

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

**Before Shri Waseem Ahmed, Accountant Member and  
Shri K. Narasimha Chary, Judicial Member**

**I.T.A. Nos. 1322 & 1323 /KOL/ 2013  
Assessment Years: 2011-2012 & 2012-2013**

*Durgapur Steel Peoples' Cooperative Bank Limited,.....Appellant  
Benachity House, Durgapur,  
Dist. Burdwan-713 204  
[PAN: AAAJD 0472 B]*

-Vs.-

*Director of Income Tax (Intelligence & Criminal  
Investigation),.....Respondent  
P-13, Chowringhee Square,  
Aayakar Bhawan Annex,  
Kolkata-700 069*

Appearances by:  
*Shri Soumitra Choudhury, Advocate, for the assessee  
None, for the Department*

Date of concluding the hearing : September 08, 2016  
Date of pronouncing the order : September 23, 2016

**O R D E R**

**Per Shri K. Narasimha Chary, J.M.:**

Both these appeals by assessee are arising out of separate penalty orders of DIT(I&CI), Kolkata passed u/s. 271FA of the Income Tax Act, 1961 hereinafter referred to as "the Act") vide Nos. DIT(I&CI)/Kol/271FA/2010-11/MDCCBL/2012-13 and DIT(I&CI)/Kol/271FA/2011-12/MDCCBL/2012-13 dated 20.03.2013. Since grounds are common and facts are identical, we dispose of both these appeals by this common order for the sake of convenience. Since

grounds are common and facts are identical, we dispose of both these appeals by taking the facts from AY 2011-12.

2. Brief facts of the case are that Durgapur Steel Peoples' Cooperative Bank Limited is an entity dealing with borrowing and lending business. Under the provisions of Section 285BA of the Act, every person who is an assessee or other categories enumerated there and responsible for registering or responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return, in respect of such specified financial transaction which is registered or recorded by him during any financial year beginning on or after the 1st day of April, 2004 and information relating to which is relevant and required for the purposes of this Act, to the prescribed income-tax or authority or agency. Durgapur Steel Peoples' Cooperative Bank Limited an assessee falling within the ambit of Section 285BA failed to comply with this legal requirement for the period of 2010-11. A notice dated 20.02.2013 was issued by the AO. The assessee complied with the requirement of Section 285BA by filing the annual information return by 15.3.2013, the same was accepted and the assessment was concluded. However, subsequently the Office of the Director of Income Tax (Intelligence and Criminal investigation) served penalty order dated 19.3.2013 levying penalty of Rs.56,100/- for the delay of 561 days in furnishing AIR in respect of AY 2011-12 and Rs.19,600/- in respect of AY 2012-13.

3. Challenging the imposition of penalty, the assessee preferred these appeals on the following common revised grounds except variation in amounts:

*"Whether on the fact and in the circumstances, ld. Director of Income Tax is justified by imposing penalty u/s 271FA".*

3. It is the argument of the learned AR that the assessee explained the delay with sufficient cause and after the assessee complied with the direction within the

extended time, it is not open for the authorities to resort to the penalty proceedings under section 271 FA of the Act. According to him, non-compliance with the requirement of Section 285BA of the Act till the notice was issued, was non-intentional but only due to the fact that the assessee was not aware of the existence of such an obligation. Learned DR, on the other hand, submitted that the department is periodically launching awareness campaigns by advertising in the print and visual media about the obligation of the specified persons for filing of AIR by them, and it is not open for the assessee to contend that they are not aware of the obligation because the assessee got the accounts of all branches consolidated and audited, filed income Tax/TDS returns and aware of the obligations under the Act.

4. Basing on the above contentions, the point that arises for our consideration is whether there is sufficient cause for the assessee for non-compliance with the requirement of Section 285BA of the Act till the notice was served?

5. Facts are admitted. There is no dispute that the assessee, Durgapur Steel Peoples' Cooperative Bank Limited is an entity falling within the ambit of Section 285BA of the Act, it failed to comply with this legal requirement for the period of 2011-12 as such a notice dated 20.2.2013 was issued by the AO questioning the same, and the assessee complied with the requirement of Section 285BA of the Act by filing the annual information return by 15.3.2013. Subsequently the Office of the Director of Income Tax (Intelligence and Criminal investigation) served penalty order dated 19.3.2013 levying penalty of Rs.56,100/- for the delay of 561 days in furnishing AIR in respect of AY 2011-12 and Rs.19,600/- in respect of AY 2012-13 in furnishing AIR. According to the assessee, the default is not intentional, but due to ignorance of existence of such an obligation, whereas the revenue contends that there cannot be such ignorance in view of the department

conducting so much of awareness campaign and the assessee complying with other obligations under the Act.

6. Learned AR placed reliance on a decision reported in *Motilal Padampat Sugul Mills Co. Ltd vs State of UP* [118 ITR 326(SC)] for the principle that there is no presumption in law that every persons knows the law. He also placed reliance on a decision reported in *WTO vs S.P. Jayakumar* (1983) 3 ITD 221 (Mad) wherein it was held,-

*“6. That the tax laws of this country are complex and complicated and often require for compliance, therewith the assistance of tax practitioners specialising in this field, is a well known fact. It is equally well known fact that the legislation in this field undergoes so frequent changes and amendments that it is not possible for even a person specialising in this field, including the tax administrator, to claim that he knows what exactly the law is on a particular given day or period without making references to the history of the enactments. In such circumstances, it would be a travesty of truth and justice to hold that the assessee knew or ought to have known the correct law and comply therewith, even though, in fact, he was not aware of the provisions.*

*7. It is well established by the decision of the Supreme Court in [Hindustan Steel Ltd. v. State of Orissa](#) [1972] 83 ITR 26 that the liability to pay penalty does not arise merely upon proof of default in complying with the statutory requirements and an order imposing penalty for failure to carry out a statutory obligation being the result of a quasi-criminal proceeding, 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 and penalty will also not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform the statutory obligation, it is stated, is a matter of discretion of the authority concerned to be exercised judicially on a consideration of all relevant circumstances and even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose it when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute...”*

He further placed reliance on a decision reported in *Kaushal Diwan vs Income-Tax Officer* 1983 3 ITD 432 Delhi, for the observation that,-

*It cannot be considered that each assessee, whether small or big, must rush to an income-tax specialist, practising as a lawyer or a chartered accountant, for his income-tax assessment especially when the income earned or being earned by him was too low. It cannot indeed be such a policy of the Government. In fact, on the other hand, an effort was being made to simplify*

*the law so that the people could pursue their assessments before the department in a simple manner and that they do not have necessarily to depend on the professionals.*

*7. Again, it is not each default that must be punished and in this respect, support can be had on the observations of the Supreme Court in the case of [Hindustan Steel Ltd. v. State of Orissa](#) [1972] 83 ITR 26.*

He brought to our notice a decision dated 20-02-2015 rendered by Lucknow Bench of the Tribunal in ITA No. 699/LKW/2013 (Raibereilly District Cooperative Bank Ltd vs Director of Income Tax (I&C), Lucknow) on an identical point.

7. Lastly he placed reliance on the decision rendered by a Coordinate Bench of this Tribunal in ITA NO. 956 & 957/KOL/2013 wherein after referring to the decision above, the Tribunal allowed the assessee's appeal on the following reasoning:-

*"8. On a careful consideration of the matter, we find that except the instant alleged breach, nothing more is alleged against the assessee. As a matter of fact, the Director of Income Tax (Intelligence and Criminal investigation) who passed the penalty order himself observed in his order vide para No 3 that the assessee got the accounts of all branches consolidated and audited, and also filed Income Tax/TDS returns. The order of the Director of Income Tax (Intelligence and Criminal investigation) does not speak as to how the assessee stood to gain by contravening with the provisions of Section 285BA of the Act or the act of assessee resulted in any loss to the Revenue. Further, it is an acknowledged and judicially recognized fact that the tax laws of this country are complex and complicated and often require for compliance, therewith the assistance of tax practitioners specialising in this field, is a well known fact, and it is equally well known fact that the legislation in this field undergoes so frequent changes and amendments that it is not possible for even a person specialising in this field, including the tax administrator, to claim that he knows what exactly the law is on a particular given day or period without making references to the history of the enactments. In these circumstances, no mala fides can be attributed to the assessee so as to invoke the penalty proceedings under section 271FA of the Act and the learned Director of Income Tax (Intelligence and Criminal investigation) should have taken note that the*

*breach is only technical or venial breach of the provisions of the Act and such a breach could have flown from a bonafide ignorance of the assessee that he is liable to act in the manner prescribed by the statute, and should not have invoked the penalty proceedings. We find every force in the argument of the learned AR and hold that the Penalty proceedings are liable to be set aside. We order accordingly, Both the appeals of the assessee are allowed”.*

8. While placing reliance on the above principles of law, learned AR contends that the breach in question is technical and venial one and not all intended or deliberate, and the explanation of the assessee as to their ignorance of obligation is sufficient cause within the meaning of Section 273B of the Act.

9. We have heard the arguments of both the sides and also perused the relevant material available on record. On a careful consideration of the matter, we find that except the instant alleged breach, nothing more is alleged against the assessee. As a matter of fact, the Director of Income Tax (Intelligence and Criminal investigation) who passed the penalty order himself observed in his order vide para No 3 that the assessee got the accounts of all branches consolidated and audited, and also filed Income Tax/TDS returns. The order of the Director of Income Tax (Intelligence and Criminal investigation) does not speak as to how the assessee stood to gain by contravening with the provisions of Section 285BA of the Act or the act of assessee resulted in any loss to the Revenue. Further, it is an acknowledged and judicially recognized fact that the tax laws of this country are complex and complicated and often require for compliance, therewith the assistance of tax practitioners specialising in this field, is a well known fact, and it is equally well known fact that the legislation in this field undergoes so frequent changes and amendments that it is not possible for even a person specialising in this field, including the tax administrator, to claim that he knows what exactly the law is on a particular given day or period without making references to the history of the enactments. In these circumstances, no mala fides can be attributed to the assessee so as to invoke the penalty

proceedings under section 271FA of the Act and the learned Director of Income Tax (Intelligence and Criminal investigation) should have taken note that the breach is only technical or venial breach of the provisions of the Act and such a breach could have flown from a bona fide ignorance of the assessee that he is liable to act in the manner prescribed by the statute, and should not have invoked the penalty proceedings. We, therefore, by following the above decision cited supra find that the Penalty proceedings are liable to be set aside. We order accordingly,

**10. In the result, both the appeals of the assessee are allowed.**

Order pronounced in the open Court on September 23, 2016.

**Sd/-**

**(Waseem Ahmed)**  
**Accountant Member**

**Kolkata, the 23<sup>rd</sup> day of September, 2016**

**Sd/-**

**(K. Narasimha Chary)**  
**Judicial Member**

*Copies to : (1) Durgapur Steel Peoples' Cooperative Bank Limited,  
Benachity House, Durgapur,  
Dist. Burdwan-713 204*

*(2) Director of Income Tax (Intelligence & Criminal  
Investigation),  
P-13, Chowringhee Square,  
Aayakar Bhawan Annex,  
Kolkata-700 069*

*(3) CIT- ,Kolkata;  
(4) The Departmental Representative  
(5) Guard File*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**