

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A ” BENCH, BENGALURU**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
&  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

I.T.A. No.1265/Bang/2019  
(Assessment Year : 2014-15)

<b>M/s Jana Small Finance Bank Limited. No.10/11/2,12/2B, The Fairway Business Park, Off.Domlur, Koramanagala, Bangalore-560 071</b>	Vs.	<b>DCIT,Circle-4(1)(1), Bangalore</b>
<b>PAN/GIR No.AABCJ7024M</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**&**

ITA No.1266(B)/2019  
(Assessment year : 2015-16)

<b>M/s Jana Small Finance Bank Limited. No.10/11/2,12/2B, The Fairway Business Park, Off.Domlur, Koramanagala, Bangalore-560 071</b>	Vs.	<b>DCIT,Circle-4(1)(1), Bangalore</b>
<b>PAN/GIR No.AAACL2937J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	<b>Shri Ajit Roti, CA</b>
<b>Respondent by :</b>	<b>Ms. Neera Malhotra, CIT-DR</b>

<b>Date of Hearing</b>	<b>26-02-2020</b>
<b>Date of Pronouncement</b>	<b>28-02-2020</b>

**ORDER**

**PER PRADIP KUMAR KEDIA – AM**

The captioned appeals have been filed at the instance of assessee against the respective orders of CIT(A)-4, Bengaluru both dated 15-03-2019 passed by the AO under s.143(3) of the IT Act, 1961 ('The Act') concerning assessment years 2014-15 and 2015-16 respectively.

2. The issues involved being common in both the appeals, both the matters were heard together and disposed of by this common order.

3. We shall first take up appeal in ITA No.1265(Bang)/2019 concerning assessment year 2014-15 for adjudication purposes.

The grounds of appeal raised by the assessee reads as under;

**1. Assessment is bad in law**

1.1. The order dated March 15, 2019 received on April 9, 2019 passed under section 250 of the Income-tax Act, 1961 ('the Act') by the learned Commissioner of Income-tax (Appeals)-4 [CIT(Appeals)], Bangalore, be struck down as invalid, as the order is bad in law and on facts.

1.2. The learned CIT(Appeals) has erred in completing the proceedings in violation of the principles of natural justice by not affording an opportunity to the Appellant to furnish additional submissions and documents which are pertinent to the additions made, thereby rendering the impugned order to be bad in law.

**2. Application for additional evidence not accepted**

2.1, The learned CIT(Appeals) erred in law and on facts by not considering the Appellant's application for additional evidence as per Rule 46A(1)(d) of the Income-Tax Rules, 1962. Specifically, the learned CIT(Appeals) has erred in holding that:

(a) Appellant failed to furnish the details during the course of assessment proceedings in spite of giving sufficient time and opportunities;

(b) Appellant enclosed only ledger extracts and nothing else during assessment proceedings appellate proceedings; and

(c) Appellant has not substantiated the reasons for not producing the required documents and evidences during the assessment proceedings and appellate proceedings:

2.2. The learned CIT(A) erred in facts and circumstance of the case in not appreciating that the Appellant did not have sufficient time to provide the documents and information during the course of assessment proceedings.

### **3. Disallowance under section 37(1) of the Act**

3.1. The learned CIT(Appeals) erred in law and in facts in confirming the Assessing Officer's action by disallowing expenses aggregating to INR 6,51,68,868 without taking into account the submissions filed by the Appellant.

3.2. The learned CIT(Appeals) erred in law by ignoring the judicial precedents relied by the Appellant in so far as the Appellant was deprived of appropriate opportunity of being heard thereby violating the principles of natural justice.

3.3. The learned CIT(Appeals) erred in law and in facts in upholding the Assessing Officer's action in holding that:

(a) Appellant filed only basic ledger extracts 'business process outsourcing expenses', 'legal professional expenses' and 'business correspondent and financial advisory expenses';

(b) Appellant has not provided evidence to substantiate the expenses claim; and

(c) Appellant has not incurred the expenses wholly and exclusively for the purpose of business.

### **4. Short grant of credit in respect of tax deducted at source**

4.1. The Assessing Officer has erred in law and in the facts and circumstances of the case in granting short credit of tax deducted at source amounting to INR 3.67,318.

4 2. The Assessing Officer has erred in law and in the facts and circumstances of the case in not following the directions of the CIT(Appeals) to grant appropriate tax credit in the order giving effect dated March 26, 2019 to the order of the CIT(Appeals) under section 250 of the Act.

### **5. Erroneous levy of interest under section 234A of the Act**

5 The learned CIT(Appeals) erred in law and in the facts and circumstances of the case in confirming the Assessing Office's action in levying interest under section 234A of the Act.

5 2 The learned CIT(Appeal) erred in law and in the facts and circumstances of the case in not taking cognizance of the fact that the return due date for AY 2014-15 was extended up to November 30, 2014 and the fact that the interim stay has been granted by Madras High Court in the case of All India Federation of Tax Practitioners (MP 2 of 2014) for interest under section 234A of the Act.

5.3. The learned CIT(Appeal) erred in law and in the facts and circumstances of the case by holding that in the absence of any stay granted either by the jurisdictional Karnataka High Court or in the Appellant's own case, the levy of interest under section 234A of the Act is mandatory.

#### **6. Erroneous levy of interest under section 234B of the Act**

6.1. The learned CIT(Appeals) has erred in law and on facts in upholding Assessing Officer's action for levying interest under section 234B of the Act.

#### **7. Initiation of penalty proceedings under section 271(1)(c) of the Act**

7.1 The learned CIT(Appeals) has erred in and upholding Assessing Officer's action in initiating penalty proceedings under section 271(1)(c) of the Act.

#### **8. Initiation of penalty proceedings under section 271B and 271F of the Act**

8.1. The learned CIT(Appeals) has erred in and upholding Assessing Officer's action in initiating penalty proceedings under section 271 B and 271 F of the Act without appreciating the fact that the Appellant had filed return of income and tax audit report for AY 2014-15 within the extended due date of November 30, 2014.

#### **9. Relief**

9.1. The Appellant prays that directions be given to grant all such relief arising from the preceding grounds as also all reliefs consequential thereto.

9.2. The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal, at any time before or during the hearing of the appeal.

4. The assessee in the captioned appeals has raised several grounds assailing the order of CIT(A) for disposal of the appeal of the assessee. However, it is noticed that one of the substantive grounds raised by the assessee whereby the assessee seeks to impugn the order of CIT(A) towards alleged violation of principles of natural justice and disposal of first appellate order without admitting additional evidences placed before the CIT(A).

5. When the matter was called for hearing, the Id.AR for the assessee at the outset submitted that the AO has made *interalia* made huge disallowances

under s.37(1) of the Act to the tune of Rs.6,51,68,868/- while framing the assessment under s.143(3) of the Act. It was pointed out that notices were issued by AO on various dates asking the assessee to furnish certain specific details and the details so called for were provided by the assessee to the AO. However, another notice was issued for assessment year 2014-15 on 27-12-2017 whereby the details of business expenses incurred like business process outsourcing expenses, legal and professional expenses, business correspondent expenses and financial advisory etc. were enquired. The notice was directed to be complied on the very next day i.e. on 28-12-2017. The details on these points were enquired for the first time and therefore, the assessee was in no position to furnish the details in spur of moment. The assessment order was eventually passed making staggering disallowance of expenses by assessment order dated 29-12-2017.

5.1 The Id.AR pointed out that, thus, in effect, no realistic opportunity was given to the assessee to comply with the notice seeking relevant details. It was thus submitted that the order of the AO is vitiated from the violation of principles of natural justice.

5.2 It was pointed out that the matter was carried to the CIT(A) wherein, the relevant details were filed on these issues and leave of the CIT(A) was sought for admission of additional evidence under Rule 46A of the IT Rules. The CIT(A) however, rejected the prayer of the assessee for admission of additional evidences placed before it. It was thus, contended that the order of the AO as well as the CIT(A) is vitiated owing to blatant transgression of natural justice and deserves to be set aside.

6. The Id.DR on the other hand, relied upon the order of lower authorities, but however, fairly voiced his concurrence with the proposal on behalf of the

assessee for setting aside the matter to enable the AO to reframe the issues afresh in accordance with law.

7. We have carefully considered the rival submissions and perused the case records. A perusal of the sequence of event shows that the so called final show cause notice dated 27-12-2017 issued by the AO sought details and explanations on certain expenses in question expecting the assessee to comply therewith on the very next day i.e. 28-12-2017 and the assessment order was eventually passed on 29-12-2017. It is thus, apparent that the opportunity granted by show cause notice was illusory and an empty formality to complete the assessment. An assessment order passed in contravention of natural justice is a nullity in the eyes of law.

7.1 Judicial propriety demands that a fair opportunity should be given to the assessee to enable it to explain its case. The breach of sacrosanct principles of natural justice is fundamental and goes to the root of the process of framing assessment. Pertinent here to say, the proceedings before the AO are quasi-judicial proceedings and all the incidences of such proceedings were expected to be observed without laxity before the proceedings were determined. The AO must realize that statutory duties conferred on him is in the nature of a trust. We are unable to visualise as to how an AO can expect compliance of onerous and complex details in few hours from a tax payer.

7.2 When seen in conjunction, it is yet more difficult to perceive that any superior authority expected to rectify such apparent violation in granting due opportunity would refuse to admit the additional evidences moved before him. Needless to say that the spirit Rule 46A of IT Rules, enabling the assessee to place additional evidences before the CIT(A) are founded on the doctrine of legitimate expectations and principles of natural justice. It is indeed the

sacrosanct obligation of the first appellate authority to have ensured that an effective opportunity is granted to an assessee for presenting his case. This apart, clause-(b) of Rule 46A itself clearly spells out that an assessee would be entitled to produce additional evidence before the CIT(A) where he was prevented by sufficient cause from producing the evidence which he was called upon to produce by the AO. The case of the assessee squarely falls within the circumstances explicitly laid down under Rule 46A. Be it as it may, the powers of CIT(A) is not fettered or circumscribed by Rule 46A for admission of additional evidences. In view of the mandate of the provisions of s.250(4) of the Act also, the situation existing in the case as narrated above, clearly warranted admission of additional evidence by the CIT(A).

7.3 We thus find apparent fallacy in the action of the CIT(A).

8. The order of CIT(A) on the subject matter of appeal is thus set aside and restored to the file of AO for *denovo* adjudication in accordance with law, after making or causing proper enquiry by the AO as he may consider expedient. The AO shall also examine the objection of the assessee towards short grant of credit in respect of tax deducted at source, as claimed by the assessee. The assessee has also challenged the charge of interest under s.234A and 234B of the Act which are consequential in nature. The assessee shall be at liberty to make its submissions before the AO on all these points. The AO shall provide reasonable opportunity to the assessee to address various objections.

9. In the light of the observations made above, the order of CIT(A) appealed against, is set aside and issues raised in the impugned appeals are restored

back to the file of the AO for fresh adjudication in accordance with law, after giving reasonable opportunity of being heard to the assessee.

10. In the result, the captioned appeals of the assessee is allowed for statistical purposes.

**This Order pronounced in Open Court on 28-02-2020.**

Sd/-  
(BEENA PILLAI)  
JUDICIAL MEMBER  
Place: Bengaluru  
Dated: 28-02-2020  
\*am

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Copy of Order Forwarded to:-

1. Revenue
2. Assessee
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Bengaluru .
6. Guard file.

By order

Asst. Registrar

