

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 313/JP/2022
निर्धारण वर्ष/Assessment Year : 2019-20.

Jhalawar Kendriya Sahakari Bank Ltd., 01, Sahakar Bhawan, NH-12, Jhalawar.	बनाम Vs.	ADL/ADIT (I&CI) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAATJ 2424 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta, Advocate

राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 23/11/2022

उद्घोषणा की तारीख / Date of Pronouncement: 11/01/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order of Id. CIT (Appeals), NFAC Delhi dated 24.06.2022 for the assessment year 2019-20. The assessee has raised the following grounds of appeal :-

1. The impugned penalty order u/s 271FA dated 20.10.2020 as well as the notice u/s 271FA is bad in law, illegal and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.
2. Rs. 1,50,000/-. The Id. CIT (A) has grossly erred in law as well as on the facts of the case in confirming the penalty of Rs. 1,50,000/- u/s 271FA imposed by the Id. AO i.e. Adl./ADIT (I&CI). Hence the penalty so imposed by the Id. AO and confirmed by the Id. CIT (A) being absolutely, contrary to the provisions of law and facts of the case and not in conformity with the law, hence the same may kindly be deleted in full.

3. The appellant prays your honour indulgences to add, amend or alter or any of the grounds of the appeal on or before the date of hearing.

2. The brief facts of the case are that the assessee is registered under Co-operative Society Act and carrying on banking business such as accept deposits, sanctioning loan etc, in rural areas to farmers and other small business persons. The Id. Add/JDIT(I&CI) noted that the assessee was required to file Statement of Financial Transaction as per Sec. 285BA of the IT Act, 1961 r.w.r. 114E of the IT Rules, 1962 for the financial year 2018-19. He stated that for the period under consideration the due date of filing the Statement of Financial Transaction was 31/05/2019. Since the appellant failed to file the Statement of Financial Transaction, that is why the ADDL./JDIT (I&CI), Jaipur issued a notice u/s 285BA(5) on 20/12/2019 which was served upon the appellant on 30/12/2019 for furnishing Statement of Financial Transaction on or before 28/01/2020. In want of compliance of notice he issued a show cause notice u/s 271FA on dated 07/02/2020 issued fixing the date of hearing on 24.02.2020. In response to this notice the assessee on 18.03.2020 furnished provisional receipt of statement of filing SFT return for the F.Y. 2018-19 along with the reasons for delay in filing SFT return vide page 2 of the Penalty order. However, the Id. Add. DIT/JDIT was not satisfied with the reply of the assessee and stated that in guise of reasons the assessee has stated their institutional problems which in any case cannot partake the character of reasons. These are purely Bank's internal administrative and mechanism issues. Therefore, cannot be excused for reasons of delay in filing SFT.

In any circumstances, it is the statutory duty of the Bank to file correct statement and in the manner prescribed by the law by due date. The Id. Add.DIT/JDIT (I&CI) further stated that the reply submitted by the assessee is for sake of reply only and no where explains the reasonable cause for delay, therefore liable for imposing penalty. After referring the provision of Sec. 285BA, he imposed the penalty as under:

As per above provisions of the Act, the total period of default by virtue of Sec. 285BA(1) is 271 days (01.06.2019 to 26.02.2020). Accordingly penalty levied u/s. 271FA of the I.T. Act, 1961 is calculated as under:-

For 242 days (01.06.2019 to 28.01.2020) @ 500/- per day	Rs.1,21,000/-
For 29 days (29.01.2020 to 26.02.2020) @ 1000/- per day	Rs. 29,000/-

Total Rs. 1,50,000/-

In first appeal the Id. CIT(A) confirmed the penalty by observing that from the penalty order, it is clearly seen that the appellant has failed to comply with the provisions of section 285BA wherein as per Section 285BA, out of the specified persons a person responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction or any reportable account, shall furnish a statement in respect of such specified financial transaction or such reportable account which is registered or recorded or maintained by him. The appellant failed to file the SFT by due date, and also to avail the opportunity granted u/s 285BA(5) and failed to provide any explanation for its default. The appellant has not been able to give any satisfactory explanation neither during the penalty proceedings nor during the appellate stage as to the reason for this particular default. Taking into account the overall facts and circumstances, as

discussed above, the Id. CIT (A) holding that the AO was justified in imposing penalty u/s 271FA of the Act of Rs. 1,50,000/-, he confirmed the order of the AO. Now, being aggrieved by the order of Id. CIT (A), assessee has filed the appeal before the Tribunal :-

Ground Nos. 1 and 2 are inter-related and relates to imposition of invalid penalty of Rs. 1,50,000/- under section 271FA of the IT Act, 1961.

3. Before us the Id. Counsel for the assessee submitted his written submissions as under :-

“1. Correct facts and position of law not considered: At the very outset it is submitted that as the assessee under Co-operative Society Act and carrying on banking business such as accept deposits, sanctioning loan etc, in rural areas to farmers and other small business persons. During the course of penalty proceedings the assessee has filed the SFT statements admittedly and also filed the reason for delay in filling.

The reasons of delay was that the bank is working with 15 branches at different places in Jhalawar district and in some cases branches are situated in rural areas where due to network connectivity problem, therefore report which is required for filing SFT could not be generated within the due time and SFT return filed after due date. Bank has to collect and compile all information received from the branches but as most of the branch managers are not fully aware with the computer system technology and compliances due to their old age and lack of knowledge, therefore there were some delay in submission SFT. Bank has regularly filed AIR every year with correct and true information within the due dates. Branch officials has no malafide intention behind delay filing the SFT return, only due the above mentioned reasons SFT return could not be filed with the due date.

However the Id. Lower authority has not rebutted our aforesaid reason with the help of any material and has not considered in their true perspective and sense.

In the case of **Durgapur Steel Peoples Cooperative Bank Limited vs. Director Of Income Tax ITA Nos. 1322 & 1323 /KOL/ 2013 September 23, 2016 (2016) 48 CCH 0072 KolTrib** It has been held that *Penalty—Penalty for failure to furnish annual information return— Obligation to furnish annual information return—Durgapur Steel Peoples’ Cooperative Bank Limited was entity dealing with borrowing and lending business—Under provisions of s 285BA, every person who was assessee or other categories enumerated there and responsible for registering or responsible for registering, or, maintaining books of account or other document containing record of any specified financial transaction, under any law for time being in force, should furnish annual information return, in respect of such specified financial transaction which registered or recorded by him during any FY beginning on or after 1st day of April, 2004 and information relating to which was relevant and required for purposes of this Act, to the prescribed IT or authority or agency—Durgapur Steel Peoples’ Cooperative Bank Limited assessee, falling within ambit of Section 285BA, failed to comply with this legal requirement for period of 2010-11—Notice was issued by AO—Assessee complied with requirement of Section 285BA by filing annual information return, same was accepted and assessment was concluded—However, subsequently Office of DIT (Intelligence and Criminal investigation) served penalty order levying penalty of Rs.56,100/- for delay of 561 days in furnishing AIR in respect of AY 2011-12 and Rs.19,600/- in respect of AY 2012-13—Held, as matter of fact, DIT (Intelligence and Criminal investigation) who passed penalty order himself observed in his order that assessee got accounts of all branches consolidated and audited, and also filed Income Tax/TDS returns—Order of DIT (Intelligence and Criminal investigation) did not speak as to how assessee stood to gain by contravening with provisions of Section 285BA or act of assessee resulted in any loss to*

Revenue—Further, it was acknowledged and judicially recognized fact that tax laws of this country were complex and complicated and often required for compliance, there with assistance of tax practitioners specializing in this field, was well known fact, and it was equally well known fact that legislation in this field underwent so frequent changes and amendments that it was not possible for even person specializing in this field, including tax administrator, to claim that he knew what exactly law was on particular given day or period without making references to history of enactments—In these circumstances, no mala fides could be attributed to assessee so as to invoke penalty proceedings u/s. 271FA and DIT(Intelligence and Criminal investigation) should have taken note that breach was only technical or venial breach of provisions and such breach could have flown from bona fide ignorance of assessee that he was liable to act in manner prescribed by statute, and should not have invoked penalty proceedings—Following above decision cited supra found that penalty proceedings were liable to be set aside—Both appeals of assessee were allowed

2. Technical breach only: Alternatively and without prejudice to our other submission, even assuming some default was there, the same at the best was a merely technical and venial breach of law and the conduct of the assessee has not been shown to be contumacious. No deliberate defiance of law is established. It has been held that by the Honble Supreme Court in the case of **Hindustan Steels v/s State of Orisa 83 ITR 26 (SC)**. "That in order to impose penalty for failure to carry out a statutory obligation is the result of quasi criminal proceedings and penalty will not ordinarily be imposed, unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. The Supreme Court has further laid down that penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority and is to be exercised judiciously and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the

authority competent to impose the penalty, will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute." The assessee in any case entertained a bonafide belief and advised of the counsel that if there is any difficulties or problem by any reason in filling the SFT as we already stated the reason in above para 1 the same may be filed after removal those reasons. Hence due to fault on the part of above reason and misunderstanding the provision of law the assessee should not be suffer. This way a reasonable cause did exist u/s 273B and hence also the penalty imposed may kindly be quashed. Thus due to the negligence of the consultants/counsel if any a poor assessee should not be suffered.

In the case of **HTSL Community Service Trust vs. JDIT(EXEMPTIONS) (2012) 31 CCH 0251 Bang. Trib** *Charitable Trust—Failure to furnish return within due date—Penalty u/s 272A—Assessee, a registered public charitable trust filed return of income belatedly after the expiry of the due date—AO levied penalty u/s 272A(2)(e) for not filing the return of income within the due date as prescribed in section 139 of the Act—Penalty may be imposed u/s 272A(2)(e) for failure to furnish the return of income in accordance with the provisions of section 139(4A) rws 139(1)—An attempt of deliberateness or deceptiveness is associated with the word 'failure'—In the present case, there was no deliberateness or deceptiveness in not filing the return of income within the prescribed time limit—Assessee was under a bonafide belief that securing recognition u/s 80G would be a pre requisite for filing the return of income—However, immediately on being appraised, the income tax returns were filed for all the years without any further delay—The delay in filing the return was not intentional or deliberate—Since the entire income was applied towards the charitable activities, no tax was payable for the assessment year under consideration—As a result of late filing of the return, there was no loss of revenue to the Government—Assessee had no ulterior motive to defraud the revenue and had not acted dishonestly or negligently—Therefore, there*

was sufficient/ reasonable cause for the delay in furnishing the return of income—Hence, assessee trust not liable for penalty u/s 272A(2)(e) of the Act for delay in filing the return of income

This principal is also applicable in the present case. As there was no loss to the revenue nor brought on record.

In the case of **Shyam Gopal Charitable Trust v/s DIT(Exmp.) 290 ITR 99(Del. HC)** it has been held that “18. We are of the view that the appellant ought not to be made to suffer penalty, in the peculiar facts of the present case, for having acted upon an advice of its chartered accountant and not filing the IT returns in time. We should not be understood as laying down a general proposition that in all cases where the assessee fails to file returns in time and attributes the failure to an advice by its chartered accountant, that by itself constitutes a sufficient explanation in terms of s. 273B of the Act. Each case would have to be tested on its merits by the authorities concerned or the Court, as the case may be, for coming to a conclusion that sufficient grounds in the context of s. 273B have been made out for not imposing a penalty for the failure to file returns within the time stipulated.

19. On the facts of the present case, we are of the considered view that the appellant has proved that there was reasonable cause within the meaning of s. 273B of the Act for the failure to file IT returns for the relevant assessment years within the time stipulated and, therefore, no penalty was required to be levied in terms of s. 272A(2)(e) of the Act.

3. View favorable to the assessee: Further it is also settled that if case both the side has been referred then it is the settled legal position that to remove the undue hardship and considering the decision of supreme Court in case of **CIT Vs. Vegetable Products Ltd. 88 ITR 192 (SC)** where it is held that when two views are possible on an issue, the view in favour of the assessee has to be preferred. And also many High court also held the same.

4. No benefit obtained by the assessee nor any loss to the revenue:

Further it is submitted that as per provisions the assessee should have filed the SFT. However by one and other reasons the same could not be filed in due time however the assessee has filed the same with the delay. Anyhow in our view there is loss occurred to the revenue nor assessee has benefited for delay in filing. As there is no tax liability arises on assessee on such delay filing.

5. Prayer: In view of the above submission the penalty so imposed by the lower authority may kindly be deleted in full.”

4. On the other hand, the Id. D/R supported the order of the Revenue authorities.

5. We have heard the learned Counsels for both the parties and perused the material available on record. We noticed that the assessee Society is registered under the Co-operative Society Act and carrying on banking business such as accepting deposits, sanctioning loans etc. in rural areas to farmers and other small business persons. During the course of penalty proceedings, the assessee has filed the Statement of Financial Transaction (SFT) admittedly and also filed the reasons for delay in filing. However, the revenue authorities have not accepted the reasons so put-forth by the assessee and thus levied penalty. Whereas even before us, the Id. A/R representing the assessee has reiterated the same arguments as put-forth before the lower authorities and categorically submitted that the reasons of delay in filing the Statement of Financial Transactions as per section 285BA of the IT Act, 1961 read with Rule 114E of I.T. Rules, 1962 for financial year 2018-19 was that the assessee bank was working with 15 branches at different places in Jhalawar district and in some cases branches are situated in rural areas where due to network

connectivity problem the report which was required for filing Statement of Financial Transaction (SFT), could not be generated within the due time and thus the said SFT return was filed after due date. In this connection, it was also submitted that the bank has to collect and compile all information received from the different branches but as most of the branch managers are not fully aware with the computer system technology and compliances due to their old age and lack of knowledge, therefore there were some delay in submission of SFT. It was further submitted that the bank has regularly filed AIR every year with correct and true information within the due dates and thus in this way it is apparently clear that branch officials have no malafide intention behind delay in filing of SFT return. According to the Id. A/R, only on the above mentioned reasons that the SFT return could not be filed within the due date. After considering the submissions of both the parties, we cannot lost sight of the fact that it is acknowledged and judicially recognized fact that tax laws of this country are complex and complicated and often required for compliance, there with assistance of tax practitioners specializing in this field, is well-known fact and it is equally well-known fact that legislation in this field underwent so frequent changes and amendments that it was not possible for even person specializing in this field, including tax administrator, to claim that he knew what exactly law was on particular given day or period without making references to history of enactments. Thus in these circumstances no malafides could be attributed to assessee so as to invoke penalty proceedings under section 271FA and DIT should have taken note that breach was only technical or venial breach of provisions and such breach could have flown from bonafide ignorance of assessee that he was liable to act in manner prescribed by statute, and should not have invoked penalty proceedings. In this

regard we draw strength from the decision of Coordinate Bench of ITAT Kolkata in ITA No. 1322 & 1323/Kol/2013 dated 23rd September, 2016 (2016) 48 CCH 0072 (Kol. Trib.) in case of Durgapur Steel Peoples Cooperative Bank Ltd vs. Director of Income-tax wherein it has been held that –

“Penalty—Penalty for failure to furnish annual information return—Obligation to furnish annual information return—Durgapur Steel Peoples’ Cooperative Bank Limited was entity dealing with borrowing and lending business—Under provisions of s 285BA, every person who was assessee or other categories enumerated there and responsible for registering or responsible for registering, or, maintaining books of account or other document containing record of any specified financial transaction, under any law for time being in force, should furnish annual information return, in respect of such specified financial transaction which registered or recorded by him during any FY beginning on or after 1st day of April, 2004 and information relating to which was relevant and required for purposes of this Act, to the prescribed IT or authority or agency—Durgapur Steel Peoples’ Cooperative Bank Limited assessee, falling within ambit of Section 285BA, failed to comply with this legal requirement for period of 2010-11—Notice was issued by AO—Assessee complied with requirement of Section 285BA by filing annual information return, same was accepted and assessment was concluded—However, subsequently Office of DIT (Intelligence and Criminal investigation) served penalty order levying penalty of Rs.56,100/- for delay of 561 days in furnishing AIR in respect of AY 2011-12 and Rs.19,600/- in respect of AY 2012-13—Held, as matter of fact, DIT (Intelligence and Criminal investigation) who passed penalty order himself observed in his order that assessee got accounts of all branches consolidated and audited, and also filed Income Tax/TDS returns—Order of DIT (Intelligence and Criminal investigation) did not speak as to how assessee stood to gain by contravening with provisions of Section 285BA or act of assessee resulted in any loss to Revenue—Further, it was acknowledged and judicially recognized fact that tax laws of this country were complex and complicated and often required for compliance, there with assistance of tax practitioners specializing in this field, was well known fact, and it was equally well known fact that legislation in this field underwent so frequent changes and amendments that it was not possible for even person specializing in this field, including tax administrator, to claim that he knew what exactly law was on particular given day or period without making references to history of enactments—In these circumstances, no mala fides could be attributed to assessee so as to invoke penalty proceedings u/s. 271FA and

DIT(Intelligence and Criminal investigation) should have taken note that breach was only technical or venial breach of provisions and such breach could have flown from bona fide ignorance of assessee that he was liable to act in manner prescribed by statute, and should not have invoked penalty proceedings—Following above decision cited supra found that penalty proceedings were liable to be set aside—Both appeals of assessee were allowed.”

And even if some default was found to be there in filing the SFT, the same at the best was merely a technical and venial breach of law and the conduct of the assessee in the particular has not been shown to be contumacious and no deliberate defiance of law is established on record by the revenue authorities. Therefore, while relying upon the decision of Hindustan Steels vs. State of Orissa, 83 ITR 26 (SC), wherein the Hon'ble Supreme Court has held that –

"That in order to impose penalty for failure to carry out a statutory obligation is the result of quasi criminal proceedings and penalty will not ordinarily be imposed, unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. The Supreme Court has further laid down that penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority and is to be exercised judiciously and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty, will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

And in the case of HTSL Community Service Trust vs. JDIT (Exemptions) (2012) 31 CCH 0251 (Bang.Trib.), the Coordinate Bench of the Tribunal held as under :-

“Charitable Trust—Failure to furnish return within due date—Penalty u/s 272A—Assessee, a registered public charitable trust filed return of

income belatedly after the expiry of the due date—AO levied penalty u/s 272A(2)(e) for not filing the return of income within the due date as prescribed in section 139 of the Act—Penalty may be imposed u/s 272A(2)(e) for failure to furnish the return of income in accordance with the provisions of section 139(4A) rws 139(1)—An attempt of deliberateness or deceptiveness is associated with the word 'failure'—In the present case, there was no deliberateness or deceptiveness in not filing the return of income within the prescribed time limit—Assessee was under a bonafide belief that securing recognition u/s 80G would be a pre requisite for filing the return of income—However, immediately on being appraised, the income tax returns were filed for all the years without any further delay—The delay in filing the return was not intentional or deliberate—Since the entire income was applied towards the charitable activities, no tax was payable for the assessment year under consideration—As a result of late filing of the return, there was no loss of revenue to the Government—Assessee had no ulterior motive to defraud the revenue and had not acted dishonestly or negligently—Therefore, there was sufficient/ reasonable cause for the delay in furnishing the return of income—Hence, assessee trust not liable for penalty u/s 272A(2)(e) of the Act for delay in filing the return of income

This principal is also applicable in the present case. As there was no loss to the revenue nor brought on record.”

In the case of **Shyam Gopal Charitable Trust v/s DIT (Exmp.) 290 ITR 99(Del. HC)** it has been held that -

“18. We are of the view that the appellant ought not to be made to suffer penalty, in the peculiar facts of the present case, for having acted upon an advice of its chartered accountant and not filing the IT returns in time. We should not be understood as laying down a general proposition that in all cases where the assessee fails to file returns in time and attributes the failure to an advice by its chartered accountant, that by itself constitutes a sufficient explanation in terms of s. 273B of the Act. Each case would have to be tested on its merits by the authorities concerned or the Court, as the case may be, for coming to a conclusion that sufficient grounds in the context of s. 273B have been made out for not imposing a penalty for the failure to file returns within the time stipulated.

19. On the facts of the present case, we are of the considered view that the appellant has proved that there was reasonable cause within

the meaning of s. 273B of the Act for the failure to file IT returns for the relevant assessment years within the time stipulated and, therefore, no penalty was required to be levied in terms of s. 272A(2)(e) of the Act.”

Therefore, taking into consideration the facts and circumstances of the case and also following the judicial pronouncements of the Hon'ble Supreme Court, Hon'ble High Court and of the Coordinate Benches of the Tribunal, we are of the view that the assessee deserves to succeed. Thus we allow the grounds of the assessee and delete the penalty.

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

Order pronounced in the open court on 11/01/2023.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/01/2023.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-Jhalawar Kendriya Sahakari Bank Ltd., Jhalawar.
2. प्रत्यर्थी / The Respondent- The ADL/ADIT (I & CI), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 313/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar