

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.250/Lkw/2018  
Assessment Year:2015-16

The Sub Registrar, Sub Registrar Bldg. Rath, District-Hamirpur,U.P. PAN/TAN:KNPS04127E (Appellant)	Vs.	DI (Intelligence & Criminal Investigation) 15/295A, Vaibhav Building, Civil Lines, Kanpur-208001,U.P.. (Respondent)
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ITA No.251/Lkw/2018  
Assessment Year:2017-18

The Sub Registrar, Sub Registrar Bldg. Maudaha, District-Hamirpur. PAN/TAN:KNPSO3570A (Appellant)	Vs.	DI (Intelligence & Criminal Investigation) 15/295A, Vaibhav Building Civil Lines, Kanpur-208001,U.P.. (Respondent)
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Appellant by	None (Adjournment Application)
Respondent by	Shri Amit Nigam, D. R.
Date of hearing	18/10/2022
Date of pronouncement	18 /10/2022

**ORDER**

**PER RAMIT KOCHAR, A.M.**

These two appeals are filed by two different assessee's challenging penalty levied u/s 271FA of the Income-tax Act,1961 for default in filing of the AIR information within the time stipulated u/s 285BA(1) of the 1961 Act. First we, shall take up appeal of the assessee for assessment year 2015-

16(financial year 2014-15). The Assessing Officer issued penalty notice u/s 271FA read with section 274,dated 19/01/2017 to the assessee as there was delay by assessee in filing of AIR information for the financial year 2014-15 , which was required to be filed by assessee latest by 31<sup>st</sup> August, 2015. The AO also issued notice dated 29.10.2015 u/s 285BA(5) of the 1961 Act.The assessee filed AIR information for financial year 2014-15 , on 02/12/2016 and hence there was a delay of 458 days by assessee in filing of AIR information for financial year 2014-15, which led to levy of penalty aggregating to Rs.1,91,400/- by the Assessing Officer, which comprises of 94 days of delay leading upto 03<sup>rd</sup> December, 2015 which was the time given vide notice issued by AO u/s 285BA(5) commencing from the due date of filing of AIR information which was 31.08.2015, and further delay of 364 days till actual filing of AIR information by assessee for financial year 2014-15(assessment year 2015-16), on 02/12/2016.

2. The assessee, being aggrieved by penalty order dated 23.03.2017 passed by Assessing Officer levying penalty of Rs. 191400 u/s 271FA against the assessee, has filed first appeal with Tribunal on 4<sup>th</sup> April, 2018, which itself is a belated appeal. The assessee has directly filed first appeal with Tribunal against penalty order u/s 271FA dated 23.03.2017 passed by learned DIT (Intelligence & Criminal Investigation), Kanpur. When this appeal was called for hearing before the Division Bench, on 17<sup>th</sup> October, 2022, none appeared on behalf of the assessee although adjournment application was filed. The Division Bench passed interim order on 17.10.2022, which reads as under:

*"Assessee has filed an application for adjournment of hearing. At the outset, the Bench noticed that these appeals are directed against the Penalty Order passed U/s. 271 FA directly before the Tribunal where as per Section 246A(1)(q) of the Income Tax Act penalty is imposed under chapter XXI is*

*appealable order before CIT(A). The assessee is required to explain the jurisdiction of the Tribunal to entertain these appeals. The hearing of this appeal is adjourned to 18.10.2022."*

Thus , the appeal was again fixed for hearing on 18<sup>th</sup> October, 2022, to decide on jurisdiction of this tribunal to adjudicate this appeal. Again none appeared on behalf of the assessee before Division Bench when this appeal was called for hearing on 18.10.2022, although adjournment application is filed on behalf of the assessee. The adjournment application was rejected by Division Bench , and the Division Bench proceeded to adjudicate the appeal after hearing learned D.R.

3. At the outset, the Id. DR submitted that this tribunal does not have jurisdiction to hear this appeal as correct forum to file first appeal against penalty order u/s 271FA is with Id. CIT(A), keeping in view provisions of Section 246A(1)(q). This appeal is emanating from penalty order passed u/s 271FA of the Act , which has been directly filed with the Tribunal although correct appellate authority for adjudicating first appeal against penalty order passed u/s 271FA is learned CIT(A), and reference is drawn to the provision of Section 246A(1)(q) of the Act , wherein appeals arising out of the penalty orders passed under Chapter XXI of the 1961 Act shall lie with Id. CIT(A). Thus in nut shell, the correct authority to adjudicate first appeal arising out of penalty order u/s 271FA , is learned CIT(A). Reference is also drawn to following orders passed by the Varanasi Division Bench (in which both of us were part of the DB who pronounced the order)wherein a similar view has been taken that the correct authority to adjudicate first appeal arising from penalty order passed by AO u/s 271FA, is learned CIT(A) and not the tribunal.

1. I.T.A. No.46/Vns/2020 in the case of The Sub-Registrar  
Gandhi Road, Saidpur, Ghazipur, Distt.Ghazipur,

UttarPradesh v. DIT(I&CI), Lucknow, order dated 07.07.2022 (Varanasi Circuit Bench)

The findings of the Tribunal in ITA No. 46/Vns/2020 , are as under:

*“6. We have considered rival submissions and perused the material on record. We have observed that the appellant has filed an appeal with tribunal directly against penalty order passed by A.O. under section 271FA of the 1961 Act, for the ay: 2018-19 (F.Y. 2017-18), wherein the AO levied penalty of Rs.4,74,500/- u/s 271FA of the 1961 Act for non-compliance of provisions of Section 285BA(1) of the 1961 Act. We are of the considered view that first appeal against penalty order passed by A.O. levying penalty under section 271FA of the 1961 Act would lie before Learned CIT(A), and not before the tribunal. Thus, the assessee erred in filing this appeal directly before the tribunal, and hence this appeal is non-est and not maintainable before the tribunal. In this connection, reference is drawn to provisions of Section 246A(1)(q) of the 1961 Act, which provides that an appeal against order imposing penalty under Chapter-XXI would lie with Learned CIT(A). Section 271FA of the 1961 Act falls under Chapter-XXI of the 1961 Act. In this connection, it is also relevant to reproduce the appellate order passed by ITAT, Varanasi Circuit Bench, Varanasi in the case of Sub-Registrar, Gola Bazar, Dist. Gorakhpur etc., v. DIT (I & CI), DTRTI, Lucknow, in ITA.Nos.75 to 78, 96 to 98/VNS/2019, vide common Order dated 24.03.2022 [in which both of us were part of the Division Bench who pronounced said orders], whereby the Division Bench had taken a view that first appeal against penalty order passed by A.O. levying penalty under section 271FA of the 1961 Act would lie with Learned CIT(A), keeping in view provisions of Section 246A(1)(q) of the 1961 Act. The relevant extract of the aforesaid tribunal order dated 24.03.2022 are reproduced as hereunder:*

*“4. We have heard both the rival parties and perused the material on record. We have observed that penalty order dated 26.03.2012 was passed by Id. AO u/s. 271FA of the 1961 Act , levying penalty of Rs.57,200/- against the assessee, for default in complying with the provisions of Section 285BA(1) of the 1961 Act. The said penalty order was challenged by assessee by filing first appeal before Id. CIT(A), who dismissed the appeal of the assessee on the grounds that the appeal against penalty order passed u/s 271FA for infringement of Section 285BA(1) of the 1961 Act, is not subject to challenge before Id. CIT(A) , keeping in view provisions of Section 246 and 246A of the 1961 Act, and hence the appeal was dismissed by Id. CIT(A) as infructuous being not maintainable with Id. CIT(A) and directions*

were issued to the assessee to file its appeal with appropriate authority designated for adjudicating such appeals. We are afraid that this finding of Id. CIT(A) is erroneous in the teeth of provisions of Section 246A(1)(q) of the 1961 Act, and in fact Id. CIT(A) is the appropriate authority designated for adjudicating first appeal against an penalty order passed by AO u/s 271FA of the 1961 Act. The provisions of Section 246A(1)(q) of 1961 Act is a residuary provisions which stipulate that first appeal against an order imposing penalty under Chapter XXI shall lie with CIT(A). Undoubtedly, provisions of Section 271FA falls under Chapter XXI of the 1961 Act.

Reference is also drawn to Co-ordinate Benches decision of tribunal in the following case, where the similar view was taken, as under :

a. Chandigarh-tribunal order in Sub-Registrar , Fategarh Sahib, v. DIT (CIB), Chandigarh, in ITA no. 1184, 1185, 1186 & 1189/Chd./2010, vide common order dated 22.02.2011, wherein tribunal held as under :

“ 5. We have heard the parties and considered the facts and materials on record. First of all, we have to decide whether the appellant can file an appeal before the Tribunal directly without filing of appeal before the CIT(Appeals). In this connection, learned counsel for the assessee brought to our notice that now the CBDT has clarified in F.No.279/M-31/2010-SO(ITJ) on this point. He also filed on record a copy of page No. 5 & 6 of the said Notification. We find that in the above Notification, the CBDT has clarified that u/s 246A(1)(q), of the income-tax Act, the CIT(Appeals) has powers to dispose of any penalty levied u/s 271FA and that there is no legal bar on CIT(Appeals) passing an appeal order against penalty order passed by the DIT (CIB), who is equivalent to the rank of CIT(Appeals). It has also been mentioned in the above Circular that whether CIT(Appeals) and DIT(CIB) are equivalent in rank or not is an administrative issue and it has nothing to do with the fact that the CIT(Appeals) can hear an appeal filed against an order passed u/s 271FA of the Income Tax Act by Director of Income Tax(CIB). Further it is clarified in the said Circular that u/s 246A(1)(q) of Income Tax Act, CIT(Appeals) has powers to hear an appeal filed against an order passed under Chapter XXI of the Income Tax Act, 1961.

6. In view of the above clarification given by the CBDT, in our considered opinion, the appellant should have filed an appeal before

*the CIT(Appeals) before filing an appeal directly before this Tribunal. In view of this position, we are dismissing all the four appeals filed by the appellant.”*

*b. Chennai-tribunal decision in the case of Sub- Registrar, Salem v. The DIT(CIB)(I/C), Chennai in I.T. Act no. 2009, 2013, 2015 and 2016/Mds/2010, vide common order dated 02.06.2011, wherein the tribunal has taken a similar view that an appeal against penalty order passed u/s 271FA shall lie with Id.CIT(A) keeping in view provision of Section 246A(1)(q) of the 1961 Act.*

*Thus, under these circumstances as narrated above, we are setting aside appellate order passed by Id. CIT(A) as not sustainable in the eyes of the law and restore the matter back to the file of Id. CIT(A) for fresh adjudication of all the grievances/grounds of appeal raised by the assessee in its appeal before Id. CIT(A), by holding that Id. CIT(A) is the correct designated appellate authority to adjudicate first appeal arising from an penalty order passed by AO u/s 271FA of the 1961 Act. Needless to say that Id. CIT(A) will give proper and adequate opportunity of hearing to the assessee in set aside remand proceeding while adjudicating first appeal filed by the assessee, in accordance with the principle of natural justice and in accordance with law. The Id. CIT(A) is directed to pass reasoned and speaking order on all the issues raised by the assessee in its appeal filed with Id. CIT(A), while adjudicating denovo the appeal of the assessee. The evidences /explanations submitted by the assessee shall be admitted by Id. CIT(A) in accordance with law and be adjudicated on merits in accordance with law. Thus, in nut-shell appeal filed by the assessee in ITA no.75/Vns/2019 for ay: 2011-12 is allowed for statistical purposes. We order accordingly.*

*6.1. We have observed that in the above cases which were decided by tribunal vide common order dated 24.03.2022, Learned CIT(A) has dismissed all the appeals taking a view that first appeal against penalty order passed by A.O. under section 271FA levying penalty for noncompliances of Section 285BA(1) of the 1961 Act, would lie directly to ITAT, which view of the Learned CIT(A) was held to be an erroneous view by the tribunal vide common order dated 24.03.2022. Thus, there could be a bonafide belief on the part of the appellant to file an appeal directly with the tribunal against penalty order passed by A.O. under section 271FA of the 1961 Act for non compliance of provisions of Section 285BA of the 1961 Act, but however the fact of the matter is that the first appeal against the penalty order passed by AO u/s 271FA shall lie with Id. CIT(A) and not with tribunal.*

***6.2 Thus, keeping in view our aforesaid discussions, we are inclined to dismiss this appeal filed by the appellant before the tribunal as a non-est appeal being not maintainable , with a further direction that appellant, if so advised, may file first appeal before the Learned CIT(A) against the penalty order dated 17.12.2009 passed by A.O. under section 271FA of the I.T. Act, 1961 immediately on receipt/service of this appellate order, and if that be so, we direct Learned CIT(A) to condone the delay in filing appeal by the appellant. We order accordingly”***

The Varanasi-tribunal has also taken similar view in appeals in I.T.A. No.75-78/Vns/2019 and ITA No. 96-97/Vns/2019 , vide common order dated 24.03.2022 in the case of Sub-Registrar, Gola Bazar, 1st Floor, Tehsil Compound, Gola Bazar, District Gorakhpur, Uttar Pradesh-273408 v. The Director of Income Tax(I&CI), Lucknow and others(in which both of us were part of the DB who pronounced the order).

3.2 Thus , based on our above discussions, we hold that the first appeal arising from penalty order u/s 271FA passed by AO shall lie with Id. CIT(A) and not with the tribunal, thus we dismiss appeal in I.T.A. No.250/Lkw/2018 filed by the assessee for ay: 2015-16(fy2014-15) , with liberty to the assessee to file appeal with Id. CIT(A), if so advised, immediately on receipt of this order , and then learned CIT(A) shall condone the delay so far as time consumed by the assessee in persuing litigation with the Tribunal. However, for other delay, the assessee has to explain the same before learned CIT(A) which shall be adjudicated on merits by Id. CIT(A). With these directions, we dismiss the appeal in I.T.A. No.250/Lkw/2018 filed by assessee, for assessment year2015-16(financial year 2014-15).We order accordingly.

4. Our above decision in I.T.A. No.250/Lkw/2018 will apply mutatis mutandis to appeal filed in I.T.A. No.251/Lkw/2018 for assessment year 2017-18(financial year 2016-17) by another assessee namely Sub-Registrar,Maudha, District Hamirpur, U.P.. We order accordingly.

5. In the result, both the appeals filed by the aforesaid two different assessee's in ITA No. 250-251/Lkw/2018 are dismissed .We order accordingly.

(Order pronounced in open court on 18/10/2022 at the conclusion of hearing)

**Sd/.**  
**(VIJAY PAL RAO)**  
**Judicial Member**

**Sd/.**  
**(RAMIT KOCHAR)**  
**Accountant Member**

Dated:18/10/2022  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant The Sub-Registrar, Rath , District Hamirpur, U.P. & The Sub-Registrar, Maudaha, District Hamirpur, U.P.
2. The Respondent- The DI(Intelligence and Criminal Investigation)15/295A, Vaibhav Building, Civil Lines, Kanpur-208001, U.P.
3. Concerned CIT
4. The Guard File
5. The D.R., I.T.A.T., Lucknow

Asstt. Registrar