

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

**BEFORE S/SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.356/Ahd/2019
Assessment Year :2013-14**

Faith Intertrade 701, Shapth-1 SG Highway Ahmedabad 380 015. PAN : AABFF 2495 B	Vs	ITO, Ward-3(3)(2) Ahmedabad.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
Assessee by :		Shri Mehul Talera, Advocate
Revenue by :		Shri V.K.Singh, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : 23/02/2022
घोषणा की तारीख /**Date of Pronouncement**: 28/02/2022

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 27.12.2018 passed by Ld.Commissioner of Income-tax (Appeals)-3, Ahmedabad [for short "Ld.CIT(A)] in Appeal No.CIT(A)-3/ITO Ward-3(3)(12)/109/2017-18 under section 271BA of the Income Tax Act, 1961 (hereafter referred to "the Act") relating to the assessment year 2013-14, whereby the ld.CIT(A) confirmed action of the AO in imposing penalty of Rs.1,00,000/- under section 271BA of the Act.

2. The brief facts of the case is that the assessee is a partnership firm engaged in the business of industrial waxes and poultry feeds. For the Asst.year 2013-14, the assessee filed its return of income on 26.9.2013 declaring total income at Rs.1,46,082/-. The return of

income was taken for scrutiny assessment and order under section 143(3) read with section 92CA(3) of the Act was passed on 2.12.2016. During the financial year, the assessee firm had entered into an international transaction amounted to Rs.5,09,26,331/-. As per section 92E of the Act, the assessee is required to get its books of Accounts audited and furnish a report in Form No.3CEB. Failure to file report under section 92E will attract levy of penalty under section 271BA of the Act. The assessee's case was referred to TPO under section 92CA(1) of the Act. The ld.TPO vide his order dated 31.8.2016 passed under section 92CA(3), and has not made any adjustment to the arm's length price of the transaction entered into by the assessee. It is also noted that the assessee has not furnished report of accountant as required under section 92E of the Act during the assessment proceedings. Therefore, the ld.AO invoked the provisions of section 271BA of the Act, and levied a penalty of Rs.1,00,000/- against the assessee.

3.1. In appellate proceedings, the ld.CIT(A) held that from language of section 92E of the Act it was clear that the assessee has to obtain a report in respect of specified domestic transaction w.e.f. 1-4-2013 from an Accountant and the same is to be filed before the due date of filing of the return. Under Rule 10E report from the accountant is required to be obtained under section 92E by every person who has entered into international/specified domestic transaction during the previous year shall be in form No. 3CEB and verified in the manner indicated therein. Therefore, the contention of the LdAR that the appellant was not aware of the rule, as it was first year is not acceptable. The case laws cited by the appellant of Kolkata bench in case of J.J. Exports Ltd v. DCIT [15 taxmann.com 348] is related to the international transaction and not specified domestic transaction

(w.e.f 01.04.2013). The Mumbai Bench of Income-tax Appellate Tribunal (the Tribunal) in case of BNT Global Pvt. Ltd. upheld the levy of penalty under Section 271BA of the Income-tax Act, 1961 (the Act) for taxpayer's failure to file the audit report in Form 3CEB in respect of its international transaction of receiving foreign remittance.

3.2. Further the assessee in the instant case, was required to file the report u/s 92E read with Rule 10E in respect of specified domestic transaction before the specified date i.e. the due date for filing of the return. Since the assessee has not filed a report in Form 3CEB before the due date of filing of the return, penalty u/s 271BA is leviable. It is observed that there was no plausible reason put forth by taxpayer to establish, how it was prevented from preparing and filing the audit report in Form 3CEB. Thus, the failure on the part of the taxpayer to furnish the Audit Report in Form 3CEB within the prescribed period, without reasonable cause, is a clear violation of the provisions of Section 92E of the Act. Accordingly, The ld.CIT(A) confirmed action of the AO in imposing penalty under section 271BA of the Act.

4. Aggrieved against the impugned order of the ld.CIT(A), the assessee is in appeal before the Tribunal.

5. The Ld. Counsel for the assessee Shri. Mehul Talera took us through paper book filed by the assessee, more particularly page no.14-23 wherein letter dated 24.6.2016 addressed to TPO enclosing therewith study report for the financial year 2012-13 as well as the Form No.3CEB duly attested by a Chartered Accountant dated 7.9.2013. Further, in response to the show cause notice issued by

the AO, the assessee replied that though certificate in Form No.3CEB was obtained, but failed to furnish it electronically as the assessee was not aware about the recent change in the provisions of the Act. Since this was the first year of applicability, the assessee was ignorant about the change and did not file it electronically. This being a technical ground, ignorance about the same is prayed to be considered as reasonable cause for delay in furnishing Form NO.3CEB, and thus penalty proceedings requested to be dropped.

6. Per contra, the Ld. Departmental Representative Shri V.K. Singh contended that the letter dated 24.6.2016 sent by the assessee does not carry seal or stamp of the department. However, in the penalty order, the AO categorically held that during the course of assessment proceedings, the assessee failed to furnish the form as required under section 92E of the Act, and therefore penalty under section 271BA of the Act of Rs.1,00,000/- was levied on the assessee, and the ld.CIT(A) also confirmed that such report have been furnished during the assessment proceedings by the assessee, and thereby confirmed the levy of penalty. This factual matter does not require any interference, and thereby pleaded to confirm the levy of penalty.

7. We have given out thoughtful consideration on the issue of levy of penalty under section 271BA of the Act and heard the rival submissions and perused the material available on record. In the facts of the present case, admittedly the assessee failed to upload Form No. 3CEB in terms of the statutory requirement. The Statute requires in terms of Section 92E that the report from an Accountant be filed in regard to the international transactions or specified domestic transactions. The relevant provision reads as under :

“Report from an accountant to be furnished by persons entering into international transaction.—

"92E. Every person who has entered into an international transaction [or specified domestic transaction] during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed."

7.1 In order to ensure compliance, the Statute has provided imposition of penalty u/s 271BA in case of violation of section 92E. The relevant provision is extracted hereunder for completeness:

“Penalty for failure to furnish report under section 92E.

*"271BA—If any person fails to furnish a report from an accountant as required by section 92E, the Assessing Officer **may** direct that such person shall pay, by way of penalty, a sum of one hundred thousand rupees."*

7.2. A perusal of the above provisions shows that the Parliament has used the words "may" and not "shall", thereby making their intentions clear inasmuch as that levy of penalty is discretionary and not automatic. The said conclusion is further justified by Section 273B of the Act. A careful reading of Section 273B encompasses that certain penalties "shall" not be imposed in cases where “reasonable cause” is successfully pleaded. It is seen that penalty imposable u/s 271BA is also included therein. By the said provisions, the Parliament has unambiguously made it clear that no penalty "shall be" imposed, if the assessee "proves that there was a reasonable cause for the said failure". As noticed, if the statutory provision shows that the word "shall" has been used in Section 271BA, then the imposition of penalty would have been mandatory. Section 273B as noted further throws light on the legislative intent

as it specifically provides that no penalty "shall" be imposed if the assessee proves "that there was reasonable cause for the said failure".

7.3. In the facts of the present case, it is seen that the consistent explanation of the assessee has been ignored. The assessee has pleaded ignorance in regard to the said legal requirement and has demonstrated that the word "Specified Domestic Transaction" was inserted in section 92E by Finance Act, 2012 w.e.f. 01-04-2013 which is applicable for the first time from the assessment year 2013-14. Though the assessee obtained the Form 3CEB from the Chartered Accountant but had failed to up load electronically, as it has not aware about the recent changes and amendments in the provision. Further this being the first year of this new provision it could not upload the same electronically which is neither wilful nor wanton. The assessee has further pleaded that based on the report, no adjustments have been proposed by the TPO. Copy of the assessment order dated 02.12.2016 passed u/s. 143[3] rws 92CA(3) clearly shows that there were no adjustment made by the TPO and the AO accepted the returned income as the Assessed Income. Thus there is no mala fide is found in the above transaction, but only a bond fide mistake of new amended provision is not followed by the assessee. It is further seen that both the lower authorities has proceeded as though the levy of penalty u/s.271BA as automatic, without considering section 273B of the Act.

7.4. For the reasons stated above, non uploading of Form 3CEB for the first time is an unintentional *bona fide* mistake. Being satisfied by the explanation offered by the assessee, after considering the position of law as applicable, we hold the respective orders imposing

and confirming the penalty are set aside. The penalty order is quashed and the assessee appeal is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 28th February, 2022 at Ahmedabad.

**Sd/-
(PRAMOD M. JAGTAP)
VICE-PRESIDENT**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 28/02/2022