

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

**BEFORE SHRI KUL BHARAT, VIDE PRESIDENT
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.347/Lkw/2019
Assessment Year: 2013-14

Sub Registrar, Tamkuhiraj, Kushinagar. TAN:ALDS05138A (Appellant)	Vs.	Addl. C.I.T., (I&CI), Lucknow. (Respondent)
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Appellant by	None
Respondent by	Shri Sunil Kumar Rajwanshi, Addl. CIT (D.R.)

ORDER

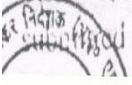
PER ANADEE NATH MISSHRA:A.M.

(A) This appeal has been filed by the assessee for assessment year 2013-14 against impugned appellate order dated 03/01/2019 passed by learned Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

(B) The dispute in this appeal pertains to penalty levied by Addl. Director of Income Tax (Intelligence & Criminal Investigation) vide order dated 18/09/2013. The Sub Registrar (the appellant in the present appeal) was requested to furnish information vide statutory notice dated 06/09/2012 issued u/s 133(6) of the I.T. Act. However, the Sub Registrar did not make

any compliance to the notice. In view of the non compliance on the part of the Sub Registrar, aforesaid order dated 18/09/2013 was passed levying penalty u/s 272A(2)(C) of the IT Act amounting to Rs.35,500/-. The relevant portion of the aforesaid order is reproduced below:

2. The Sub Registrar, Tamkahiraj, Kushinagar was requested to furnish information under the CIB Code 001 vide a statutory notice u/s 133(6) of the Income-tax Act 1961 dated 06.09.2012, issued and served upon the sub registrar by the Income-tax Officer(I&CI) Gorakhpur, after seeking prior permission to call for such information u/s 133(6) of the competent authority i.e the Director Income-tax (intell.), Lucknow. As per the requirements of this statutory notice u/s 133(6), the sub registrar was under the obligation to submit the required particulars of information before the Income-tax officer (I&CI) Gorakhpur, in the manner as required in the said notice and by the dates indicated in the said notice. The consequences of non compliance of such notice were also duly brought to the knowledge of the Sub Registrar in the said notice.

3. The Sub Registrar did not make any compliance to the notice u/s 133(6) dated 06.09.2012. In order to give him another opportunity, a further notice/letter (reminders) u/s 133(6) dated 07.11.2012 & 05.12.2012 was issued and served on him by the ITO (I&CI) requiring compliance by the Sub Registrar, Tamkahiraj, Kushinagar. In response to which the sub registrar raised several issues regarding the information sought, which were duly clarified by the ITO(I&CI) Gorakhpur vide his letter 15.01.2013. In spite of this, the sub registrar did not  submit the desired information.

4. In view of non compliance of the statutory notices u/s 133(6), show cause notices dated 13.03.2013 and 26.08.2013, initiating proceedings under section 272(2)(C) of the Income-tax Act were issued.

5. In response to the show cause notices dated 13.03.2013, the Sub Registrar in his letter dated 10.04.2013, questioned the scope of section 133(6) in calling for information from the Sub Registrar and applicability of the provision of section 133(6) on him, by submitting a copy of a letter circulated by I. G. Registration U.P, with his organization. In the said letter, the I. G. Registration U.P has claimed that Sub- Registrars are not covered under the definition of "person" and secondly, that the information cannot be sought/asked under the section 133(6) of the Income-tax Act 1961.

The Sub Registrar, was however, given one more opportunity to show cause vide a further notice u/s 272(A)(C)/274 dated 26.08.2013 fixing the date of hearing on 05.09.2013. In response to which the Sub Registrar Tamkuhiraj, Kushinagar, attended the office and submitted his reply stating that it is not proper to consider the Sub Registrars in the definition of "person" and it is not legal to call for the information of the sale deeds between 5 lakh to 10 lakh under section 133(6) of the Income-tax Act 1961.

6. I have gone through the facts of the case. The Sub Registrar Tamkuhiraj, Kushinagar has raised two issues in his submission. First, that he is not covered under the definition of "person" and secondly that the information cannot be sought/asked under the section 133(6) of the Income-tax Act 1961.

So far as the definition of "person" is concerned, it may be mentioned that, apart from the inclusive definition of the word "person" in section 2(31) of the income-tax Act, the term "person" also finds mention in other provision of the Act, like section 192 of the Income-tax Act, which is reproduced for ready reference:-

" 192(1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the [rates in force] for the financial year in which the payments in made on the estimated income of the assessee under this head for that financial year."

It may please be noted that all the Sub-Registrar are having TAN and are presently deduction TDS from salaries of their State Government Employees as per the provisions of section 192 of the Income-tax Act quoted above. As the Sub-Registrars accept that they are includible in the category of "person" as per section 192 of the Act, on similar reasoning, they would be includible under "person" in any other provision of the Income-tax Act, without prejudice to their being covered under section 133(6) of the Income-tax Act.

Notwithstanding, the legal position as stated above, it may please be noted that information had been collected from the sub-registrar since past several years. Further they have been other Sub-Registrars from the UP (East) region who have complied with the said notice u/s 133(6) of the IT Act, 1961, and have furnished the requisite information.

7. With respect to the issue of illegality of proceeding u/s 133(6) of the IT Act, 1961, it may be noted that section 133(6) of the Income-tax Act 1961, clearly provides as under

133 " The Assessing Officer , the [Deputy Commissioner (Appeals),] [the Joint Commissioner} or the Commissioner (Appeals) may, for the purposes of this Act-

(6) Require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified.

Provided that powers referred to in clause (6), may also be exercised by the Director-General, the Chief Commissioner, the Director and the Commissioner

Provided further that the power in respect of any inquiry, in case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Director or Commissioner without the prior approval of the Director or, as the case may be, the commissioner."

As mentioned above, the second proviso to section 133(6) stipulates that information can be called for even if no proceeding is pending with the approval of Director. In the current case the notice u/s 133(6) dated 06.09.2012 had been issued by the ITO(I&CI), Gorakhpur after taking due approval from the Director (I&CI), Luck now and therefore is covered under the second proviso the said section.

It has been clarified vide CBDT F.No: 291/17/2012-IT(inv-IV)/Part-I/826 dated 13.08.2013 that the section 133(6) of Income-tax Act empowers the collection of information from Registrar/Sub-Registrar/Stamps Registration Officer.

Also the Kerala High Court has held in the case of requesting informations from the Urban-Co-operative Banks that the action of the department in seeking to collect information is in accordance with relevant provisions of the Income-tax Act 1961.

Notwithstanding, the legal position as stated above, it may please be noted that, information had been collected from the sub-registrar since past several years, and this plea that sub-registrar are not covered under the definition of "person" as also the plea of the illegality of the proceeding u/s 133(6) of the IT Act, 1961, is not tenable.

Accordingly, rejecting the pleas of the assessee penalty u/s section 272A(2)(C) of the Income-tax Act, 1961, is hereby imposed and the same is calculated as under.



In the Present case, the period of default is computed from 28.09.2013 w.r.t to the requisite date of compliance mentioned in the notice u/s 133(6) dated 06.09.2012 till date, which works out to 355 days, and the quantum of penalty accordingly works out to $(355 \times 100) = 35,500/-$ accordingly, a penalty of Rs. 35,500 is hereby levied upon the Sub Registrar Faukubiraj, Kushinagar under section 272A(2)(C) of the Income-tax Act, 1961 for the default of non-complying with the notice issued under provisions of section 133(6) of the Income-tax Act, 1961. The ITO shall issue notice of demand and challan.

(C) The assessee's appeal, filed against the aforesaid order dated 18/09/2013 in the office of the learned CIT(A), was dismissed vide impugned appellate order dated 03/01/2019. The relevant portion of the order of learned CIT(A) is reproduced below:

In this case the appellant was required by the Income tax officer (I&CI) Gorakhpur to furnish information regarding the registered sale/ purchase deeds u/s 133(6) of the Act. The information was not submitted and even on issuance of the reminder the same was not submitted, Thereafter show cause notice was issued for initiating proceedings u/s 272A(2)(C) of the Act. During the penalty proceedings the AO held that the appellant has made default in submitting the information sought u/s 133(6) of the Act and was liable for imposition of the

penalty. The penalty in this case has been imposed on the fact that the appellant was statutory obliged to furnish the requisite information before the prescribed authority as required by section 133(6) of the Act. It is a fact that the appellant had failed to discharge the obligation under section 133(6) of the Act. Section 272A (2)(c) provides levy of penalty in case of such default. it would be convenient to read Section 272A(2)(c), which is extracted as follows :

"272A. (2) If any person fails- . . .
(c) to furnish in due time any of the returns, statements or particulars mentioned in Section 133 or Section 206 or Section 206C or Section 285B ;

he shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues :

Provided that the amount of penalty for failure in relation to a declaration mentioned in Section 197A, a certificate as required by Section 203 and returns under Sections 206 and 206C shall not exceed the amount of tax deductible or collectible, as the case may be."

3. During the course of the appellate proceedings it was submitted that as per directions of the Hon'ble High Court in W.P. no. 359/2014 dated 30.07.2014 it was agreed that the department of Income Tax will surrender all penal proceedings and waive of penalty imposed for non-compliance of notice u/s 133(6) of the Act against Sub Registrar, if the latter party files form 61A.

The order of the Hon'ble High Court was perused according to which a meeting was held on 17/07/2014 between the Chief Commissioner of Income Tax, Lucknow and the Inspector General (stamps and Registration) Govt. of Uttar Pradesh. The Minutes of the meeting recorded as under

" After discussions, it was reiterated by both the parties that on its part, the Sub Registrars shall provide the information relating to immovable properties of Rs. 5 Lacs and upto Rs. 30 Lacs, in a manner and form available with the Sub Registrars as captured on customized software, PRERNAVERSION2.0 in Index2 Format and in the form of photocopies of index registers 2 in respect of non-computerized offices while the Income Tax Department shall Endeavour that stay petitions, if any moved by the SROs against the penalty imposed for non-compliance of the notices u/s 133(6) of the Income tax Act, 1961 are expeditiously disposed off as per rules. It was also agreed that the matter relating to the amount already recovered by the department can be resolved following the appellate procedure laid down in the Income Tax Act, 1961, for which the SROs can move appeal before the appropriate authority.

The meeting concluded with the resolution that the SROs shall provide the information called for by the Income Tax Department, as agreed above, However This shall be without prejudice to the legality of applicability of penal provision for non-furnishing of information u/s 133(6) of the Act in the case of SROs.

The Hon'ble court further directed, in terms of the request which was made before it, that the appeals which are filed against the orders of the penalty imposed on the Sub registrars, may be decide expeditiously and if an application for urgent stay is moved, that may also be disposed of.

Thus it can be seen that the conclusions of the meeting have been wrongly interpreted by the appellant. It has been clearly mentioned in the minutes of the meeting that the resolution which was agreed upon between the two parties was without prejudice to the legality of applicability of penal provision for non-furnishing of information u/s 133(6) of the Act in the case of SROs.

7. The appellant has submitted that the appellant was not covered under the definition of 'person' and that the information cannot be asked under the section 133(6) of the Act. The submissions made by the appellant were considered. A perusal of the penalty order shows that the issues raised by the appellant were also raised during the penalty proceedings. The AO has considered them and I find that the AO has suitably controverted them.

The appellant has argued that as per section 285BA he was submitting the requisite information regarding the specified financial transactions and he was not obliged to provide the information for transaction registered with office for value between 05 lacs to 30 lacs.

In this regard I find that the appellant has failed to distinguish the difference between the two sections of the Act. While section 285 BA is regarding the obligation cast upon certain specified persons for filling of AIR information regarding specified financial transactions, whereas section 133(6) of the Act pertains to powers of the AO to call for information from any person. Thus the purpose of the two section of the Act is different and the obligation cast upon in the one cannot be a reason not to fulfill the requirements of the other. In view of the above I find that the appellant has not submitted any valid reason / cause for failure to discharge the obligation under section 133(6) of the Act. Accordingly the penalty imposed by the AO is upheld.

(D) At the time of hearing before us on 03/12/2024, none appeared from the side of the appellant. On earlier dates of hearing on 07/06/2023, 21/08/2023, 22/11/2023 and 28/02/2024 also, there was no representation from the side of the appellant. On 26/09/2024, Sri Krishna Kumar Mishra (stated to be the Sub-Registrar) himself attended. On his request, the hearing was adjourned to 03/12/2024, which was pronounced in open court. Once again (as stated earlier) there was no representation from the side of the appellant. Thus, it can be seen that there was continued non-compliance with notices of hearing by the appellant. In the absence of any representation from the appellant side, we heard the learned Sr. D.R. for Revenue who relied on the order dated 18/09/2013 passed by Addl. Director of Income Tax (I&CI) and dated 03/01/2019 passed by learned CIT(A) respectively.

(E) We have perused the records. It is not in dispute that the aforesaid notice dated 06/09/2012 was issued u/s 133(6) of the IT Act. It is also not in dispute that the assessee did not make any compliance to the aforesaid notice. Nothing has been brought for our consideration from either side to persuade us to take a view different from the view taken by learned CIT(A) in the impugned appellate order dated 03/01/2019. Considering the continued absence from the hearings in ITAT, despite having been issued several notices, and in view of the facts and circumstances of the case before us, we are constrained to uphold the order of learned CIT(A). In view of the foregoing, we hold that the order passed by learned CIT(A) is just and fair and in accordance with law having regard to facts and circumstances of the case.

(F) In the result, the appeal of the assessee is dismissed.

(Order pronounced in the open court on 05/12/2024)

Sd/.
(KUL BHARAT)
Vice President

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:05/12/2024
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. The CIT(A)
5. D.R. ITAT, Lucknow

Asstt. Registrar