

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI****BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER****I.T.A. No. 4846/DEL/2019 (A.Y 2017-18)**

The Rewari Central Co-operative Bank Ltd., Near GPO, Circular Road, Rewari, Haryana – 123 401 PAN No. AAAAT7998P (APPELLANT)	Vs.	Directorate of Income Tax, (I & CI) Rewari. (RESPONDENT)
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Assessee by :	Shri Sanjeev Jain, C.A.;
Department by:	Md. Gaysuddin Ansari, Sr. D. R.;

Date of Hearing	20.07.2022
Date of Pronouncement	26.07.2022

ORDER**PER YOGESH KUMAR US, JM**

This appeal is filed by the assessee for assessment year 2017-18 against the order of the Id. Commissioner of Income Tax (Appeals), Rohtak, dated 18.03.2019.

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

“1. That The CIT(A) has erred on facts and in law by upholding the penalty of 1,05,000/- levied by Ld. DIT(l&CI), Chandigarh for default

in filling of Statement of Financial Transaction (SFT) return for the period from 08.11.2016 to 30.12.2016. Ld. CIT brush aside the fact that "The Rewari Central Cooperative Bank" (RCCB) is a rural Cooperative Bank governed by the Haryana Govt, and have very small infrastructure and Statement of Financial Transaction (SFT) returns were not deliberately delayed, but delay was due to not serving of previous notices which sent through Email only to the bank which mail id was already been changed as well as lack of knowledge on the part of employees of the bank.

2. That the Ld. CIT (A) has erred on facts and in law by confirming the order of Ld. DIT(I&CI), Chandigarh and failed to appreciate the facts that bank has already been complied the requirement by submitting same information's to Dy Director of Income Tax (Inv.)-I, Gurgaon in compliance of notice dated 21.11.2016 and also filed its Statement of Financial Transaction (SFT) return for the period from to 30.12.2016 immediate after receiving such show cause notice on before personal hearing on 19.09.2017 which shows that the it was not the intention of the bank to take the requirement of the Income Tax office in light way and delay in filling of the returns was not a willful act on the part of the bank.

3. The Ld. Assessing Officer has erred in law & in fact by not consider the land mark decision given by Apex court in Dilip N Shroff Vs Joint CIT (2007) ITR 519 SC mere omission or negligence would not constitute a deliberate act.

4. The CIT(A) has erred in law & in fact by not consider the land mark decision given by Apex court in proper manner in Hindustan Steel Limited Vs. State of Orissa (1972) 83 ITR 26 (SC) that Penalty can be levied only if assessee acted deliberately, i.e. mens rea,

guilty mind is essential before penalty and in our case appellant is a District Central coop, bank managed and controlled by Haryana Govt, and a Govt, institution can't be acted deliberately or guilty mind."

3. Brief facts of the case are that, the assessee is a District Cooperative Bank, registered under Cooperative Societies Act controlled by state of Haryana. The assessee is engaging in banking activities like borrowing, raising or taking up money, lending or advancing of money to its members.

A show cause notice has been issued on 08/09/2017 by the Director of Income Tax (I & CI), Chandigarh calling upon the assessee to explain the reason for not filing of statement of financial transaction return (SFT Return). On receipt of the show cause notice, the assessee has filed the SFT Return on 14/09/2017 for the period from 08/11/2016 to 30/12/2016. The Ld Director of Income Tax (I & CI), Chandigarh was not satisfied with the reasons for the delay of 210 days in filing the STF Return, therefore, imposed penalty of Rs. 1,05,000/- (Rs. 500 per day for 210 days) and passed an order on 19/09/2017 u/s 271 FA of the Income Tax Act.

4. Aggrieved by the assessment order dated 19/09/2017, the assessee has preferred an Appeal before the CIT(A). The Ld.CIT (A) has dismissed the appeal filed by the assessee on 18/03/2019 by confirming the penalty imposed by the u/s 271FA of the Act. As against the order dated 18/03/2019, the assessee has preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the assessee submitted that the order u/s 271FA of the Act came to be passed due to delay in filing the SFT Returns of 210 days. On receipt of the show cause notice dated 14/09/2017, immediately assessee has filed SFT Return for the period 08/11/2016 to 30/12/2016. The advisory, notice issued u/s 285 BEA (5) and the first penalty notice u/s 271FA have not

been received by the assessee since the assessee has inadvertently changed the E-mail address. The Ld. Counsel for the assessee further submitted that, the assessee being rural bank, governed by Haryana Government, have very small infrastructure and filing of belated SFT return was not deliberate. The Ld. Counsel further submitted that, both CIT(A) and A.O have failed to follow the ratio laid down in the case of Dilip N Shroff Vs. Joint CIT (2007) ITR 519 S.C.

6. Per contra, the Ld. DR has relied on the orders of the Lower Authorities.

7. We have heard the parties perused the material on record and gave our thoughtful consideration. The assessee being a District Cooperative Bank has filed statement of financial transaction with a delay of 210 days i.e. after receipt of the show cause notice issued by the Director of Income Tax (I & CI, Chandigarh). The explanation given by the assessee that the assessee has not received advisory notice issued u/s 285 BA (5) and the show cause notice of penalty u/s 271FA due to change of mail id and further contended that, the delay in filing the return was not deliberate. By taking into the above facts and circumstances and also the fact that, the assessee has already filed SFT return, in our opinion, the Ld. A.O should have taken lenient view by adopting fair objective of the penalty proceedings.

8. The Hon'ble Apex Court in the case of Dilip N Shroff Vs. Joint CIT (2007) ITR 519 S.C. held that, penalty proceedings are not initiated only to harass the assessee; approach of Assessing Officer while initiating penalty proceedings must be fair and objective. Further, in the case of Hindustan Steel Ltd. Vs. State of Orissa (1947) 83 ITR 26 held that, for the proposition that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty 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.

9. In view of the above discussions and relying on the judgment of the Apex Court, we are of the opinion that the penalty of Rs. 1,05,000/- imposed by Ld. A.O u/s 271FA of the Act which was confirmed by CIT(A) deserves to be deleted.

10. Accordingly, the grounds of Appeal are allowed, penalty imposed by the A.O stood deleted.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26th July, 2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd /-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Dated : 26/07/2022

R.N

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI.

