

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.174 to 177 & ITA Nos.381 to 384/Bang/2021 Assessment Years:2006-07 to 2009-10 & 2010-11 to 2013-14 respectively

The South Canara District Central Co-operative Bank Ltd. 14-7-1011, Post Box No.721 Sadashiva Sahara Sadana, Kodialbail Mangalore, Dakshina Kannada Karnataka-575 003 PAN NO :AABAT6621N	Vs.	The Director of Income Tax (Intelligence and Criminal Investigation) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar S.V., A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	05.10.2021
Date of Pronouncement	:	05.10.2021

ORDER

PER Bench:

All these appeals filed by the assessee are directed against the orders passed by Ld. CIT(A)-2, Panaji and they relate to the assessment years 2006-07 to 2013-14. The assessee is challenging the decision of Ld. CIT(A) in confirming the penalty levied by the Director of Income Tax u/s 271FA of the Income-tax Act,1961 [‘the Act’ for short] for non-filing of Annual Information Return as required under Rule 114E of the I.T. Rules.

2. The Ld. A.R. submitted that the assessee is a co-operative bank. He submitted that the impugned penalty was levied by Ld. Director of Income Tax (Intelligence & Criminal Investigation) in all the eight years for filing Annual Information Return, which is required to be filed as per provisions of section 285BA(2) read with Rule 114E of the Income Tax Rules beyond the due date prescribed. The Ld. A.R. submitted that the assessee is a co-operative bank and the co-operative banks were specifically included in rule 114E only w.e.f. 1.4.2016 only. Hence, there was an ambiguity as to whether the co-operative banks are required to comply with the provisions of rule 114E of the rules or not. Hence, there was delay in filing the annual information return, which was on account of bona fide belief only. The Ld. A.R. submitted that the above said bonafide belief shall constitute a reasonable cause in terms of section 273B of the Act. In support of his submissions, he placed his reliance on the order dated 13.3.2020 in the case of The Mandya District Co-op. Central Bank Ltd. Vs. DIT (I&CI) in ITA No.447/Bang/2019 dated 13.3.2020. Accordingly, he prayed for deletion of penalty levied u/s 271FA of the Act in all the 3 years under consideration.

3. The Ld. D.R., on the contrary, supported the orders passed by Ld. CIT(A).

4. We heard the rival contentions and perused the record. We notice that an identical issue has been considered by this bench in the case of The Mandya Dist. Co-op. Central Bank Ltd. (supra). For the sake of convenience, we extract below the relevant observations made by the Tribunal in above said case:

“5. The assessee challenged the penalty levied u/s 271FA of the Act by filing appeal before Ld CIT(A), but the same was dismissed. Hence the assessee has filed this appeal before us.

6. *The Ld A.R submitted that there was reasonable cause for the assessee in not filing the AIR. He submitted that the provisions of Rule 114E specifically included “co-operative Bank” with effect from 01-04-2016. He invited our attention to the provisions of Rule 114E before amendment and post amendment. He submitted that the pre-amended provisions are applicable to the year under consideration and the relevant portion read as under :-*

“A Banking Company to which Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of the Act.)”

He submitted that the above said portion was amended by IT (Twenty-second Amendment) Rules 2015 w.e.f. 01-04-2016 as under:-

*“A Banking Company **or a co-operative bank** to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of the Act.)”*

He submitted that the “co-operative banks” were specifically included with effect from 01-04-2016 and hence there was a view that the co-operative banks are not required to furnish AIR information. In view of the above said ambiguity, the assessee has not filed the AIR information. He submitted that the assessee has furnished the above said explanation before Ld CIT(A). However, the Ld CIT(A) has taken the view that the amendment made with effect from 1.4.2016 is clarificatory in nature and hence the same would apply to the year under consideration also. The Ld A.R submitted that the ambiguity demonstrated by the assessee constitutes a reasonable cause within the meaning of provisions of sec.273B of the Act. Accordingly he prayed that the impugned penalty be deleted.

7. *The Ld D.R, however, submitted that the assessee shall fall under the category of “banking company” and hence the assessee has complied with the notice issued u/s 285BA(5) of the Act. He submitted that the amendment made in Rule 114E by inserting “co-operative bank” is only clarificatory in nature. He submitted that all the assessees are covered by sec.285BA(1) of the Act and hence there exists no ambiguity as contended by Ld A.R.*

8. *In the rejoinder, the Ld A.R submitted that the expressions Banking company and co-operative banks have specific meaning under the Banking Regulations Act.*

9. *We heard rival contentions and perused the record. We notice that the original provisions of Rule 114E of Income tax Rules did not include “co-operative bank” and it was inserted only in the amended provisions of Rule 114E, which came into effect from 1.4.2016. Accordingly, in our view, there is merit in the submission of the ld A.R that there existed an ambiguity as to whether the co-operative banks are required to comply with the provisions of Rule 114E of the Act,*

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meaning thereby, the bonafide belief of the assessee shall constitute reasonable cause in terms of sec.273B of the Act for the failure in furnishing the AIR for the year under consideration. In this view of the matter, the impugned penalty is liable to be deleted. Accordingly we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned penalty levied u/s 271FA of the Act for the year under consideration.”

5. We notice that the facts prevailing in the above said case are identical with the facts of the present cases. The Ld A.R also pointed out that an identical view has been taken by another co-ordinate bench in the case of Shri Chatrapati Shivaji Maharaj Sahakari Bank Niyamitha vs. DIT (ITA No.1332 to 1341/Bang/2019 dated 11.3.2020). Accordingly, following the above said orders of the Tribunal, we set aside the order passed by the Ld. CIT(A) and direct the DIT to delete the penalty levied u/s 271FA of the Act in all the three years under consideration.

6. In the result, all the eight appeals of the assessee are allowed.
Order pronounced in the open court on 5th Oct, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 5th Oct, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.