

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

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

ITA No.330/Bang/2022
Assessment year : 2011-12

State Bank of India, PBB Jayanagar Branch, No.296, GVS Complex, 10 th Main, 22 nd Cross, Jayanagar 3 rd Block, Bangalore-560 011. PAN – AAACS 8577 K	Vs.	The Income Tax Officer, Ward-3(2), Bengaluru.
APPELLANT		RESPONDENT

ITA Nos.331 to 333/Bang/2022
Assessment year : 2011-12 to 2013-14

State Bank of India, Inspection & Audit Department (presently known as Circle Audit Office) 7 th Floor, SBI Building, Mysore Bank Circle, K.G Road, Bangalore-560 009. PAN – AAACS 8577 K	Vs.	The Income Tax Officer, Ward-3(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ragavendra Chakravarthy, C.A
Revenue by	:	Shri Narayana K.R, Addl.DIT (DR)

Date of hearing	:	12.07.2022
Date of Pronouncement	:	19.07.2022

ORDER***Per Bench :***

All these four appeals are directed against the common order passed by the CIT(A) dated 21/2/2019 for the assessment year 2011-12. The issue in all these appeals are regarding levy of penalty u/s 271C of the Act, hence these appeals are heard together and disposed of together in this common order for the sake of convenience.

2. Since the issues raised by the assessee in all these appeals are common except for the figures. The decision in ITA No.330/Bang/2022 shall apply mutatis mutandis in other appeals also. Hence, the grounds raised in ITA No.330/Bang/2022 is reproduced as under:-

“1. The order of Commissioner of Income Tax (Appeals) in upholding penalty levied Rs. 52,746/- by the learned assessing officer under section 271C, in so far it is against the appellant is opposed to law, weight of evidence, facts and circumstances of the Appellant's case.

2. In view of Decisions of Hon'ble Income Tax Appellate Tribunal, Bangalore in case of State Bank of India, Jigani Branch, Bengaluru Vs. Additional CIT, TDS, Range 3, Bengaluru, ITA no. 1118 to 1172, 1237 and 1238/Balig/ 2019 dated 18.11.2019, this penalty proceedings should be set aside.

3. The Commissioner of Income Tax (Appeals) has grossly erred in upholding the levy of penalty u/s 271C of the Act without appreciating the fact that the appellant had complied with all the provisions of TDS on salaries under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

4. *The Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the interpretation of provisions of Sec. 10(5) was debatable under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.*

Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant did not have mala fide intention in not deducting tax at source on LTC portion of salaries under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

6. *Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant was under bona fide belief that there is no tax liability on LTC portion paid to employees since the same was exempted from tax u/s 10(5) of the Act (which deals with incomes which do not form part of total income) under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.*

7. *Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant was under bona fide belief that there is no tax liability on LTC inasmuch as the appellant was only reimbursing the LTC claim and no TDS was attracted on the same under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.*

8. *Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant was under bona fide belief that there is no tax liability on LTC inasmuch as the same methodology was being followed by the appellant for more than 2 decades under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.*

9. *Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant was under bona fide belief that there is no tax liability on LTC inasmuch as the appellant was being guided by Indian Bank Association and the appellant had all along been followed the same principle without any change under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.*

10. *Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant had reasonable cause for not deducting impugned tax at source under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.*

11. *Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act and further erred in not considering the appellant's claim that the appellant was eligible to be heltered u/s 273B of the Act for having reasonable cause for not deducting impugned tax at source under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.*

12. *For these and such other grounds as may be raised by the appellant during the course of appellate proceedings, appellant hereby humbly prays before this Hon'ble Tribunal to allow the appeal of the appellant in the interest of equity and advancement of substantial cause of justice in the eyes of law."*

3. At the outset it is observed that there was delay in filing these appeals of the respective branches, the no of days delay in filing the appeal is as under:-

SN	ITA No.	No of days Delay
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1	330/Bang/2022	1104
2	331/Bang/2022	925
3	332/Bang/2022	925
4	333/Bang/2022	925

4. The contents of the affidavit in all these appeals are similar and for the sake brevity, we reproduce contents of Affidavit in ITA No.330/Bang/2022, which is as under:-

“That, there was a penalty order u/s 271C passed by the Additional Commissioner of Income Tax, TDS Range —3, Bangalore on 27.11.2017 for AY 2011-12.

That, an appellate order was passed by the Commissioner of Income Tax (Appeals) - 6, Bangalore on 21.02.2019 and the same was uploaded in the Income Tax portal on 21.02.2019.

That, the Branch intended to prefer an appeal before the hon'ble Income Tax Appellate Tribunal, Bangalore against the Commissioner of Income Tax (Appeals) order.

That, as per the provisions of Income Tax Act, 1961 appeal had to be filed before the hon'ble Income Tax Appellate Tribunal on or before 22 ndApril, 2019.

That, the delay in filing appeal before Income Tax Appellate Tribunal, Bangalore is caused due to change in Manager and the appeal order was not noticed by the

That due to the reasons mentioned above, the delay of 1104 days may be condoned and the appeal of the Branch be admitted before the hon'ble Tribunal in the interest of equity and advancement of justice.

That the contents of this affidavit are true and correct to the best of my knowledge and belief.”

5. The Id.AR submitted that there was a sufficient reason for not filing appeal within the time which has been explained by the concerned authorities by way of Affidavits. The CIT(A) order was received by the earlier responsible officers and he later on he was transferred out, therefore, the appeal could not file within the due date. Accordingly, he contended that the issue is covered u/s 273B of the Act and he requested that the matter may be heard on the merits of the case. He further submitted that on the merits of the case, the similar issue has been decided by the coordinate bench of this Tribunal in the assessee's own case in ITA No.1118/Bang/2019 and others vide order dated 18/11/2019. Accordingly, he requested that the penalty imposed by the Revenue officers u/s 271C is not applicable to the assessee.

6. The Id.DR relied on the order of the lower authorities and vehemently objected that the assessee has not provided complete details in the Affidavit. When the bank Manager is changed, the succeeding manager should have followed the matter and lame excuses that the appeal was unnoticed by the Manager is not acceptable since SBI is leading bank and it is always well aware of the rules and regulations. Moreover, the reasons explained by the assessee are without any valid reasons and does not supported with any evidence. Further, the assessee has not explained as to why such a long time was taken in handing over the matter by one person to another person and in all Branches how the same thing has happened. In fact, there is even no attempt to explain the same. The person who is handling the matter

would undoubtedly be conscious of the fact that the time to file the appeals is running against the assessee and there must be proper explanation in the condonation petitions that it was taking steps to expedite the filing of the appeals before the CIT(A). The reason explained by the assessee in these condonation petitions is too general and it does not explain the delay except stating that the delay was due to transfer of the concerned officers in the in the respective Branches with whom the papers were pending for preparation of the appeals. The reasons stated in the Affidavit are vague and is not covered by the sec. 273B of the Act and he also submitted that in the quantum proceedings is in favour of the Revenue and on merits of case, he relied on the following 2 judgments :-

1. CIT Vs. Muthoot Bankers [2017] 86 taxmann.com 34 (Kerala)
2. Union Bank of India Vs. ACIT [2018] 100 taxmann.com 231 (All)

Accordingly, the Id.DR submitted that the delay should not be condoned and even on the merits, the assessee has no good case.

7. We have heard the rival submissions and carefully considered the same along with the order of the authorities below as well as the documents referred to and relied on before us during the course of the hearing. We observe that as per Form No.36, the order of the CIT(A) was served on the assessee on 19/8/2019 and the appeal has been filed

by the assessee before the ITAT on 29/9/2022, which is the delay beyond the period of 60 days. Though there was a Covid-19 issue starting from March 2020, the Hon'ble Supreme Court suo moto writ petition No.03/2020 along with M.P 21/2022 has held that the period from 15/3/2020 till 28/02/2022 shall stand excluded for the purpose of period of limitation as may be prescribed under any general or special laws in respect of quasi judicial and judicial proceedings. Even after excluding the CVOID period still the appeal filed by the assessee is beyond due date as prescribed in the provisions. Even during the period of Covid 19, the ITAT was functioning as well as banking facilities was provided by the bank the assessee's bank branch. On further observations of the Affidavit cited Supra filed by the assessee that due to change of Manager of the Branch and the appeal order was not noticed by the manager, hence the assessee could not file appeal within period of limitation is not acceptable. Even in the quantum proceedings, the appeal has been decided against the assessee. In such a situation, the assessee must be well aware of the tax implications upon the assessee. It is the duty of the responsible officer to comply the notices. The books of accounts of the bank is audited by the CA along with the internal auditors also. The assessee cannot escape by giving the reason merely for change of branch manager. In support of our above observations, we rely on the judgment of the Hon'ble Supreme Court in the case of Mani Mandir Sewa Nyas Samiti Ramghat Ayodhya Vs. CIT [2020] 119 taxmann.com 383. We also rely on the decision of the ITAT Cochin Bench in the case of Catholic Syrian

Bank Ltd., in ITA Nos.341 to 345/Coch/2018 vide order dated 8/10/2018.

7.1 Considering the totality of the facts and circumstances of the case without going into the merits of the case, we are not entreating the condonation of delay for the reason that the assessee has not sufficiently explained its bonafide mistake. The assessee will not get benefit of sec.273B of the Act. The assessee should be well aware of the statutory provisions and the period of limitation and should pursue its remedies diligently. The assessee cannot expect their appeals to be entertained because they are after all the Bank, notwithstanding the facts that the delay is not sufficiently explained, Hence, the delay is not condoned and the appeal is unadmitted. Accordingly, the appeal of the assessee is dismissed.

8. Since we dismissed the appeal in ITA No.330/Bang/2022, the reason stated above shall apply mutatis mutandis in other appeals also.

9. In the result, all the four appeals filed by the are dismissed and a copy of common order passed is to be placed on the respective case files.

Order pronounced in court on 19th day of July, 2022

Sd/-

(GEORGE GEORGE K)

Judicial Member

Bangalore,

Dated, 19th July, 2022

/ vms /

Sd/-

(LAXMI PRASAD SAHU)

Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
.....
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
.....
13. Date of Despatch of Order.
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