

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 105 of 2017 (O&M)
Date of decision: 18.5.2017

Sub-Registrar, Bhiwani

.....Appellant

Vs.

Director of Income Tax (CIB), Chandigarh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Ajay Shekhawat, Advocate for the appellant-assessee.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos. 105, 106, 108, 109 and 151 of 2017 as the Tribunal vide one consolidated order dated 06.09.2016 impugned in these appeals decided the same. However, the facts are being extracted from the ITA No.105 of 2017.

2. ITA No. 105 of 2017 has been preferred by the appellant Sub-Registrar, Bhiwani under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 06.09.2016, Annexure.9, passed by the Income Tax Appellate Tribunal, Delhi Division Bench "Friday-C", New Delhi (in short, "the Tribunal") in ITA No. 5737/DEL/2012, for the financial year 2008-09, claiming following substantial questions of law:-

(i) "Whether the penalty imposed in the present case is in contravention of Section 275 being time barred when the

penalty proceedings were initiated on 30.11.2006 with the issuance of notice under Section 285BA(5) of Income Tax Act, 1961?

(ii) Whether the action of DIT (CIB), in imposing penalty of ₹ 15,600/- on the appellant, is unjustified specially when the appellant had filed Annual Information Returns before the receipt of the show cause notice from DIT (CIB), Chandigarh?

(iii) Whether the learned DIT (CIB), erred in not considering the frequent transfers of Sub Registrars (seven officers in five years) in the office of Sub Registrar Bhiwani as a reasonable cause?”

(iv) Whether the present appellant who was posted as Sub Registrar, Bhiwani on dated 16.08.2010 is responsible for the lapse committed by his predecessors?

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No.105 of 2017 may be noticed. The appellant, Sub Registrar, Bhiwani is engaged in registration of sale deeds under the Registration Act, 1908 (in short, “the 1908 Act”) and various other activities assigned by the State Government as well as the Deputy Commissioner in the District. He was posted as such at Bhiwani with effect from 16.08.2010. As per the new provision inserted in the year 2005 of the Act, the Registrar or Sub Registrar appointed under Section 6 of the 1908 Act was required to file Annual Information Returns (AIR) in respect of transactions of purchase or sale by any person of immovable property valuing ₹ 30 lakhs or more. The due date for filing the Annual Information Returns was 31st August immediately following the financial year in which the transaction was registered or recorded. In the event of failure to furnish such information, penalty was leviable under Section 271FA of the Act.

There was delay in filing AIR for the five consecutive financial years starting from 2004-05, as per the consolidated order dated 06.01.2011 passed by the Director of Income Tax (CIB), Chandigarh. Show cause notice was issued on 6.09.2010 asking the filer to show cause as to why penalty under Section 271FA of the Act should not be imposed upon it for failure to furnish the AIR in time. The reply was sought by 27.09.2010. On 22.11.2010, an official from the office of the filer attended the hearing and requested for adjournment as the filer was unable to attend the hearing. He was also asked to file necessary copy of provisional receipts for the financial years 2007-08 and 2008-09 as a proof of having filed the AIR. On 29.11.2010, the appellant filed copy of provisional receipt for the financial year 2007-08 along with its written reply stating therein the reasonable cause for not filing the AIR in time. The Director of Income Tax (CIB), Chandigarh held the appellant liable for penalty under Section 271FA of the Act for the financial years under consideration. Aggrieved by the order, the appellant filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] on 20.05.2011. Vide order dated 21.08.2012, Annexure A.4, the CIT(A) partly allowed the appeal filed by the appellant following the judgment of the High Court of Gujarat in the case of ***Patan Nagrik Sarkari Bank Vs. DIT***, (2011) 240 CTR 113 whereby penalty up to the date of service of first notice was cancelled and for the remaining period the same was sustained. Still not satisfied, the appellant filed an appeal before the Tribunal. Vide order dated 09.02.2015, Annexure A.7, the Tribunal dismissed the appeal filed by the appellant. The Tribunal had given findings on ground No.1 only and remaining grounds 2 to 4 remained unattended. Therefore, the appellant filed miscellaneous application seeking rectification of the order passed by the Tribunal. Vide order dated

06.09.2016, Annexure A.9, the said application was dismissed by the Tribunal. Hence, the instant appeals by the appellant.

4. We have heard the learned counsel for the appellant.

5. The primary issue that arises for consideration in the present appeals is whether the failure of the appellant in furnishing AIR in time could justify the levy of penalty under Section 271FA of the Act. The matter is no longer res integra. The issue involved in the present appeals stands concluded against the appellant in ITA No.344 of 2013 (*The Joint Sub Registrar, Sangat, District Bathinda Vs. Director of Income Tax (CIB), Chandigarh*) decided on 21.07.2014. After considering the relevant statutory provisions and the case law on the point, it was recorded therein as under:-

“7. Section 285BA was inserted in the Act by Finance Act 2003 with effect from 1.4.2004. However, Finance (No.2) Act, 2004 substituted new provision in place of old provision with effect from 1.4.2005 in the following terms:-

“**285BA.** (1) Any person, being—

- (a) an assessee; or
- (b) the prescribed person in the case of an office of Government; or
- (c) a local authority or other public body or association; or
- (d) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); or
- (e) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988); or
- (f) the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or
- (g) the Collector referred to in clause (c) of section 3 of the Land Acquisition Act, 1894 (1 of 1894); or
- (h) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or
- (i) an officer of the Reserve Bank of India, constituted

under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934); or

(j) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996),

who is responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return in respect of such specified financial transaction which is registered or recorded by him during any financial year beginning on or after the 1st day of April, 2004 and information relating to which is relevant and required for the purposes of this Act, to the prescribed income-tax authority or such other authority or agency as may be prescribed.

(2) The annual information return referred to in sub-section (1) shall be furnished within the prescribed time—after the end of such financial year, in such form and manner (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed.

(3) For the purposes of sub-section (1), “specified financial transaction” means any—

(a) transaction of purchase, sale or exchange of goods or property or right or interest in a property; or

(b) transaction for rendering any service; or

(c) transaction under a works contract; or

(d) transaction by way of an investment made or an expenditure incurred; or

(e) transaction for taking or accepting any loan or deposit, which may be prescribed—

Provided that the Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction :

Provided further that the value or, as the case may be, the aggregate value of such transactions during a financial year so prescribed shall not be less than fifty thousand rupees.

(4) Where the prescribed income-tax authority considers that the annual information return furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such return and give him an opportunity of rectifying the defect within a period of one month from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed income-tax authority may, in his discretion, allow; and if the defect is not rectified within the said period of one month or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to furnish the annual information return.

(5) Where a person who is required to furnish an annual information return under sub-section (1) has not furnished the same within the prescribed time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such return within a period not exceeding sixty days from the date of service of such notice and he shall furnish the annual information return within the time specified in the notice.”

8. Sub section (1) provides that any person specified in clauses (a) to (j) therein who is responsible for registering or maintaining books of account or other documents containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information report in respect of such specified financial transaction to the prescribed income tax authority or such other authority or agency as may be prescribed. The return is required to be furnished relating to transactions which have been registered or recorded on or after 1st April 2004. Under sub section (2), the annual

information return shall be furnished in the prescribed format and manner and also within the prescribed time after the end of the financial year.

Sub section (3) defines the “specified financial transaction” to mean any transaction of purchase, sale or exchange of goods or property or right or interest in a property or transaction for rendering any service or transaction under a works contract or transaction by way of an investment made or expenditure incurred or a transaction for taking or accepting any loan or deposit as may be prescribed. It has also been provided that the Board may prescribe different monetary values of different transactions in respect of different persons. The said sub section further provides that the value or the aggregate value of such transaction during a financial year so prescribed shall not be less than fifty thousand rupees.

By virtue of sub section (4), the defective annual information return can be rectified by the person furnishing it under sub section (1) to the prescribed income tax authority. An intimation of the defect and opportunity to remove the same shall be provided by the said authority. The period for removing the defect would be one month from the date of intimation or any further period which the prescribed income tax authority may allow. In the event of failure to cure the defect, such return shall be treated to be invalid and all consequences under the Act shall follow as if no such return had been filed.

According to sub section (5), where any person who is required to furnish an annual information return has not furnished the same within the prescribed time, the prescribed income tax authority may serve upon such person a notice requiring him to furnish such return within a period not exceeding sixty days from the date of service of such notice.

9. A notification has been issued on 1.12.2004 prescribing Rule 114E relating to furnishing of annual information return. The form and manner in which the annual information return shall be furnished has been prescribed in this rule. Clause (2) of the Table prescribes the persons who shall furnish annual information return. The nature of transactions is specified in corresponding entry of Clause (3) thereof.

Under Rule 114E, such return shall be furnished in Form No.61A and shall be verified in the manner indicated therein. It has also been provided that annual information return be furnished on or before 31st of August immediately following the financial year in which transaction is registered or recorded.

10. The Finance (No.2) Act, 2004 has inserted a new section 271FA providing for penalty for failure to furnish the annual information return. It reads thus:-

“271FA. If a person who is required to furnish an annual information return, as required under sub-section (1) of [section 285BA](#), fails to furnish such return within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.”

The said section provides that where any person who is required to furnish the annual information return fails to furnish the same within the prescribed time, the prescribed income tax authority may direct that such person shall pay by way of penalty a sum of one hundred rupees for every day during which the failure continues. However, under Section 273B of the Income Tax Act, 1961, no penalty under Section 271AA of the Act would be imposed where assessee proves that there was reasonable cause for the failure.

XXXXXXXXXX.”

6. In the present case also, it has been categorically recorded by the Tribunal that the assessee had not established any reasonable cause for not filing AIR within time. The assessee also failed to file any documentary evidence supporting the version submitted by him. Thus, the Tribunal rightly held the penalty levied to be valid. The relevant findings recorded by the Tribunal read thus:-

“Keeping in view of the aforesaid discussion, we are of the considered view that assessee has not established any reasonable cause for not filing the Annual Information Return (AIR) within time. Secondly, assessee has also failed to file any documentary evidence supporting the version submitted before the Revenue Authority as well before us. According to the provisions of law applicable to the case of the assessee as well as decision cited by the assessee before the Revenue Authority and before us, after thoroughly going through the same, we are of the considered view that the facts and circumstances of the present case are not identical to the facts of the case relied upon by the assessee’s counsel. Assessee has also failed to establish any bonafide in not filing the AIR within time, inspite of the fact that assessee is holding a very responsible post and discharging very important duties which directly affect the exchequer of the country. Since the AIR to be filed by the assessee is very much essential for further cause of action on the same for which the assessee has failed to submit within time. Therefore, the penalty in dispute has rightly be levied by the Revenue Authorities, hence, we uphold the penalty in dispute by dismissing all the Appeals filed by the Assessee.”

7. Learned counsel for the appellant was unable to demonstrate that when show cause notice was issued on 06.9.2010 asking the filer to show cause as to why penalty under Section 271FA of the Act be not imposed and the reply was sought by 27.7.2010, the order imposing penalty under Section 271FA of the Act having been passed on 06.01.2011, it could not be shown that the order was beyond limitation as it was hit by Section 275(1)(c) of the Act. No error in the findings recorded by the Tribunal could be established or it could not be successfully controverted regarding the applicability of the decision rendered in the *Joint Registrar, Sangat*,

District Bathinda’s case (supra). Thus, no substantial question of law as claimed in these appeals arises. Consequently, the appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

May 18, 2017
‘gs’
Whether speaking/reasoned
Whether reportable

(Harinder Singh Sidhu)
Judge
Yes
Yes