIT(A), the assessee filed appeals before this Tribunal.

I.T.A. 355 & 356/Viz/2018, F.Y.2010-11 and 2011-12 (A.Y. 2011-12 and 2012-13)

5. During the appeal hearing, the Ld.AR submitted that for the F.Ys 2010-11 and 2011-12, there were no transactions with the assessee which required to be reported u/s 285BA of the Act r.w.Rule 114E of Income Tax Rules and thus submitted that there is no obligation on the part of the assessee to file the AIR return, hence submitted that there is no case for levy of penalty u/s 271FA of the Act. The Ld.AR taken our attention to page No.3 of the paper book, wherein, the AIRs filed by the assessee disclosing Nil transactions for both the assessment years. Hence, argued that there is

no case for imposing penalty u/s 271FA and requested to set aside the order of the CIT(A) and cancel the penalty imposed by the Ld.DIT.

6. On the other hand, the Ld.DR vehemently opposed the contention of the Ld.AR stating that the assessee did not take the ground of non requirement of furnishing the return before the Ld.CIT(A), hence the same cannot be entertained by the Tribunal. The Ld.DR argued that the Ld.AR's argument that penalty is not leviable in the absence of reportable transactions was not agitated before the CIT(A) hence required to be rejected as untenable. The Ld.DR further submitted that since, the assessee was given the notice u/s 285BA(5), the assessee ought to have filed the returns within the specific time frame allowed by the Ld.DIT and accordingly argued that there is no error in the order of the Ld.DIT and the Ld.CIT(A), hence requested to uphold the order of the Ld.CIT(A).

7. We have heard both the parties and perused the material placed on record. As per section 271FA, a person who is responsible for registering, or maintaining books of account or other document containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return, in respect of such specified financial transaction which is registered or recorded by him

during any financial year beginning on or after the 1st day of April, 2004 and information relating to which is relevant and required for the purposes of this Act, to the prescribed income-tax authority or such other authority or agency as may be prescribed. The return has to be filed by a person who has recorded the transaction and person who fails to furnish such return within time period prescribed u/s 285BA(2) of the Act, shall be liable to pay penalty u/s 271FA of the Act for a sum of Rs.100/- for everyday during the period which the failure continues. Combined reading of section 271FA and section 285BA shows that a person is obliged to furnish the AIR, only, when there is existence of reportable transaction or specified transaction which required to be reported u/s 285BA of the Act. In case of no reportable transaction/ specified transaction during the financial year, there is no requirement to file the AIR. Thus, if any of the assessee or person not having entered into the reportable transaction/specified transaction mentioned u/s 285BA of the Act need not furnish a statement or the return. In the instant case, as per the acknowledgement placed by the Ld.AR in the paper book, there were no reportable transactions/specified transactions which required to be reported u/s 285BA of the Act r.w.Rule 114E of Income Tax Rules. Therefore, there is no obligation cast upon the assessee to file the return u/s 285BA for the F.Y.

2010-11 and 2011-12. The Ld.DIT issued notice u/s 285BA on 24.08.2017 which was served on the assessee on 27.03.2017 and the assessee responded to the notice by furnishing the 'Nil' transactions and the department did not make out a case that the assessee had the recorded reportable/specified transactions in the relevant financial year. We are unable accept the contention of the Ld.DR not to accept fresh argument of the assessee with regard to non requirement of filing the AIR in the absence of reportable transaction and the same is rejected. We hold that in the absence of any specified transaction required to be reported u/s 285BA of the Act, the assessee is not obliged to file the AIR and levy of penalty u/s 271FA is unjustified. Accordingly, we set aside the orders of the lower authorities and cancel the penalties imposed u/s 271FA for the A.Y. 2011-12 and 2012-13. The appeals of the assessee for the F.Y. 2010-11 and 2011-12 are allowed.

I.T.A. 357-360/Viz/2018 - F.Y.2012-13 to 2015-16 (A.Y. 2013-14 to 2016-17)

8. In the assessment years under consideration, the assessee has filed the annual returns belatedly and on verification of the annual returns by the department they were found to be defective. Therefore, the Ld.DIT has issued the notice u/s 285BA(4) for rectifying the mistakes on 24.03.2017

directing the assessee to correct the defects and file supplementary return on or before 28.03.2017. Thus, the Ld.DIT has given 4 days time to rectify the defects and found that the assessee did not rectify the defects or file the supplementary return within the time allowed by the Ld.DIT in the notice supra. Therefore the Ld.DIT has issued the notices u/s 274 r.w.s. 271FA of the Act vide notice dated 04.04.2017 and called for the explanation of the assessee. As per the notice, the assessee has to furnish the explanation before 10.04.2017 and there was no response from the assessee. Hence the Ld.DIT levied penalty u/s 271FA for the entire period from 1st September of the subsequent financial year to till the date of filing the supplementary return rectifying the defects pointed out by the DIT vide notice issued u/s 285BA(4) of the Act.

9. Aggrieved by the order of the DIT, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeals of the assessee stating that there was no reasonable cause for filing the return belatedly. The Ld.CIT(A) relied on the decision in the case of Joint Sub Registrar, Sangat and Sub-Registrar, Bhiwani (supra).

10. During the appeal hearing, the Ld.AR argued that the DIT has issued the notice u/s 285BA(4) for rectifying the defect on 24.03.2017 granting

time period of 4 days for rectifying the defects and to file the revised/supplementary return on or before 28.03.2017. The said notice was served on the assessee on 27.03.2017, thus the time available to the assessee to file the supplementary return was only one day. The month of March being the end of the financial year and the Cooperative Bank was busy with the year end closing work could not file the supplementary return within the time period allowed by the DIT. There was no deliberate or intentional default. Similarly, the Penalty notice was issued by the DIT vide notice dated 04.04.2017 and served on the assessee after two/three days and there was no time available to the assessee to furnish the explanation, hence requested to set aside the order of the Ld.CIT(A) and cancel the penalty imposed by the Ld.DIT.

11. On the other hand, the Ld.DR relied on the orders of the lower authorities and the decisions relied upon by the Ld.CIT(A).

12. We have heard both the parties and perused the material placed on record. For the F.Y. 2012-13 to 2015-16, the assessee committed the default in spells (i) delay in furnishing the original return (ii) delay in furnishing the supplementary return. For the impugned A.Ys. the assessee recorded reportable transactions as per rule 114E which is evident from

the AIR returns filed by the assessee. As discussed earlier, AIRs required to be filed on or before 31st August of subsequent assessment year. In the case of the assessee, the assessee filed the AIRs for the F.Y. 2012-13 to 2015-16 with delay as under:

F.Y.	A.Y.	Due Date	Date of Filing the AIR	Delay
2012-13	2013-14	31.08.2013	16.07.2014	318 days
2013-14	2014-15	31.08.2014	27.11.2014	87 days
2014-15	2015-16	31.08.2015	26.08.2015	-
2015-16	2016-17	31.08.2016	15.11.2016	75 days

12.1. For the F.Y. 2012-13, 2013-14 and F.Y.2015-16 there was delay in filing the AIRs as above and the assessee failed to explain the reasons for non-furnishing the AIR on or before the due date. From the records of the assessee it is observed that the assessee is a habitual offender in filing the AIRs and complying with the statutory requirements. The Parliament incorporated the provisions of section 285BA of the Act casting the obligation on the assessee to furnish the annual statement of specified transactions with an intention to take necessary action against the non-assessees of the tax returns or tax evaders. Non furnishing of the returns and non-reporting of the specified transaction before the due date specified in the Act defeats the purpose of making the provisions in the Act causing

delay in taking action against the tax offenders. In the instant case, the assessee could not explain the valid reason for not furnishing the returns and AIRs before the due date. Therefore it is fit case for imposing penalty u/s 271FA for furnishing the returns beyond the specified date. This view is upheld by the decisions relied upon by the Ld.CIT(A) in the case of Sub Registrar (Tehsildar), Jagadhari (42 taxmann.com 444) and the decision of Hon'ble High Court of Punjab and Haryana in the case of Sub-Registrar, Bhiwani (88 taxmann.com 582). Therefore, we uphold the order of the Ld.CIT(A) and confirm the penalty imposed for the period of delay in filing the AIR (i.e. from the due date to the date of filing the defective AIR). However, in this case the question is whether the penalty is leviable for the entire period from the due date to furnishing the original return or till supplementary return is a question which required to be answered.

13. The assessee filed the AIR belatedly, but it was found defective in as much as not incorporating some of the transactions which require to be reported u/s 285BA of the Act. The DIT issued the notices u/s 285BA of the Act 24.03.2017 and directed the assessee to file the supplementary return rectifying the defects on or before 28.03.2017 for all the assessment years involved. The notices issued by the DIT were stated to be served on

assessee on 27.03.2017 and in response, the assessee filed the supplementary returns rectifying the defects as under:

F.Y	A.Y.	Date of filing the supplementary AIR
2012-13	2013-14	25.04.2017.
2013-14	2014-15	27.04.2017.
2014-15	2015-16	25.04.2017.
2015-16	2016-17	25.10.2017.

14. During the appeal hearing, the Ld.AR argued that for the A.Ys 2013-14 to 2015-16(FY 2012-13 to 2014-15) the assessee has filed revised returns or the supplementary returns rectifying the defects within 30 days from the date of receipt of the notice. The Ld.AR further submitted that though the DIT has issued notice u/s 285BA(4), has given only 4 days time from the date of notice and the notice was served on 27.03.2017 allowing only one day time for the assessee to comply with the notice which is an impossible task. Further due to heavy pressure of financial year closing work, the assessee could not file the supplementary return, therefore requested to take lenient view and cancel the penalty for delay in filing the supplementary return.

15. On the other hand, the Ld.DR supported the orders of the Ld.CIT(A) on this issue also.

16. We have heard both the parties and perused the material placed on record. In this case, the assessee filed the AIR Return on various dates mentioned in this order. Subsequently the DIT found defects and issued notices u/s 285BA for furnishing the supplementary return rectifying the defects raised by the Ld.DIT. The assessee filed the supplementary returns rectifying the mistake subsequently, however, not before the due date mentioned in the notice issued u/s 285BA(4) of the Act. The Ld.DIT has issued notice u/s 271FA and not being convinced with the explanation offered by the assessee levied the penalty from the date of default in furnishing the original return to till the date of filing the supplementary return rectifying the defects. There are two aspects to be considered in this case. Firstly, the failure of furnishing the original return and secondly, the period of default in furnishing the defective return rectifying the defects. Therefore, we are of the considered opinion that the penalty required to be imposed for the period of delay i.e delay in filing the original return as well as the delay in furnishing the supplementary return correcting the defects, but not for the intervening period. In the instant case, the Ld.DIT have given only 4 days time to rectify the mistakes and the assessee has filed the AIR within 30 days from the date of receiving the notice for the A.Y. 2013-

14 to 2015-16 and the reason explained by the assessee was delay in service of notice and insufficient time given by the DIT and pressure of work due to annual closing of the accounts. Therefore, we consider it is reasonable cause for not furnishing the supplementary returns rectifying the defects within one month from the date of receipt of notice u/s 285BA(4). Accordingly, no penalty is leviable for the A.Y. 2013-14 to 2015-16 for delay in filing the supplementary return rectifying the defects.

17. For the A.Y. 2016-17, the assessee filed the supplementary return on 25.10.2017 with 210 days delay. Since the notice was received by the assessee on 27.03.2017, we consider it is reasonable to allow the time limit of at least 29 days from the date of receipt of the notice as provided u/s 285BA(4) of the Act, as the Act provides time limit of less than 30 days for rectifying the defects. Thus, the assessee should have filed the rectified return on or before 25.04.2017. The assessee did not furnish any reason for not furnishing the supplementary return on or before 25.04.2017. Though the assessee explained that the reason for not furnishing the return was closing work of year end, the same would be completed by 31st March of the relevant financial year and there is no reason for not furnishing the supplementary return subsequent to completion of the year end closing

work. In the instant case, there was a delay of 210 days and as discussed earlier 29 days time limit is allowed for furnishing the return as per the Act and we do not find any reason for not furnishing the return before 29 days of time allowed u/s 285BA(4) of the Act. The Ld.AR also could not explain the reason for the delay in furnishing the supplementary return within one month from the date of receipt of the notice. Therefore, we confirm the penalty for the period of default in furnishing the original return and the supplementary return rectifying the defects.

18. Accordingly, we set aside the orders of the Ld.CIT(A) and confirm the penalty u/s 271FA for the period of delay in furnishing the original return from the due date of furnishing the return for the F.Y. 2011-12 to 2014-15 and also the delay in furnishing the supplementary return rectifying the defects after expiry of 29 days limit for the F.Y.2015-16. Accordingly, we direct the DIT to restrict the penalty for the period of default as under :

A.Y.	Delay in filing the original return	Default in furnishing the Supplementary Return	Total
2013-14	318	-	318 days
2014-15	87	-	87 days
2015-16	-	-	-
2016-17	75	185	260 days

Accordingly, we set aside the order of the Ld.CIT(A) and allow the appeal of the assessee partly.

19. In the result, appeals of the assessee are partly allowed.

Order pronounced in the open court on 25th January, 2019.

Sd/-

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 25.01.2019

L.Rama, SPS

(वी.दुर्गा राव)

(V. DURGA RAO)

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

1. निर्धारिती / The Assessee – M/s Guntur District Co-operative Central Bank Ltd., PB No.6, Bose Road, Near Veda Deluxe Theatre, Tenali
2. राजस्व / The Revenue– Director of Income Tax (Intelligence & Criminal Investigation), Hyderabad
3. The Chief Commissioner of Income Tax, Vijayawada
4. The Commissioner of Income Tax-(Appeals)-1, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीयअधिकरण, विशाखापटणम /DR, ITAT,Visakhapatnam
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ITAT, VISAKHAPATNAM