



Penalty for delay in filing of Annual Information Return not to be levied in view of taxpayer's bona fide ignorance plea

Background

Recently, the Kolkata Bench of Income Tax Appellate Tribunal (Tribunal) in the case of Malda District Central Co-op Bank Ltd.¹ (the taxpayer) dealt with a case pertaining to levy of penalty under Section 271FA of the Income-tax Act, 1961 (the Act) for delay in furnishing Annual Information Return (AIR) in terms of provisions of Section 285BA of the Act. The Tribunal held that the non-compliance with provisions of Section 285BA is only technical or venial breach of the provisions of the Act and such a breach could have occurred due to a bona fide ignorance of the taxpayer that he is liable to act in the manner prescribed by the statute and, thus, penalty proceedings under Section 271FA should not have been invoked.

Facts of the case

- The taxpayer is an entity engaged in borrowing and lending business and falling within the ambit of Section 285BA of the Act.
- As per provisions of Section 285BA, every person who falls in the categories enumerated therein shall furnish an AIR, in respect of certain specified financial transactions, to the prescribed income-tax authority or agency.
- The taxpayer failed to comply with provisions of the said section for Assessment Year (AY) 2012-13.
- The Assessing Officer (AO) issued a notice dated 14 February 2013, and subsequently, on a request by the taxpayer, extended the time limit for compliance till 18 March 2013. Upon filing of the AIR on 15 March 2013 by the taxpayer, the assessment was concluded.
- Subsequently, Director of Income Tax (Intelligence and Criminal investigation) (DIT) initiated penalty and served penalty order levying a penalty of INR56,100 for delay in furnishing the AIR.
- The taxpayer contended that the AO, having been satisfied with the cause of delay explained by the taxpayer, extended the time for furnishing the AIR and it is not open for the authorities to subsequently resort to penalty proceedings after the taxpayer has complied with the direction within the extended time. Further, the taxpayer vehemently contended that non-compliance till the time the notice was served, was solely because the taxpayer was ignorant of existence of such an obligation.
- The DIT, on the other hand, contended that there cannot be such an ignorance in view of the department conducting so much of awareness campaign and the taxpayer complying with other obligations under the Act.
- The taxpayer, aggrieved by the order of DIT initiating the penalty, went on appeal before the Tribunal.

¹ Malda District Central Co-op Bank Ltd v. DIT(I&CI) (ITA Nos 956 & 957/Kol/2013) taxsutra.com

Tribunal's Ruling

- The order of the DIT does not speak as to how the taxpayer stood to gain by contravening with the provisions of Section 285BA of the Act or the act of taxpayer resulted in any loss to the Tax department.
- The tax laws of the country are complex and complicated and often require for compliance, there with 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 to claim that he knows what exactly the law is on a particular given day or period without making references to the history of enactments.
- The Tribunal observed that the breach in question is not at all intended or deliberate, and the explanation of the taxpayer as to their ignorance of obligation is sufficient cause within the meaning of Section 273B of the Act.
- No mala fides can be attributed to the taxpayer so as to invoke the penalty proceedings under Section 271FA of the Act. The DIT 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 taxpayer that he is liable to act in the manner prescribed by the statute, and therefore, the penalty proceedings should not have been invoked.

Our comments

The principle that every individual is deemed to know the law of the land and ignorance of law is not an excuse for not taking appropriate action within limitation has been upheld by Courts in various cases². In view of increasing number of laws being enacted every year and in view of increase in complexity, the Courts in some cases³ have held that there is no presumption in law that every person knows the law. This Tribunal in the instant case has also recognised this principle and held that it is not possible for even a person specialising in this field to claim that he knows what exactly the law is on a particular given day or period without making references to the history of enactments.

The Gujarat High Court in the case of Patan Nagrik Sahkari Bank⁴ has held that levy of penalty shall not be valid to the extent that there was a reasonable cause in not complying with the statutory provisions of Section 285BA. The Punjab & Haryana High Court in the case of Joint Sub Registrar⁵ and The Rajasthan High Court in the case of State of Rajasthan⁶, on the other hand, have upheld penalty under Section 271FA of the Act wherein AIR was filed belatedly and no plausible explanation for delay was given by the taxpayer.

The instant decision deals with a case where the default in complying with provisions of Section 285BA of the Act was attributed to bona fide ignorance of the taxpayer. The Tribunal held that the breach of provisions of Section 285BA of the Act was technical or venial and no malafides can be attributed to the taxpayer so as to invoke penalty proceedings under Section 271FA of the Act.



² Swadeshi Cotton Mills Co. Ltd. v. Government of U.P. [1975] 4 SCC 378 (SC); Sporthi Sadan Convent v. CIT [2016] 68 taxmann 245 (Kar); All India J.D. Educational Society v. DGIT [2011] 198 taxmann 443 (Del)
³ Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [1979] 118 ITR 326 (SC); CIT v. Schell International [2005] 278 ITR 630 (Bom); Kadayanallur Cholia Brahmana Mahajana Trust v. ITO [2010] 2 ITR 14 (Chen)

⁴ Patan Nagrik Sahkari Bank Ltd v. DIT(CIB) [2012] 20 taxmann 754 (Guj)

⁵ Joint Sub Registrar, Sangat v. DIT(CIB) [2014] 51 taxmann 197 (P&H)

⁶ State of Rajasthan v. DCIT [2013] 30 taxmann 369 (Raj)

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