

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos.263 to 271/Bang/2023
Assessment Years : 2006-07 to 2014-15

M/s. Suco Souharda Sahakari Bank Ltd., Suco Bhavan, Moka Road, Bellary, Karnataka – 583 103. PAN : AACAS 9025 L	Vs.	The Joint Director of Income Tax [I and CI], Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate and Ms. Sunaina Bhatia, CA
Revenue by	:	Shri. Gudimella VP Pavan Kumar, JCIT (DR)(ITAT), Bengaluru.

Date of hearing	:	23.05.2023
Date of Pronouncement	:	24.05.2023

ORDER

Per Bench :

These appeals at the instance of the assessee are directed against nine orders of CIT(A), all dated 27.02.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Years are 2006-07 to 2014-15.

2. Common issues are raised in these appeals and they pertain to the same assessee, hence, they were heard together and are being disposed off by this consolidated order.

3. Brief facts of the case are as follows:

The assessee is a society registered under the Karnataka Souhardha Sahakari Act, 1997. The objects of the assessee society are to carry on the business of banking by accepting deposits and lending money to the members of the Sahakari. The assessee's business activities carried on are similar to the business of banking carried on by Co-operative Banks formed and registered under the Karnataka Societies Act, 1959. There was a survey under section 133A of the Act on 24.01.2018 at the headquarters of the assessee at Bellary. In the course of survey, it was noticed that assessee has not filed Annual Information Report (AIR) for the Assessment Years 2006-07 to 2014-15, despite the fact that the assessee had reportable transactions in terms of section 285BA(2) of the Act. Accordingly, show cause notice dated 26.09.2018 was issued for imposing penalty under section 271FA of the Act since assessee had not filed AIR as per the provisions of section 285BA(2) of the Act r.w.r. 114E of the Income Tax Rules, 1962. The assessee filed objections to the notice issued under section 271FA of the Act. The AO not being satisfied with the explanation submitted by the assessee, imposed penalty under section 271FA of the Act. The details of the Assessment Year and penalty imposed under section 271FA of the Act are as under:

Assessment Year	Penalty levied in INR
2006-07	4,19,700
2007-08	3,83,200
2008-09	3,46,600
2009-10	3,10,100
2010-11	2,73,600
2011-12	2,34,200
2012-13	2,03,900
2013-14	1,67,500
2014-15	1,27,700

4. Aggrieved by the orders imposing penalty under section 271FA of the Act, assessee filed appeals before the First Appellate Authority (FAA). Assessee had filed a common written submissions for the Assessment Years 2006-07 to 2014-15. The contentions raised before the FAA are as under:

- The JDIT (I & CI) does not have jurisdiction to pass the impugned orders under section 271FA of the Act.
- The orders imposing penalty under section 271FA of the Act is barred by limitation.
- It was contended by the assessee that only after 01.04.2015 in view of the specific amendment under Rule 114E of the Rules, the assessee was liable to furnish the AIR and hence not liable for penalty under section 271FA of the Act.
- It was further contended that no specific notice was issued under section 285BA(5) of the Act.
- Lastly, it was contended that there was a “reasonable cause” as mandated under section 271B of the Act for not imposing penalty under section 271FA of the Act.

5. The contentions raised by the assessee before the FAA were rejected and the appeals filed by the assessee for the Assessment Years 2006-07 to 2014-15 were dismissed.

6. Aggrieved by the orders of the CIT(A), assessee has filed the present appeal before the Tribunal. Common grounds are raised for all the appeals except for variation in figures. Therefore, grounds pertaining to Assessment Year 2006-07 is reproduced below:

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
2. *The learned CIT[A] is not justified in upholding the penalty imposed by the learned JDIT (I & CI) under section 271FA of the Act of Rs. 4,19,700/- under the facts and in the circumstances of case.*
3. *The learned CIT[A] ought to have appreciated that the appellant was not to file Annual Information returns in form 61A having regard to the provisions of Rule 114E(2), which was not applicable as the appellant is neither a banking Company or banking institution referred to in section 51 of the Banking Regulation Act, 1949 and further the Co-operative bank is included in the class of persons with effect from 1.4.2016 and not prior and thus, the appellant was under the bonafide belief that it was not required to file the AIR return under the facts and in the circumstances of the appellant's case.*
- 3.1 *The learned CIT[A] erred in upholding the penalty imposed u/s.271FA of the Act without appreciating the aforesaid explanation of the appellant constituted enable cause for failure to comply with the provisions of 285BA and hence, in terms of section 273B of the Act, the penalty imposed ought to have been cancelled.*
- 3.2 *The learned CIT[A] further erred in not following the binding decisions of the Hon'ble ITAT relied upon by the appellant on the ground that the Hon'ble RAT has not looked into the fact that co-operative banks are governed by the Banking Regulation Act, 1949, which failure to follow the binding decision of the ITAT amount to judicial indiscipline.*
4. *Without prejudice to the above the learned CIT [Appeals] failed to appreciate that the learned JDIT (I & CI) was not the prescribed authority in terms of section 285BA[1] of the Act, as it stood for the relevant assessment year Lander appeal and consequently, the order imposing penalty is a nullity and the same requires to be annulled.*
5. *Without prejudice to the above, the learned CIT[A] failed to appreciate that order imposing penalty u/s,271FA passed by the learned JDIT (I & CI) is bad in law and barred by limitation in as much as the said penalty proceedings have been initiated after an expiry of 12 years from the end of the assessment year and therefore, the proceedings cannot be considered as having been initiated within reasonable time under the facts and in the circumstances of the appellant's case.*
6. *Without prejudice to the above, the learned CIT[A] failed to appreciate that the penalty notice issued and the penalty order passed under section 271FA of the Act is bad in law in absence of issue of*

specific notice under section 285BA(5) of the Act directing the appellant to file the Annual Information Return within a period of sixty days from the date of service of the notice on the facts and circumstances of the case.

7. *Without prejudice to the above, the penalty levied is excessive and - quires to be reduced substantially.*
8. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

7. Assessee has filed a Paper Book comprising of 75 pages enclosing therein the case laws relied on, the written submissions filed before the FAA, copy of the show cause notice issued under section 271FA of the Act, the assessee's reply to the show cause notice, copies of the provisions of the relevant sections and rules, etc. The learned AR reiterated the submissions made before the CIT(A).

8. The learned DR, on the other hand, supported the order of the AO and the CIT(A).

9. We have heard the rival submissions and perused the material on record. The main contention of the learned AR before the Tribunal was that there is reasonable cause as mandated under section 273B of the Act for not filing the AIR for the relevant Assessment Years. In this context, the learned AR had relied on the order of the Bangalore Benches of the Tribunal in the case of The Mandya Co-operative Central Bank Vs. DIT (Intelligence and Criminal Investigation) in ITA No.447/Bang/2019, order dated 13.03.2020. The provisions of Rule 114E(2) before the substitution w.e.f. 01.04.2015 and thereafter is set out in the impugned orders of CIT(A), hence the same is not reiterated here. The Rule under 114E(2) of the Rules lists out the persons who are required to furnish the AIR in terms of section 285BA of the Act. It is clear that in terms of Sl.Nos.1

and 2 of the Table under Rule 114E(2) of the Rules, before 01.04.2015 only banking companies or banking institutions (which includes the provisions of section 51 of the Banking Regulation Act, 1949) but not the provisions of section 56 or Part V of the Banking Regulation Act, 1949, that deals with Co-operative Societies were required to file the AIR. The co-operative banks have been brought within the ambit of Sl. Nos.1 to 4 of Table under Rules 114E(2) after 01.04.2015 and prior to that, the assessee being a Souhardha Sahakari, there was ambiguity as to whether Co-operative Banks are required to comply with the provisions of Rule 114E of the Rules, meaning thereby, the bonafide belief of the assessee would constitute a reasonable cause as mandated as per section 273B of the Act for the failure to furnish AIR for the relevant years under consideration. On identical facts, the Bangalore Benches of the Tribunal in the case of Mandya District Co-operative Bank Ltd., (supra) has held as under :

“9. We heard rival contentions and perused the record. We notice that the original provisions of Rule 114E of Income tax Rules did not include “co-operative bank” and it was inserted only in the amended provisions of Rule 114E, which came into effect from 1.4.2016. Accordingly, in our view, there is merit in the submission of the ld A.R that there existed an ambiguity as to whether the cooperative banks are required to comply with the provisions of Rule 114E of the Act, meaning thereby, the bonafide belief of the assessee shall constitute reasonable cause in terms of sec.273B of the Act for the failure in furnishing the AIR for the year under consideration. In this view of the matter, the impugned penalty is liable to be deleted. Accordingly we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned penalty levied u/s 271FA of the Act for the year under consideration.”

10. Similar view has been taken by the Bangalore Benches of the Tribunal in the cases of Nehrunagar Co-operative Bank Ltd., Vs. DIT (I & CI), Bangalore in ITA Nos.965 to 967/Bang/2019 (order dated 26/06.2020), The South Canara

District Central Co-operative Bank Ltd., Vs. DIT in ITA Nos.174 to 177 and ITA No.381 to 384/Bang/2021 (order dated 05.10.2021).

11. In the case of Shri. Chatrapati Shivaji Maharaj Sahakari Bank Niyamitha Vs. DIT in ITA Nos.1332 to 1341/Bang/2019, the Bangalore Bench of the Tribunal held as follows:

“5. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue as envisaged by the learned Authorized Representative on the levy of penalty under Section 271FA of the Act on the co-operative bank for non-filing information of transactions in the Annual Information Return (AIR), under the provisions of Section 285BA(2) of the Act r.w Rule 114E of I T Rules 1962. We found as per Rule 114E of I T Rules 1962, the co-operative bank was not included prior to amendment effective from 1.4.2016. We found the amendment to Rule 114E of I T Rules 1962, is as under:

SI.No.	Nature and value of transaction	Class of person (reporting person)
(1)	(2)	(3)
1.	<i>A banking company or a co-operative bank to which the Banking Regulation Act. 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act).</i>	<i>Cash deposits aggregating to ten lakh rupees or more in a year in any savings account of a person maintained in that bank.</i>

6. We, on perusal of the provisions found that the co-operative bank has been included in the amendment w.e.f 1.4.2016 and is not disputed. The learned Authorized Representative supported the claim relying on judicial decisions and provisions of Banking Regulation Act read as under :

'Section 5i in BANKING REGULATION ACT.1949

1[51. Application of certain provisions to the State Bank of India and other notified banks.---21"

(1) Without prejudice to the provisions of the State Bank of India Act, 1955 (23 of 1955), or any other enactment, the provisions of section 10, 13 to 15, 17 253[19 to 21A, 23 to 28, 29 (excluding sub-section (3)] 265[sub-sections (1B), (1C), and (2) of section 30], 31, 34,35,35A, 36 [excluding clause (d) of sub-section (1)], 45Y to 45ZF, 46 to 48],50,52 and 53 shall also apply,

so far as maybe, to and in relation to the State Bank of India 253[or any corresponding new bank or a Regional Rural Bank or any subsidiary bank] as they apply to and in relation to banking companies:

PROVIDED that,-

(a) nothing contained in clause (c) of sub-section (1) of section 10 shall apply to the Chairman of the State Bank of India or to a 267[Managing Director] of any subsidiary bank in so far as the said clause precludes him from being a Director of, or holding an office in, any institution approved by the Reserve Bank;

253[(b) nothing contained in sub-clause (iii) of clause (b) of sub-section (1) of section 20 shall apply to any bank referred to in sub-section (1), insofar as the said sub-clause (iii) of clause (b) precludes that bank from entering into any commitment for granting any loan or advance to or on behalf of a company (not being a government company) in which not less than forty per cent of the paid-up capital is held (whether singly or taken together) by the Central Government or the Reserve Bank or a corporation owned by that bank; and

(c) nothing contained in section 46 or in section 47A shall apply to-

(i) an officer of the Central Government or the Reserve Bank nominated or appointed as Director of the State Bank of India or any corresponding new bank or a Regional Rural Bank or any subsidiary bank or a banking company; or

(ii) an officer of the State of India or a corresponding new bank or a Regional Rural Bank or a subsidiary bank nominated or appointed as Director of any of the said banks (not being the bank of which he is an officer) or of a banking company.]

(2) References to a banking company in any rules or direction relating to any provisions of this Act referred to in sub-section (1) shall, except where such rule or direction provides otherwise, be construed as referring also to the State Bank of India, a corresponding new bank, a Regional Rural Bank and a subsidiary bank.]

Further on perusal of the Paper Book in respect of the financial statements filed for Asst. Years 2006-07 to 2015-16, the learned Authorized Representative submissions are that the assessee has only one Branch and small operational activities and filed list of staff in the bank at pages 45 to 55, where in the present financial year there are only 8 persons and was increased to 11 from F.Y. 2011-12. We found strength in the submission of learned Authorized Representative that the assessee bank was in Bona Fide belief that there is no requirement to file this statement as the law is application from 1.4.2016. We found under the provisions of Section 273B of the Act where penalty need not be imposed, if there exists a reasonable

cause. We consider appropriate to the provisions of Section 273B which is read as under :

" 273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 27113 section 271BA, section 27188, section 2710, section 271CA, section 271D, section 271E, section 271F, section 271M section 271FAB, section 271FB, section 271G, section 271GA, section 271GB, section 271H, section 271I, section 271J, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A sub-section (1) of section 272AA or section 2728 or sub-section (1) or sub-section (1A) of section 272B8 or sub-section (1) of section 2728138 or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure."

We, on perusal of the facts of the case and the explanations and the grounds of appeal duly supported by the Paper Book and judicial decisions are of the view that the amendment to Rule 114E of IT Rules has been effective from 1.4.2016 and, further the Assessing Officer has levied penalty for the F.Y. 2005-06 in the year 2017 and there was no provision under Rule 114E to include co-operative banks. We found the submissions of the learned Authorized Representative are realistic considering small activity of the Bank and limited staff which cannot be overlooked. Accordingly considering the principles of natural justice and the facts. we found there is a reasonable cause in not submitting the information as the assessee was under Bona Fide belief. Accordingly we set aside the order of C17 (Appeals) and direct the Assessing Officer to delete the penalty and allow the grounds of appeal of the assessee. In the result, the assessee appeal is allowed.

7. Similarly, for the Asst. Years 2007-08 to 2015-16, the issues are similar and identical, the decision taken in ITA No.1332/Bang/2019 as discussed in the above paragraphs are equally applicable. Accordingly, for these appeals also, the order of CIT (Appeals) is set aside and direct the Assessing Officer to delete the penalty and allow the grounds of appeal of assessee."

12. Before concluding, it is to be mentioned that for imposing penalty under section 271FA of the Act, the AO and CIT(A) had strongly placed reliance on

the judgment of Hon'ble Gujarat High Court in the case of Patan Nagrik Sahakari Bank Ltd., Vs. DIT (CIB) 338 ITR 167 (Gujarat). The judgment of the Hon'ble Gujarat High Court is distinguishable on the facts due to the following reasons:

- i) The Hon'ble High Court has rendered the judgement on 4th March, 2011 and thus, there was no occasion for the Hon'ble High Court to consider the subsequent substitution of the Rule 114E of the I.T. Rules with effect from 01/04/2015 vide which co-operative banks have been specifically prescribed under Rule 114E of the I.T. Rules, for the purpose of furnishing a statement u/s.285BA of the I.T. Act.
- ii) Thus, there was no occasion for the Hon'ble Gujarat High Court to consider the contention raised with regard to the ambiguity as to whether the co-operative banks are required to comply with the provisions of Rule 114E of the I.T. Rules prior to its substitution in as much as, the decision of the Hon'ble Gujarat High Court was rendered prior to the substitution.
- iii) In the aforesaid judgement, the Hon'ble Gujarat High Court has partly allowed the appeal of the assessee on the ground that the assessee was not aware of the statutory provisions in as much as the income of the assessee was exempt u/s 80P[2][a][i] of the Act and the assessee became aware of the said provisions only upon the issuance of the notice u/s.285BA[5] of the Act and has therefore held that the same constitutes reasonable cause u/s.273B of the Act till the date of issuance of the notice and no penalty u/s.271FA of the Act was leviable till such date. Thus, the Hon'ble High Court has also considered the plea of reasonable cause as applicable in the said case.

13. In view of the above, the reliance placed by the learned AO and CIT(A) on the aforesaid judgement of the Hon'ble Gujarat High Court is misplaced since the same is distinguishable from the facts of the present case.

14. As mentioned earlier, the Bangalore Bench of Tribunal in cases cited supra had considered that Rule 114E of the IT Rules was substituted to include

co-operative banks w.e.f 01.04.2015 and has held that the ambiguity of the provisions constitutes reasonable cause under section 273B of the Act.

15. Therefore, on facts of the instant case, the assessee has demonstrated reasonable cause under section 273B of the Act and considering the same, we delete the levy of penalty under section 271FA of the Act, for the Assessment Years 2006-07 to 2014-15. It is ordered accordingly.

16. In the result, appeals of the assessee are allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Judicial Member

Bangalore.

Dated: 25.05.2023.

/NS/*

Copy to:

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|-------------------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.