

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.1646 to1656/Bang/2019
(Assessment Years : 2006-07 to 2016-17)

M/s. Aruna Sahakari Bank Niyamitha,
No.689, Yelahanka New Town,
Yelahanka, Bangalore-560064
PAN AAAAAA8267C

....Appellant

Vs.

Director of Income Tax,
(Intelligence and Criminal Investigations)
Bangalore.

.....Respondent.

Assessee By:	Shri Sandeep C, C.A.
Revenue By:	Shri Sunil Kumar Agarwal, Addl. CIT(D.R)

Date of Hearing :	03.12.2019
Date of Pronouncement :	06.12.2019

ORDER

PER BENCH :

These are the appeals filed by the assessee for the Assessment Years 2006-07 to 2016-17 against the common order of Commissioner of Income Tax (Appeals)-13, Bangalore passed under Section 271FA

and 250 of the Income Tax Act, 1961 ('the Act'). Since all these appeals have identical and common issues, they are clubbed and heard together and common consolidated order is passed. For the sake of convenience we shall take up the assessee's appeal in ITA No.1646/Bang/2019 for A.Y. 2006-07 and the facts narrated therein.

2. At the time of hearing, the learned Authorised Representative filed additional grounds of appeal and upon hearing the learned Departmental Representative, they are admitted. The assessee has raised the grounds of appeal and additional grounds of appeal which are read as under :

1. That the order of the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.
2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the Co-operative Banks are liable to comply with the provisions of section 285BA of the Act even though the relevant rule 114E(2) of the Act does not specify Co-operative Bank as a class of person during the relevant period.
3. That the order u/s 271FA of the Act is barred by limitation.
4. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the penalty u/s 271FA of the Act even though there is no loss of revenue to the Government and there is merely a technical breach.
5. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the penalty for not filing the return within the time prescribed u/s 285BA(1) even though S.285BA(1) does not prescribe any time limit for filing the annual return.

6. Without prejudice to the above grounds, that the learned Commissioner of Income Tax (Appeals) ought to have deleted the penalty as there is sufficient and reasonable cause for not filing the AIR within prescribed time.
7. Without prejudice to the above grounds, the learned Commissioner of Income Tax (Appeals) erred in law and on facts in levying penalty from the date of expiry of due date for filing the Annual Information Return (AIR) and not from the date of expiry of the time allowed in the notice issued u/s 285BA(5) of the Act.
8. Without prejudice to the above grounds, the learned Commissioner of Income Tax (Appeals) ought to have held that the penalty for not filing the AIR within the prescribed time is Rs. 100 per day and not Rs. 500 per day as the penalty provisions u/s 271FA applicable for such financial year provides penalty as Rs. 100 only.
9. Without prejudice to the above grounds the learned Commissioner of Income Tax (Appeals) ought to have held that the penalty can be levied only till the date of filing the AIR manually.

ADDITIONAL GROUNDS

10. That the learned lower authorities erred in law and on facts in levying penalty u/s 271FA of the Act for not filing the AIR even though S.285BA was substituted without any saving clause w.e.f 1.4.2015.
11. That the learned lower authorities erred in law and on facts in levying penalty u/s. 271FA of the Act on the basis of unamended S.285BA(1) which did not exist on the date of passing the penalty order.

Each of the above grounds is without prejudice to one another, the appellant craves the leave of the Income Tax Appellate Tribunal, Bangalore to add, delete, modify and amend otherwise any of the ground either at the time of filing the appeal or at the time of hearing.

3. The Brief facts of the case are that under the provisions of Section 285BA of the Act r.w. Rule 114E of I.T. Rules, 1962 for the assessment

year 2006-07 related to F.Y. 2005-06, the assessee has to file Annual Information Return (AIR) on or before 31.08.2006 in respect of transaction specified in sub-rule 2 of Rule 114E of I.T. Rules. Since there was no compliance by the assessee in submitting the information under provisions of Section 285BA of the Act. Hence Notice was issued under Section 285BA(5) of the Act on 27.2.2015 to file Annual Information Return within 15 days but there is no compliance by the assessee. Subsequently Show Cause Notice was issued and Sworn statement was recorded by the Revenue authorities. Whereas the Assessing Officer found that reasons explained by the assessee for not filing the Annual Return for F.Y. 2005-06 and subsequent assessment years are not satisfactory in respect of substantive reportable transactions. Hence there is clear violation of provisions of Section 271FA of the Act and levied penalty vide the order passed under Section 271FA of the Act dt.25.4.2017. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals) whereas the CIT(Appeals) considering the submissions of the assessee, grounds of appeal and findings of the Assessing Officer has confirmed the penalty and dismissed the assessee's appeal. Aggrieved by the CIT(Appeals) order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorised Representative submitted that the assessee has filed additional grounds of appeal on the technicalities and legal issue on applicability of law which is effective from 1.4.2015 and further the authorities erred in levying the penalty under Section 271FA of the Act relying on unamended provisions of Section 285BA(1) which does not exist on the date of passing the order. The learned Authorised Representative submitted that the assessee has filed additional grounds of appeal filed before the CIT(Appeals) on 8.5.2019 and whereas the CIT(Appeals) has already passed the order on 6.5.2019 which was not within the knowledge of the assessee and hence prayed that the additional grounds of appeal are heard and allow the appeal. Contra, the learned Departmental Representative supported the orders of CIT(Appeals).

5. We heard the rival contentions and perused the material on record. Prima facie, the learned Authorised Representative has restricted his arguments to the extent of additional grounds only which are admitted. The contention of the learned Authorised Representative that the assessee filed additional grounds of appeal before CIT (Appeals) and substantiated with the acknowledgement of filing in the office of CIT

(Appeals) on 8.5.2019 but CIT (Appeals) has passed the order on 6.5.2019 which cannot be disputed. Hence again the assessee has raised additional grounds of appeal before the Tribunal. We found that this additional ground has to be heard by the CIT(Appeals) on the legal and technical aspects. Accordingly to meet the ends of justice, we restore the these additional grounds of appeal to the file of CIT(Appeals) to adjudicate on technical and legal aspects and if the assessee fails on additional grounds of appeal before the appellate authority, the CIT(Appeals) is directed to adjudicate afresh all the disputed issues on merits and pass a reasonable and speaking order. Further the assessee should be provided adequate opportunity of hearing and shall co-operate in submitting the information/details for early disposal of appeal and allow the grounds of appeal of the assessee for statistical purposes.

6. Similarly the assessee filed appeals in ITA Nos.1647 to 1656/Bang/2019 for the Asst. Years 2007-08 to 2016-17 and the decision as decided in ITA No.1646/Bang/2019 for the A.Y. 2006-07 is applicable to these appeals also. Hence these appeals are also restored along with additional ground of appeal to the file of CIT(Appeals) to

adjudicate afresh as directed in para 5 and allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the assessee's appeals in ITA Nos.1646/Bang/2019 to 1656/Bang/2019 are allowed for statistical purposes.

Order pronounced in the open court on 6th Dec., 2019.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 06.12.2019.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore