

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE VIKAS AWASTHY (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.1127/Mum/2023
(Assessment year 2020-21)**

Kotak Mahindra Bank Limited 27, BKC, Bandra Kurla Complex Bandra East, Mumbai-400 051 PAN : AAACK4409J	vs	Addl. Director of Income-tax (Inv), Unit-7, Mumbai Air India Building, Mumbai-400 021
APPELLANT		RESPONDENT

Assessee represented by	Shri Prasad Lanke a/w Chetan Kaka
Department represented by	Smt. Usha Gaikwad, Sr.AR.

Date of hearing	04-07-2023
Date of pronouncement	04-07-2023

ORDER

PER : MS PADMAVATHY S. (AM)

This appeal is against the order of the Commissioner of Income-tax (Appeals)(National Faceless Appeal Centre)(in short, 'the CIT(A)') dated 06/02/2023 for A.Y. 2020-21.

2. The assessee raised the following grounds of appeal:-

"1. The Commissioner of Income Tax (Appeals), NATIONAL FACELESS APPEAL CENTRE (NFAC) ["the CIT(A)"] erred in confirming the penalty of Rs. 10,000/-under section 272A(l)(c) of the Income Tax Act ("Act") levied by ADIT (Inv), Unit 7, Mumbai for alleged non-compliance of summons issued u/s. 131 of the Act which is arbitrary and unjustified.

2. *The CIT(A) further erred in confirming the penalty on conjecture and surmise and without appreciating facts of the Appellant's case.*
3. *The CIT(A) failed to appreciate and ought to have held that:*
 - a. *The Appellant has not committed any default much less a deliberate default so as to attract penalty under section 272A(l)(c).*
 - b. *There was no deliberate default on the part of the Appellant in making compliance to the requirements of summon under section 131 of the Income Tax Act.*
 - c. *The Appellant was prevented by a reasonable cause within the meaning ' of section 273B of the Income Tax Act in alleged non-compliance of summon issued under section 131 of the Income Tax Act and, therefore, there was no justification in the levy of penalty under section 272A(l)(c) of the Income Tax Act.*
 - d. *The alleged non-compliance of summons under section 131 cannot be said to be intentional or wilful and is only a technical or venial breach.*
 - e. *The Appellant neither acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation*
 - f. *The detailed called for were regarding the account of the customer for the FY 2012-13 of erstwhile ING Vysya Bank Ltd (eIVBL) which was merged with Kotak Mahindra Bank Ltd (KMBL) w.e.f. 01.04.2015.*
 - g. *The erstwhile eIVBL operated on an independent core banking system called "Profile" whereas KMBL operated on a core banking system called "Finacle" and thus, both the banks operated on different software platforms.*
 - h. *Manual intervention was indeed required for extracting the data and when the summons were served on Appellant, it was difficult to gather data in respect of the accounts of the customers of eIVBL in the computer system as well physical documents.*
 - i. *Further the data requested was very old relating to FY 2012-13*
4. *The Appellant prays that based on the facts and the circumstances of its case, it be held that there is no failure on the part of Appellant to comply with summons issued u/s 131 of the ACT and the provisions of section 272A(l)(c) are not attracted and AO be further directed to delete the penalty of Rs. 10,0007-.*
5. *Without prejudice to the above, since the Appellant has not acted deliberately in defiance of law nor was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation, would not be subjected to penalty.”*

3. The assessee is a banking company. Erstwhile ING Vysya Bank Ltd (in short, eIVBL) was merged with the assessee with effect from 01/04/2015 as per the order of the Reserve Bank of India. During the course of investigation in the case

of M/s Gujalaxmi Diamonds Pvt Ltd , summons under section 131 of the Income-tax Act, 1961 (in short, 'the Act') dated 02/01/2020 was issued by DDIT (Inv)-7(3), Mumbai to the Branch Manager of Kotak Mahindra Bank, Nariman Point, Mumbai-21. Vide these summons, the bank authorities were required to produce bank statements of the following held in the name of M/s Gujalaxmi Diamonds Pvt Ltd and persons associated with it along with KYC details for the period starting from 01/04/2012 to 31/03/2013 for necessary examination and verification:-

A/c No.	Name	Transaction dt	Transaction Particulars	Debits amount
5000110443880	M/s Gujalaxmi Diamonds Pvt Ltd	06.07.2012	550dirb002729/12 To Customer Account To	15290843
552011024778	Hari Om Jewels Pvt Ltd	22.06.2012	550dirb002283/12 To Customer Account To	48711598
500011045522	Noor Exim Pvt Ltd	11.10.2012	550dirb005986/12 To Customer Account To	31506117
500011043856	Shri Shri Mal Gems Pvt Ltd	17.07.2012	550dirb003117/12 To Customer Account To	52227031
500011045514	Rahi Impex Pvt Ltd	29.09.2012	550dirb005270/12 To Customer Account To	10704614

4. In response, the assessee filed the details through email and after perusal of the bank statement and other details, another summons dated 31/03/2020 was issued requiring the bank authorities to produce specific details of the transactions above Rs. 5 lakhs as reflected in the copy of bank statements with account number, bank details, etc. on or before 03/02/2020. The assessee vide mail dated 07/02/2020 had stated that there are no transaction above Rs.5 lakhs for the given period were made from the accounts under consideration and that all the bank

accounts under investigation currently stand closed. The Assessing Officer queried the assessee with regard to the contradiction found in the bank statement (submitted earlier) where there are transactions above Rs.5 lakhs. In response, the assessee submitted that the statement made was an inadvertent error due to oversight and that the intention was not to provide false information. The assessee further submitted that the parties concerned were customers of eIVBL and to retrieve details from the system used in eIVBL manual intervention is needed. Accordingly the assessee requested for more time which the Assessing Officer did not accept. The Assessing Officer issued a notice under section 274 read with section 272A(1)(c) dated 19/02/2020 for not furnishing the required details in response to summons and proceeded to levy penalty under the said section. The Assessing Officer held that the assessee has intentionally omitted to produce the correct documents and details as called for in connection with the case of M/s Gujalaxmi Diamonds Pvt Ltd and the non compliance by the assessee has not only hampered the time barring investigation proceedings but also made it difficult for the Assessing Officer to verify the suspicious transactions reported in the case of M/s Gujalaxmi Diamonds Pvt Ltd.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The assessee reiterated that due to system compatability issue with eIVBL, the data as required by the Assessing Officer could not be retrieved within the short period of time provided. The assessee further submitted that the assessee had ultimately submitted all the details and there is no non-compliance to the summons issued. The assessee also submitted that the assessee had a reasonable cause for the delay and therefore prayed for deletion of penalty.

6. The CIT(A) dismissed the appeal of the assessee by holding that –

*“During the course of appellate proceedings, the Appellant has not submitted any reply or justification as to how and why the misleading reply was given to the DDIT(lnv) when he repeatedly requested to supply very specific information which was necessary in the investigation in the case of M/s Gujalaxmi Diamonds Pvt. Ltd. The Appellant has also not given any comments as to why the information of above Rs.5 lakh transactions requisitioned by the DDIT(lnv) were not provided. Similarly the Appellant has not submitted any justification for not complying the show cause notice issued by the DDIT(lnv). I further find that the facts of the decisions relied upon by the Appellant are not identical to the facts of Appellant's case, hence I am unable to accept the contention raised by the Appellant. Though the Appellant has contended that the information called for was old data and was maintained in different software by the merged bank with Appellant namely eIVBL, no justification has been provided for contradictory reply given to DDIT(lnv) and no justification for not complying the summons thereafter have been provided. In view of the above facts, I find that the case of the Appellant is not covered by reasonable cause within the meaning of section 273B of the IT Act. Therefore the penalty of Rs.10,000/- levied by the DDIT(lnv), Mumbai is confirmed. The grounds No. 1 to 6 are thus **dismissed.**”*

7. Aggrieved, the assessee is in appeal before the Tribunal.

8. The Ld.AR submitted that the details called for by the Assessing Officer through summons pertained to FY 2012-13 and that the account details pertained to the customers of eIVBL. The Ld. AR submitted that eIVBL and the assessee used different banking systems and, therefore, manual interventions were required each time the data of some customers was to be found. The Ld.AR further submitted that in the summons issued on 31/01/2020, the assessee was given barely 3 days' time to submit the details and due to the lengthy process involved, the assessee could not do so. The Ld.AR also submitted that the assessee had filed necessary adjournment letters explaining the inability to produce the details and that ultimately all the details called for were produced before the Assessing Officer as tabulated below (pages 19 to 25 of the paper book).

Date of Notice / Summons	Date of Compliance
02 Jan 2020	27 Jan 2020
	28 Jan 2020
	29 Jan 2020
31 Jan 2020	14 Feb 2020(sought adjournment)
	20 Feb 2020 (sought adjournment)
	04 Mar 2020 (sought adjournment)
	09 Mar 2020
	16 Mar 2020
	19 Mar 2020

9. The Ld.DR, on the other hand, relied on the order of the CIT(A).

8. We heard the parties and perused the material on record. In the given case, the assessing officer has issued summons u/s.131 to the assessee to produce certain documents in connection with one Gujalaxmi Diamonds Pvt Ltd. The assessee in response to the initial summons dated 02.01.2020 had submitted the details called for vide emails dated 27.01.2020 and 28.01.2020. The assessing officer subsequently issued one more summons on 30.01.2020 in which further details were called for. The assessee in response submitted the details called for pertaining to customers of erstwhile ING Vaishya Bank (eIVBL). Retrieval details from the eIVBL systems require manual intervention since the systems used by assessee are not compatible with that of eIVBL. The assessee for this reason sought time from the assessing officer for producing the details. The assessing officer has levied the penalty u/s.272A(1)(c) for non-compliance of summons. In the second summons issued the assessing officer has called on the assessee to submit the details of transactions more than Rs.5 lakhs pertaining to Gujalaxmi Diamonds Pvt Ltd and its associates based on the details already submitted in response to the first summon. In a reply filed the assessee had inadvertently stated

that there are no transactions above Rs.5 lakhs. The CIT(A) in the appellate proceedings had upheld the penalty for the reason that the assessee is giving wrong information and is trying to hide the details pertaining to the customers.

9. It is relevant here to note that section 273B of the Act contains provisions to state that the penalty cannot be imposed under certain circumstances. The section reads as under –

273B. Notwithstanding anything contained in the provisions of²⁰[clause (b) of sub-section (1) of]²¹[[section 271](#), [section 271A](#),²² [[section 271AA](#),] [section 271B](#)²³[, [section 271BA](#)],²⁴ [[section 271BB](#),] [section 271C](#),²⁵[[section 271CA](#),] [section 271D](#), [section 271E](#),²⁶ [[section 271F](#),²⁷ [[section 271FA](#),]²⁸ [[section 271FB](#),]²⁹ [[section 271G](#),]] clause (c) or clause (d) of sub-section (1) or sub-section (2) of [section 272A](#), sub-section (1) of [section 272AA](#)] or³⁰ [[section 272B](#) or]³¹[sub-section (1)³²[or sub-section (1A)] of [section 272BB](#) or]³³ [sub-section (1) of [section 272BBB](#) or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of [section 273](#), no penalty shall be imposed on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause³⁴ for the said failure.]

From the plain reading of the said section it is clear that the penalty under section 272A(1)(c) cannot be levied if the assessee is able to prove that there was a reasonable clause.

10. We will now look at the facts of assessee's case in the light of the above provisions to examine if the assessee had a reasonable cause. It is an undisputed fact that there was a merger between the assessee and eIVBL w.e.f.01.04.2015 as per the order of the Reserve Bank of India. The systems used by the assessee is a core banking system called "Finacle" and that used by eIVBL is "profile" and the old data pertaining to eIVBL customers were continued in "profile" and through manual interventions the data was getting retrieved as and when required. These facts have been explained by the assessee before the lower authorities and the

lower authorities have not recorded any contrary finding in this regard. It is noticed that the details called for by the Assessing Officer were related to AY 2012-13 and therefore we see merit in the submission that the retrieval of details pertaining 8 years old data required time and effort. It is noticed that the assessing officer has given only 3 days time (from 30.01.2020 to 02.02.2020) for furnishing such old data. It is also noticed that the assessee has been periodically sharing the details as and when retrieved which is evidenced from the various submissions made by the assessee before the assessing officer. The Id AR during course of hearing admitted that there was a mistake on the part of the assessee to have made a submission that there were no transactions having value more than Rs.5 lakhs. The Id AR further submitted in this regard that though the assessee has inadvertently stated thus, it has subsequently submitted the relevant details as has been called for. Therefore it was submitted that a mere error in the statement made cannot be the reason for levy of penalty. We are inclined to agree with this submission of the Id AR since from the perusal of the records it is noticed that the assessee has submitted the relevant details as called for by the assessee which includes the transactions more than Rs.5 lakhs. We accordingly are of the view that the contention of the CIT(A) that such details were not provided is not factually correct. The contention that the assessee has intentionally hidden / provided inaccurate details pertaining to Gujalaxmi Diamonds Pvt Ltd is also incorrect since it is factually established that the assessee has ultimately shared all the relevant details and therefore not tenable. In view of these discussions and considering facts of the present case, we are of the view that there is a reasonable cause for the delay in providing the details by the assessee and since the assessee in the end had shared all the relevant details, levy of penalty under section 272A(1)(c) is not warranted. Accordingly the penalty thus levied is hereby deleted.

11. In result the appeal of the assessee is allowed.

**Order pronounced in the open court at the time of hearing on
04/07/2023.**

Sd/-

sd/-

(VIKAS AWASTHY)	(PADMAVATHY S)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 04th July, 2023

Pavanan

प्रतिलिपि अग्रेषित **Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai