

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(Conducted Through Virtual Court)

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri B.M. Biyani, Accountant Member**

**ITA No. 337/Ind/2022
Assessment Year: 2017-18**

M/s. Kesar Alloys & Metals Pvt. Ltd. 109-110, Vikram Urban, Mechanic Nagar, Indore PAN: AACCK9245Q (Appellant)	Vs	The Director of Income Tax, (I & CI), Bhopal (Respondent)
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Assessee by : Shri P.D. Nagar, C.A.
Revenue by : Shri Ashish Porwal, Sr. DR

Date of hearing : 03-01-2023
Date of pronouncement : 31-01-2023

आदेश/ORDER

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

This appeal is filed by the Assessee as against the Appellate order dated 31.08.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), confirming the penalty levied 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 brief facts of the case is that the assessee a Private Limited Company during the financial year issued 1,00,000 equity shares of Rs.10/- each aggregating to Rs. 10 lacs at a premium of Rs.25/- each. Thus it was required to furnish Statement of Financial Transaction (SFT) before 31.05.2017 (extended upto 30.06.2017). The assessee did submit SFT-008 relevant to F.Y. 2016-17 on 29-05-2017 but the information was stated as NIL under the bona-fide belief that the face value of equity shares allotted to Shri Subhash Jain, Director of the company was Rs. 10 lacs excluding the premium collected thereon at Rs. 25 lacs. Such mistake was bona-fide and committed by the Accountant of the assessee company who was not acquainted with the technicalities of the provisions of Income tax Act and Rules. The assessee was issued with a show cause notice dated 30.08.2018 why not penalty of Rs. 500/- be imposed for every day of default in filing SFT details.

2.1. In response to show cause notice revised Form SFT for financial year 2016-17 filed was not being accepted at Income Tax Portal. Therefore details relating to allotment of shares as required u/s. 285BA(5) were forwarded to the Director of Income tax (I & CI) with detailed explanation by speed post on 19.09.2018, which was delivered by the speed post to the Director of Income Tax, Bhopal on 24.09.2018.

2.2. Without considering the explanation as well SFT 008 submitted along with aforesaid letter, the Director of Income tax (I & CI) levied penalty u/s. 271FA for delayed submission of the form SFT, vide his order dated 30.11.2018 as under :-

(a) For the period from 01.07.2017 to 19.09.2018 @ Rs. 100/- per day for 446 days	Rs. 44,600/-
(b) Penalty towards delay for non-submission @ Rs. 500/- per day for 72 days show cause notice i.e. from 20.09.2018 to 30.11.2018	<u>Rs. 36,000/-</u>
Total	<u>Rs. 80,600/-</u>

3. Aggrieved against the penalty order, the assessee filed an appeal before the Ld. CIT(A)-NFAC, who confirmed the levy of penalty observing as follows:

3.2 I have carefully gone through the facts of the case, submission of the appellant, impugned penalty order and material available on record. The argument of the appellant that Statement of Financial Transaction was submitted on 28.05.2018, but the same was filed at Rs. NIL under bonafide of the accountant on the ground that share capital was increased by Rs. 10 lacs only. The shares were issued to Shri Subhash Jain (Managing Director of the Company). The mistake was realized and efforts were made to submit revised SFT but revision was not possible on portal. Therefore, manual return was submitted along with the letter dated 19.09.2018. The appellant has also contended that the Ld. AO has erred in imposing penalty of Rs. 36,000/- u/s 271FA without considering the explanation submitted on 19.09.2018 by speed post which was delivered on 24.09.2018 i.e. before passing the order.

3.3 The argument of the appellant that although he filed SFT for 2016-17 showing NIL increase in capital under bonafide belief remains unsubstantiated. The argument of the appellant is not found to be tenable because as per version of the appellant there was increase in share capital. Thus, appellant was under duty to disclose the true facts in the SFT filed before the department. In such facts and circumstance, the penalty imposed by the Ld. Director of Income Tax (I & CI) is upheld and confirmed.

4. Aggrieve against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

(1) That the learned Commissioner of Income tax (A) [NFAC] erred in law in not confirming the levy of late fee for delay in filing Form SFT. He erred in law in not considering the bonafide belief of the Accountant who submitted SFT as NIL on the ground that share capital was increased by Rs. 10 lacs only. The shares were issued to the Managing Director of the company and there was no intention to avoid the information required to be furnished u/s 285BA of the Act. Levy of penalty without considering detailed explanation and reasonable cause at

Rs.44,600/- is wholly unjustified, improper, bad in law and deserves to be quashed.

(2) That the learned Commissioner of Income tax (A) [NFAC] further erred in law in imposing penalty of Rs.36,000/- u/s 271FA of the Act without appreciating the fact that detailed explanation was submitted on 19.09.2018 by speed post, i.e. unable to file online not permitted much before passing the order. Levy of penalty for the period from 20.09.2018 to 30.11.2018 at Rs.36,000/- is wholly unjustified, improper, bad in law and deserves to be quashed. After submission of SFT manually, the failure to furnish SFT on the part of the Appellant did not continue hence levy of penalty for such period of 72 days is wholly unjustified and bad in law.

(3) That the learned Commissioner of Income tax (A) [NFAC] further erred in law in confirming the levy of net fee for filing Form SFT as well penalty for that delay without appreciating the fact that there was reasonable cause for such delay as well non-submission of SFT not only under bonafide but also due to technical reasons in filing the form on Portal. The fee as well the penalty levied and confirmed deserves to be quashed u/s 273B of the Act.

4.1. Ld. Counsel Mr. P.D. Nagar appearing for the assessee submitted before us, the notice issued dated 30.08.2018 u/s. 285BA(5) of the Act by the Director of Income Tax, (I & CI), claiming that the assessee has not furnished the Statement of Financial Transaction (SFT) under the transaction code: SFT-008 and Nature & value of transaction, namely Receipt from any person of an amount aggregating to ten lakh rupees or more for shares (including shares application money) issued by the company, u/s. 285BA of the Act. Further the DIT, directed the assessee to prepare SFT for the Financial Year 2016-17 in the prescribed manner and furnish it online at www.incometaxindiaefiling.gov.in and report.insight.gov.in on or before 19.09.2018.

4.2. Pursuant to the notice, the assessee filed its reply in Form No. SFT-008 duly filled as the same could not be uploaded, therefore vide its letter dated 18.09.2018 explained as follows:

01) *The Company was required to furnish transaction dt. 01.04.2016 being the new issue of shares to its Director Shri Subhash Jain at a premium of Rs.25 per share as specified in Rule-114E of the Income Tax Rules. The details of allotment of new shares as forwarded to Registrar of Companies, Gwalior are annexed for kind perusal (Annexure - A).*

02) *It is submitted that the company did submit SFT-G08 relevant to F.Y. 2016-17 but the information was stated as NIL under the bona-fide belief value of equity shares allotted to Shri Subhash Jain was Rs. 10 lacs only and the premium collected thereon at Rs. 25 lacs was not considered. Such mistake was bona-fide and committed by the accountant of the company without having proper reference to the provisions of the Act. Shri Subhash Jain is being assessed to tax and the amount has been deposited having proper source thereof. The mistake may therefore please be condoned for which we shall be grateful.*

03) *Revised Form SFT for financial year 2016-17 is not being accepted at portal hence details relating to allotment of shares as required u/s. 285BA(5) is being forwarded to your honour which may kindly be accepted.*

4.3. However without considering the above reply, the Ld. DIT levied the penalty under section 271FA of the Act for the entire period. The Ld. Counsel further submitted that the shares were issued to the Managing Director of the Company and there was no intention to avoid the information required to be furnished u/s. 285BA of the Act. There was reasonable cause while submitting SFT-008 on 29.05.2017 as "Not Applicable" under the bonafide belief that there was no increase in share capital exceeding Rs. 10 lacs. The word "Reasonable cause" u/s 273B of the Act as applied to human action is that which should constrain a person of average intelligence and ordinary prudence as held in the case of Addl. CIT vs. Basant Kesarwani & Co (2011) 17 ITJ299 (Indore Trib.).

4.4. The Ld. Counsel invited our kind attention to the judgment in the case of Motilal Padmapat Sugar Mills Limited vs. State of UP (1979) 118 ITR 326 (SC) wherein it was held that "there is no presumption that every person knows the law. It is often said that

everyone is presumed to know the law, but that is not a correct statement; there is no such maxim known to the law".

4.5. Thus, the Ld. Counsel pleaded that there was reasonable cause with the limited knowledge of the accountant, who had filed incorrect SFT, which was revised later on in response to notice u/s 285BA(5) of the Act, hence levy of Rs.80,600/-and penalty for delay in submission of revised SFT deserves to be quashed invoking section 273B of the Act.

4.6. Without prejudice, the Ld. Counsel submitted that detailed explanation was submitted on 19.09,2018 by speed post which was not placed on record before the Director of Income tax (I & CI) resulting into levy of penalty upto the date of order i.e. from 20.09.2018 to 30.11.2018. After submission of SFT manually, there did not remain any failure to furnish SFT on the part of the assessee, hence levy of penalty for 72 days @ Rs.500/- per day at Rs.36,000/- i.e. from 20.09.2018 to 30.11.2018 deserves to be deleted.

5. Per contra, the Ld. D.R. appearing for the Revenue supported the order passed by the DIT (I &CI) and prayed that the levy of penalty is sustainable in law and there is no infirmity in the penalty order. Therefore the assessee appeal is liable to be dismissed.

6. We have given our thoughtful consideration and perused the materials available on record including the small Paper Book filed by the assessee. The imposition of penalty under section 271FA of

the Act is not mandatory, rather it is discretionary, because if the assessee proves that there was a "reasonable cause" for the said failure, then the Assessing Officer ought to have considered the same and then proceed with levying penalty. For better understanding, Section 271FA is extracted as follows:

271FA. If a person who is required to furnish [a statement of financial transaction or reportable account] under sub-section (1) of section 285BA, fails to furnish such [statement] within the time prescribed under sub-section (2) thereof, the income-tax authority prescribed under said sub-section (1) may direct that such person shall pay, by way of penalty, a sum of [five] hundred rupees for every day during which such failure continues:

***Provided** that where such person fails to furnish the [statement] within the period specified in the notice issued under sub-section (5) of section 285BA, he shall pay, by way of penalty, a sum of [one thousand] rupees for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the [statement] expires.]*

6.1. A perusal of the above provision shows that the Parliament has used the words "may" and not "shall", thereby making their intention clear in as much as that levy of Penalty is discretionary and not automatic. The said conclusion is further justified by Section 273B of the Act namely "Penalty not to be imposed in certain cases". 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 271FA 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 271FA, then the imposition of penalty would have been mandatory. Section 273B as mentioned above 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".

6.2. In the facts of the present case, it is seen that the explanation offered by the assessee have been ignored by the DIT (I &CI) as well as the Ld. CIT(A) but confirmed the levy of penalty u/s. 271FA of the Act without considering u/s. 273B of the Act. Applying the provisions of Section 273B of the Act, we have no hesitation in deleting the penalty levied u/s. 271FA of the Act since "reasonable cause" is clearly demonstrated by the assessee.

7. In the result, the grounds raised by the assessee is hereby allowed and the appeal filed by the assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 31-01-2023

Sd/-

(B.M. BIYANI)

ACCOUNTANT MEMBER True Copy

Indore: Dated 31/01/2023

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

**Assistant Registrar
Income Tax Appellate Tribunal,
Indore Bench, Indore**