

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH
'B' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No. 833/CHD/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Shree Ram Dass Rice & General Mills, Adiana Road, Macchhiwara, Ludhiana	बनाम VS	The DCIT, Khanna.
स्थायी लेखा सं./PAN/TAN No. : AALFS9835J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Parikshit Aggarwal, C.A

राजस्व की ओर से /Revenue by : Shri Manjit Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 27.02.2019

उद्घोषणा की तारीख/Date of Pronouncement : 14.03.2019

आदेश/ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the assessee assailing the correctness of the order dated 04.05.2018 of CIT(A)-2 Ludhiana pertaining to 2014-15 assessment year on the following grounds :

1. That on the facts, circumstances of the case and in law, the Worthy CIT(A) through his order dated 28.02.2018 has erred in passing that order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.

2. That on facts, circumstances of the case and in law, the Worthy CIT(A) has erred in confirming the action of Ld. AO in wrongly imposing penalty of Rs. 1,00,000/- on account of non uploading/filing of Form 3CEB electronically ignoring the fact that all TP records had been found to be maintained and were also filed before the Ld. TPO.

3. That on facts, circumstances of the case and in law, the Worthy CIT(A) has erred in confirming the action of Ld. AO in imposing penalty of Rs. 1,00,000/- on account of non uploading of Form 3CEB electronically ignoring the justified plea of the appellant that the same had been prepared in paper mode within the proper time but due to ignorance/oversight, uploading in the e-portal was delayed.

4. That on facts, circumstances of the case and in law, the Worthy CIT(A) has erred in confirming the action of Ld. AO in imposing penalty of Rs. 1,00,000/- on account of non uploading of Form 3CEB electronically ignoring the justified plea of the appellant that the transfer pricing provisions had been properly complied with and there were no additions made by TPO in regards to it and hence, no revenue loss has been affected.

5. That the appellant craves leave for any ad, deletion or amendment in the grounds of appeal on or before the disposal of the same.

2. The ld. AR addressing the facts of the present case submitted that penalty u/s 271BA of the Act has been levied on the ground that the assessee did not upload the Form No. 3CEB alongwith the return. The failure to upload the Report was not intentional. It was his submission that it was the first year where such a responsibility was cast upon by the law on the

assessee. The said Form, it was submitted, was filed by the assessee in the course of the assessment proceedings itself. It was his submission that even otherwise qua the domestic transactions with its sister concern namely M/s HCS Foods Pvt. Limited no additions have been made by the AO considering TPO's order dated 31.03.2017 passed u/s 92CA(3) of the Act. Accordingly, it was his submission that it being the first year in which such a requirement was to be complied with by the assessee who being ignorant and having no intention to flout the provisions did not upload it. The mistake was bonafide as the Report was promptly made available in the assessment proceedings itself, it **is seen was not** avoided and the TPO after due consideration of the same has not noticed anything adverse in the transactions with its sister concern thereby proposing no additions by way of adjustments. In these peculiar facts, it was his submission that penalty order may be quashed. Reliance was placed upon the following decisions :

1. *Decision of the Madras High Court in the case of P. Senthil Kumar V Pr. CIT (TCA No. 604 of 2018)*
2. *Decision of ITAT Delhi Benches in ITA No. 1401/Del/2016 dated 14.02.2019 in the case of ACIT Vs BSCC & C JN, New Delhi*
3. *Decision of ITAT Jodhpur Bench in ITA 149/Jodh/2018 dated 25.05.2018 in the case of Shri Varun Goyal V ACIT, Bikaner*
4. *Decision of ITAT Mumbai Benches in ITA No. 4177/Mum/2012 dated 24.07.2013 in the case of IL & FS Maritime, Mumbai.*

3. The Id. Sr.DR relied upon the impugned order.

4. We have heard the rival submissions and perused the material available on record. In the facts of the present case, admittedly the assessee failed to upload Form No. 3CEB in terms of the statutory requirement. The Statute requires in terms of Section 92E that the report from an Accountant be filed in regard to the international transactions or specified domestic transactions. The relevant provision reads as under :

Report from an accountant to be furnished by persons entering into international transaction.—

“92E. Every person who has entered into an international transaction [or specified domestic transaction] during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed.”

4.1 In order to ensure compliance, the Statute has provided imposition of penalty u/s 271BA in case of violations. The relevant provision is extracted hereunder for completeness:

Penalty for failure to furnish report under section 92E.

*“271BA—If any person fails to furnish a report from an accountant as required by section 92E, the Assessing Officer **may** direct that such person shall pay, by way of penalty, a sum of one hundred thousand rupees.”*

(emphasis provided)

4.2. A perusal of the above provision shows that the law makers have used the words “may” and not “shall”, thereby making their intentions clear in as much that levy of penalty is discretionary and not automatic. The said conclusion is further justified by Section 273B of the

Income Tax Act, 1961. A careful reading of Section 273B encompasses that certain penalties “shall” not be imposed in cases where reasonable cause is successfully pleaded. It is seen that penalty imposable u/s 271BA is included therein. By the said provision, the law makers have unambiguously made it clear that no penalty “shall be” imposed if the assessee “proves that there was a reasonable cause for the said failure”. As noticed, the statutory provision shows that the word “shall” has not been used in Section 271BA as then the imposition of penalty would have been mandatory. Section 273B as noted further throws light on the legislative intent as it specifically provides that no penalty “shall” be imposed if the assessee proves “that there was reasonable cause for the said failure”. In the facts of the present case, it is seen that the consistent explanation of the assessee has been ignored. The assessee has pleaded ignorance in regard to the said legal requirement and has demonstrated that the said Form was made available in the assessment proceedings to the AO which fact is not disputed by the revenue also. The assessee has further stated that based on the report, no adjustments have been proposed by the TPO. Copy of the order dated 31.03.2017 passed u/s 92CA(3) has been filed in the Court. We find that nothing has been placed before us to show that either the assessee is a habitual defaulter or that no explanation has been offered or for that matter, the explanation offered is false. No plausible reasons have been given by the Revenue why the explanation offered cannot be accepted. It is seen that the Id. CIT(A) has proceeded as though the levy of penalty is automatic. In the facts of the present case, we find that admittedly the assessee has failed to upload electronically Form No. 3CEB. However, accepting the bonafide explanation consistently offered, we accept the same as an unintentional bonafide mistake. Being satisfied by the explanation offered by the assessee after considering the position of law as applicable, we hold that it was a case of bonafide mistake. Accordingly, the respective orders imposing and confirming the penalty are set aside. The penalty order is quashed. Said order was pronounced in the Open Court at the time of hearing itself.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 14.03.2019.

Sd/-

(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

Sd/-

(दिवा सिंह)
(DIVA SINGH)

न्यायकि सदस्य/ Judicial Member