

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAIPUR” BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI PAWAN SINGH, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 115 & 117/RPR/2017

(निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10)

Raigarh Nagrik Sahkari Bank Maryadit Daroga Para, Raigarh (CG)	बनाम/ Vs.	The Income-tax Officer-1 Aaykar Bhawan, Chakradhar Nagar, Raigarh(CG)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGFR6341B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. R. Rao, Advocate
प्रत्यर्थी की ओर से/Respondent by :	Shri Sanjay Kumar, DR

सुनवाई की तारीख / Date of Hearing	12/08/2021
घोषणा की तारीख /Date of Pronouncement	13/08/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

Both captioned appeals have been filed at the instance of the assessee against the separate orders of the Commissioner of Income Tax (Appeals), Bilaspur ('CIT(A)' in short), both dated 30.08.2016 arising in the separate penalty orders both dated 05.08.2014 passed by the Assessing Officer (AO) under s. 271FB of the Income Tax Act, 1961 (the Act) concerning AYs. 2008-09 & 2009-10.

2. The solitary issue in the appeal is justification on quantification of penalty imposed under s.271FB of the Act for delay in filing of return of fringe benefit tax as required under s.115WD (1) of the Act.

3. As pointed on behalf of the assessee, the assessee is a Sahakari Bank diligently complying with the law. The assessee has by over sight failed to file the return of fringe benefit tax on due date. However, in response to notice issued by the AO under s.115WH of the Act, the assessee came forward and filed the return as called for. As per the return of fringe benefit, the tax liability stands at a very meager amount i.e. Rs.355/- for A.Y. 2008-09 and Rs.227/- for A.Y. 2009-10. It is the case of the assessee that having regard to smallness of the fringe benefit tax, the quantum of penalty imposed based on number of days is quite high and disproportionate to the quantum of default. It is thus contended that the penalty imposed under s.271FB of the Act be dropped having regard to the bonafide error or in the alternative be restricted to the extent of fringe benefit tax involved in the respective years in the light of decision of the co-ordinate bench in *M/s Om Prakash Goyal & Company vs. ITO ITA No. 405/Ind/2012, A.Y. 2006-07*, order dated 19.12.2012.

4. The learned DR for the Revenue, on the other hand, contended that the assessee is expected to file the return on due date, the failure of which, automatically attracts penalty under s.271FB of the Act on respective assessee.

5. On an appraisal of the fact situation and having regard to the decision of the co-ordinate bench in similar facts, we find merit in the plea of the assessee for limiting the quantum of penalty to the

extent of tax imposed by way of fringe benefit tax. Otherwise also, it is a case of highly disproportionate amount of penalty qua the corresponding tax involved. Such action belies the legislative intention behind such provision. Hence, the penalty imposed under s.271FB of the Act is restricted to the corresponding fringe benefit tax determined and payable under s.115WD of the Act.

6. In the result, both the appeals of the assessee are partly allowed.

This Order pronounced in Open Court on 13/08/2021

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER
Raipur: Dated 13/08/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर /
DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

By order,

Sr. Private Secretary
ITAT, Raipur (on Tour)