

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1314/Ahd/2019
Assessment Year 2017-18**

Honey Dew Holiday & Forex Pvt. Ltd. 17, 2 nd Floor, Spectrum Commercial Centre, Sapose Road, Ahmedabad-01 PAN: AADCH1747D (Appellant)	Vs	The DIT(I & CI), Ahmedabad (Respondent)
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Appellant by : None
Respondent by : Shri R.R. Makwana, Sr.D.R.

Date of hearing : 30-08-2022
Date of pronouncement : 07-09-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Assessee against the order dated 27.11.2018 passed by the Director of Income Tax (I&CI), Ahmedabad, as against the Penalty order passed under section 271FA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2017-18.

2. The Registry has noted that there is a delay of 189 days in filing the above appeal. The assessee has filed for condonation of delay by way of an affidavit stating that the impugned order was received by the Accountant of the assessee company and misplaced by him. After the follow up action was by the Director, the misplaced order was found and resultant in filing this appeal with a delay of 148 days (189 days as noted by the Registry) in filing the above appeal. None appeared on behalf of the assessee in spite of service of notice.

3. The Ld. Sr. D.R. Mr. R.R. Makwana appearing for the Revenue submitted before us that this appeal is not maintainable u/s. 253 of the Act as against an order passed by the Director of Income Tax (I&CI) levying penalty u/s. 271FA r.w.s. 274 of the Act. The Ld. D.R. also placed reliance on Cochin Bench Tribunal in the case of SRO vs. Director of Income-tax (Intelligence), Kochi [2016] 69 taxmann.com 364 wherein it is held as follows:

3. In fact this Tribunal examined the maintainability of the appeal against the order levying penalty u/s 274 r.w.s. 271FA of the Act in SRO, Meppayur-Kozhikode v. DIT (Intelligence) [2013] 37 taxmann.com 36/[2014] 64 SOT 10 (URO)(Cochin). After examining the provisions of the Act, this Tribunal found that no appeal is provided under the Act against the penalty levied u/s 271 FA of the Act. Hence, the appeal filed by the assessee before this Tribunal against the order levying penalty u/s 271 FA is not maintainable. In fact, this Tribunal found as follows:

"4. We have considered rival submissions on either side and also perused the material available on record. The question arises for consideration is whether this Tribunal could entertain an appeal by the Sub Registrar, Meppayur-Kozhikode against the order of penalty u/s 271 FA of the Act. We have carefully gone through the provisions of section 253 of the Act. Section 253 provides for an appeal before this Tribunal against the orders mentioned therein. For the purpose of clarity, the provisions of section 253 are reproduced hereunder:

"253(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) an order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a

Commissioner (Appeals) under section 154, section 250, section 271, section 271A or section 272A; or

(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st Day of January, 1997; or

(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or

(c) an order passed by a Commissioner under section 12AA or under clause (vi) of sub-section (5) of section 80G or under section 263 or under section 271 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A; or

(d) an order passed by an Assessing Officer under sub-section (3), of section 143 or section 147 in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order."

5. Now coming to the direction given by the Director of Income-tax (Intelligence) in clause 7 of the demand notice, no doubt, the Director of Income-tax (Intelligence) mentioned in the demand notice that an appeal can be filed before this Tribunal under Part B of Chapter XX of the Income-tax Act. It is well settled principles of law that consent of a litigant party will not confer any jurisdiction on a judicial or quasi judicial authority unless and until it is otherwise conferred by the legislature. Therefore, the consent/direction of the Director of Income-tax (Intelligence) will not confer any jurisdiction on this Tribunal unless it is provided for in the Income-tax Act by the Parliament. Hence, this Tribunal could not entertain the appeal filed by the Sub Registrar, Meppayur-Kozhikode.

6. Coming to the contention of the Id.DR that appeal is provided u/s 246A(q) of the Act, no doubt, an order imposing penalty under Chapter XXI is appealable before the CIT(A) under section 246A(q) of the Act. Admittedly, section 271 FA falls in Chapter XXI of the Income-tax Act. Therefore, one may claim that an appeal is provided u/s 246A(q) of the Act. We are conscious that the CIT(A) is equivalent in rank that of the Director of Income-tax (Intelligence), therefore, the appeal before CIT(A) may not be an effective and efficacious remedy available to the Sub Registrar, Meppayur-Kozhikode against whom penalty was levied. However, this Tribunal being a quasi judicial authority established under the Income-tax Act, cannot travel beyond the provisions of section 253 of the Act. Therefore, merely because the remedy available u/s 246A(q) of the Act may not be effective and efficacious that alone will not give any jurisdiction to this Tribunal to entertain this appeal.

7. Further, we are of the considered opinion that when the provisions of section 271 FA was introduced in the statute book by the Finance Act, 2004 with effect from 01-04-2005 the consequential amendment to section 253 was omitted to be carried out. This omission may be unintended. One may argue that an appeal is provided against the

order of penalty u/s 271 in 253(l)(a) and 253(l)(c) of the Act, therefore, all branches of section 271 i.e. from 271A to 271G are included in section. This argument may not be correct because section 271 is an independent section and it has its own sub sections. Sections 271A to 271G are not sub sections under section 271 and they are independent sections by themselves. This is obvious from section 253(l)(a) and 253(1)(c) itself. The legislature has mentioned sections 271 and 271A separately in section 253(l)(a) and 253(1)(c) of the Act. Therefore, the legislature treated sections 271 and 271A as separate and independent sections. In other words, sections 271A to 271G are independent and separate sections and it is not part/branch of sections 271 of the Act. Therefore, argument, if any, that section 271FA is part of section 271 is not correct. This Tribunal is of the considered opinion that section 271 FA is separate and independent of section 271 and therefore, the reference of section 271 in section 253(l)(a) or 253(l)(c) may not be included section 271FA. As already observed, the omission to include section 271 FA in section 253 may be unintended. Therefore, it is open to the department to bring to the notice of the concerned authority about the omission to provide appeal before the Tribunal for making consequential amendment to section 253 of the Act in case the department found that the omission is unintended.

8. In view of the above discussion, the appeal of the Sub Registrar, Meppayur-Kozhikode is dismissed as not maintainable before this Tribunal. However, it is made clear that it is open to the Sub Registrar, Meppayur-Kozhikode to challenge the order passed by the Director of Income-tax (Intelligence) levying penalty u/s 271 FA of the Act before the appropriate forum in a manner known to law."

4. In view of the above order of this Tribunal which is equally applicable for the present assessee, the appeal filed by the Sub Registrar, Muvattupuzha is not maintainable before this Tribunal. Accordingly, the same is dismissed.

4.1. It is settled principle of law that nowhere in section 253 mentions the order passed by Director of Income-tax (Intelligence) or any other officer of the Income- tax Department levying penalty u/s 271 FA is appealable before this Tribunal. Income Tax Appellate Tribunal being a quasi judicial authority established under the provisions of the Income-tax Act cannot travel beyond the provisions of the Income Tax Act. Therefore, unless and until an appeal is specifically provided in section 253 of the Act, against the order levying penalty u/s 271FA, we are of the considered opinion that the present appeal is not maintainable before this Tribunal.

5. Respectfully following the above decision, the present appeal filed by the assessee is not maintainable in law and therefore the same is dismissed in limine. The assessee is at liberty to file appropriate legal remedy against this impugned order, in the manner known to law.

6. In the result, appeal filed by the Assessee is dismissed.

Order pronounced in the open court on 07 -09-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 07/09/2022

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

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

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

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद