

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.332/Ind/2018
Assessment Year 2015-16

Sub Registrar Sardarpur, O/O Sub Registrar Sardarpur, Tahsil Officer Dhar-454111	Vs.	Director of Income Tax (I&CI), Bhopal
(Appellant)		(Respondent)
TAN No.BPLS07417E		

Revenue by	Shri S.N. Agrawal, CA
Assessee by	Shri Rajeeb Jain, Sr. DR
Date of Hearing	17.10.2019
Date of Pronouncement	22.10.2019

ORDER

PER MANISH BORAD, AM.

This appeal is filed at the instance of the assessee pertaining to Assessment Year 2015-16 and is directed against the order of Ld. Director of Income Tax(I&CI) (in short 'DIT(I&CI), Bhopal dated 19.12.2017 framed u/s 271FA r.w.s. 274 of the Income Tax Act 1961(In short the 'Act').

2. The assessee has raised following grounds of appeal;

That on the facts and in the circumstances of the case and in law, the learned DIT(I&CI) has erred in levying penalty u/s 271FA of the Act of Rs.351500/- without properly appreciating the facts of the case.

The appellant craves, leave to add, alter or modify the grounds of appeal as taken by it.

3. From perusal of record we find that the instant appeal is delayed by 42 days. Request has been made for condonation of delay. Affidavit has been filed by ex-Sub-Registrar Sardarpur, Dist. Dhar M.P., Mr. Balusingh Sastiya. In the affidavit reason has been provided for the delay in filing the appeal. We set aside the reason in the affidavit which in our view was a reasonable cause for the said delay. We, therefore, condoned the delay of 42 days and admit the appeal for hearing.

4. Briefly stated facts as culled out from the records are that the assessee is local authority under the State Government of Madhya Pradesh in the name of Office of Sub Registrar Sardarpur, Dhar. As per the provisions of Section 285BA of the Act the assessee is required to submit a statement in Form 61B for every financial year by 31st May of following that year. In financial year 2014-15 the due date of filing of information in prescribed form No.61B was

31.5.2015. This date was extended by the Income Tax Department to 10.9.2015. The assessee failed to file the Annual Information Return (AIR) as required as per the provisions of Section 285BA. Show cause notice was issued by the Ld. Director of Income Tax (I&CI) on 26.11.15 to file necessary information latest by 15.12.2015 but no compliance was received. Again notice was issued on 31.03.2016 u/s 271FA r.w.s. 274 of the Act for levying penalty for non filing of the information. None attended on the date of hearing. Last opportunity was given to appear on 17.11.2017 and the assessee again failed to comply with the notice. Ld. Director of Income Tax (I&CI) accordingly levied the penalty u/s 271FA of the Act @Rs.500/- for the period of delay of 703 days and computed the penalty at Rs.3,51,500/-. Aggrieved assessee is now in appeal before the Tribunal.

5. Ld. Counsel for the assessee referring to the written submissions placed on record submitted that necessary information was provided to the tax practitioner at Dhar for filing the Annual Information Report but the same was not filed by him and this was sufficient reason for non-furnishing of Annual Information Report

within the prescribed time Reliance was placed on following decisions:

- i. Durgapur Steel Peoples Coorporative Bank Ltd. vs. DIT(I & CI), Kolkata (2016) 74 Taxmann.com 97 (Kolkata-Tirb.)
- ii. Sub-Registrar, Almora vs. DIT (I & CI), Kanpur (ITANo.480/LKW/2017) (Lucknow Tribunal)
- iii. Sub-Registrar, Bavla vs. DIT(I & CI), Ahmedabad (ITANo.1407/Ahd/2016)(Ahmedabad Tribunal)
- iv. Sub-Registrar, Dhansura vs. DIT(I & CI), Ahmedabad (ITANo.1427,1428 & 1429/Ahd/2016)(Ahmedabad Tribunal)

6. Reliance was also placed on the decision of Coordinate Bench in the case of Sub-Registrar Jaora, vs. DIT(I & CI), ITANo.108/Ind/2018 dated 16.05.2019.

7. We find that similar set of fact in this issue came up before us in the case of Sub-Registrar Jaora, vs. DIT(I & CI),(supra) we find, we have partly sustained the penalty at Rs.9,700/- as against penalty levied at Rs.3,51,500/- observing as follows:

6. We have heard rival contentions and perused the records placed before us. The assessee is a local authority controlled by State Government of Madhya Pradesh and carries out the work of registration of

the documents pertaining to transfer of immovable properties. The assessee is covered under the list of persons provided u/s 285BA Sub Section (i) of the Act and is under obligation to furnish AIR for the financial transaction or reportable action in Form No.61B. As per provisions of Section 285BA(ii) of the Act assessee was required to furnish statement in Form No.61B for every financial year by 31st May of the following year. The due date for financial year 2014-15 was 31.5.2015 which was subsequently extended to 10.12.2015. The assessee failed to file the information by 10.5.2016. Notices were issued by the revenue authorities to file the details latest by 15.12.2015 but no compliance was made. Thereafter show cause notice u/s 271FA r.w.s. 274 of the Act was issued on 31.3.2016 for imposing the penalty for the lapse in not filing the Annual Information Report but there was no compliance to these notices. Assessee also failed to appear on dates fixed for hearing on 17.11.2017 and 21.12.2017. For this reason penalty of Rs.3,51,500/- was worked out @Rs.500/- for the delay of 703 days (from 16.12.2015 to 17.11.2017).

7. *We observe that the amount of penalty is computed as per the provisions of Section 271FA of the Act which provides that before 1.04.2018 penalty of Rs.100/-per day may be charged for number of days delay. Section 273B of the Act provides for not levying penalty in certain cases if the assessee proves that there was a reasonable cause for the failure. This section also refers to the penalty of Section 271FA of the Act. Reference was made to various correspondences with the Chief Secretary, Govt. of Madhya Pradesh, Department of Commercial Taxes and Chief Commissioner of Income Tax as well as Secretary, Finance Department of Revenue which talks about the technical problem due to which non integration of the departments portal with the Income Tax Departmental portal for PAN authentication was not achieved. This problem was solved at later stage and finally assessee filed Annual Information Report for financial year 2014-15 on 14.12.2017. Certainly*

there was a delay but there was reasonable cause for such delay.

8. *However looking to the fact that the assessee has not given any reply to the numerous notices issued by the Income Tax Department deleting total penalty will not be a good message to the various government departments who are bound to supply the information to the Income Tax Department which per se helps in checking the tax evasion as well as assessing the correct income of various persons. We notice that the assessing authority has computed the penalty @Rs.500/- per day which was changed from Rs.100/- to Rs.500/- w.e.f. 1.4.2018, therefore the penalty if any has to be computed @Rs.100/- per day. Further when the assessee did not appear on 15.12.2015 why the action was not taken against the assessee, the reason is best known to the revenue authorities who waited for almost 2 years to compute the penalty. From 10.9.2015 to 15.12.2015 a total number of days for the failure on the part of the assessee is 97 days. In our considered view, totality of the facts and in the interest of justice and fair to both the parties we hold that sustaining the penalty of Rs.9700/- (97 days x Rs.100/- per day) on the assessee will be justified and it will be a message to the government authorities, so that in future such casual approach should not be taken and compliance to the statutory requirements including reply of notices by Income Tax Department should be adhered to. We accordingly sustain penalty of Rs.9,700/- and delete the remaining amount of penalty of Rs.3,41,800/- and partly allow the assessee's appeal.*

8. Per contra Ld. Departmental Representative vehemently argued and supporting the order of Ld. Director of Income Tax (I&CI). He also submitted that there was no compliance to the number of notices issued to the assessee which shows the casual

approach of the assessee towards the notices issued by Income Tax Department.

9. We have heard rival contentions and perused the records placed before us. The assessee is a local authority controlled by State Government of Madhya Pradesh and carries out the work of registration of the documents pertaining to transfer of immovable properties. The assessee is covered under the list of persons provided u/s 285BA Sub Section (i) of the Act and is under obligation to furnish AIR for the financial transaction or reportable action in Form No.61B. As per provisions of Section 285BA(ii) of the Act assessee was required to furnish statement in Form No.61B for every financial year by 31st May of the following year. The due date for financial year 2014-15 was 31.5.2015 which was subsequently extended to 10.09.2015. The assessee failed to file the information by 10.9.2015. Notices were issued by the revenue authorities to file the details latest by 15.12.2015 but no compliance was made. Thereafter show cause notice u/s 271FA r.w.s. 274 of the Act was issued on 31.3.2016 for imposing the penalty for the lapse in not filing the Annual Information Report but

there was no compliance to these notices. Assessee also failed to appear on dates fixed for hearing on 17.11.2017 and 21.12.2017. For this reason penalty of Rs.3,51,500/- was worked out @ Rs.500/- for the delay of 703 days (from 16.12.2015 to 17.11.2017).

10. Since the facts and figures have been recently adjudicated by us in the case of Sub-Registrar Jaora, vs. DIT(I & CI),(supra) referred above, we applying the same decision on the facts of the given case, restrict the penalty u/s 271FA of the Act at Rs.9,700/- and delete the remaining amount of penalty of Rs. 3,51,500/- and partly allowed the assessee's appeal.

11. In the result the appeal of the assessee is partly allowed.

The order pronounced in the open Court on 22.10.2019.

Sd/-

(KUL BHARAT)

JUDICIAL MEMBER

Sd/-

(MANISH BORAD)

ACCOUNTANT MEMBER

दिनांक /Dated : 22nd October, 2019

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By order

Assistant Registrar, ITAT, Indore