

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri Manjunatha, G. Accountant Member

आयकर अपील सं./I.T.A. Nos.440, 441 & 442/Chny/2023
निर्धारण वर्ष/Assessment Years: 2018-19, 2019-20 & 2020-21

KEB Hana Bank,
4th Floor, Bannari Amman Towers,
Dr.R.K. Salai, Mylapore,
Chennai, Tamil Nadu 600 004.

Vs. The Joint Director of
Income Tax,
Intelligence & Criminal Investigation,
Chennai.

[PAN:AADCK4261D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri VA Mehta, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 12.07.2023
घोषणा की तारीख /Date of Pronouncement : 10.08.2023

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

These three appeals filed by the assessee are directed against separate but identical orders of the Id. Commissioner of Income Tax (Appeals) 16, Chennai, all dated 09.02.2023 relevant to the assessment years 2018-19, 2019-20 and 2020-21 passed under section 271FAA of the Income Tax Act, 1961 ["Act" in short] levying penalty of ₹.50,000/- for each calendar years 2017, 2018 and 2019.

2. Brief facts of the case are that the KEB Hana Bank having ITDREIN AADCK4261D.BO183 filed the original Statement of Reportable Account in Form-61-B for CY 2017, CY 2018 & CY 2019 on 30.05.2018, 25.05.2019 & 29.05.2020 respectively. From the information available, the Prescribed Authority has noticed that the Reporting Entity had not reported 16 accounts in the statements filed for CY 2017, 2018 & 2019. Accordingly, the above discrepancy was brought to the notice of the Reporting Entity vide letter dated 30.03.2021 and requested to rectify and furnish the details for the same. After considering the replies of the Reporting Entity, the Prescribed Authority has observed that the Statement of Reportable Account furnished under sub section (1) to section 285BA of the Act for the above calendar years were inaccurate on account of omission of one saving of Mr. SinmoSoan (Account No. 8206000515) and 15 Term Deposit accounts of the same person, a notice under section 274 r.w.s. 271FAA of the Act dated 28.07.2021 was issued to the Reporting Entity requiring it to show-cause as to why the penalty under section 271FAA of the Act should not be levied against the Reporting Entity for furnishing inaccurate statement of reportable accounts. After considering the submissions of the Reporting Entity, the Prescribed Authority has completed the penalty order by levying penalty of ₹.50,000/- each under section 271FAA of the Act for filing inaccurate

Statement of Reportable Account for the CY 2017, CY 2018 and CY 2019.

3. The Reporting Entity carried the matter in appeal before the Id. CIT(A). After considering the submissions of the Reporting Entity, the Id. CIT(A) confirmed the penalty levied under section 271FAA of the Act for all the CY under appeal.

4. On being aggrieved, the Reporting Entity is in appeal before the Tribunal for all the Calendar Years under appeal. The Id. Counsel for the Reporting Entity has submitted that the defects pointed out by the Prescribed Authority were duly rectified and revised/rectified Form 61-B was filed well within the time allowed under section 285BA(4) of the Act and therefore, the penalty is leviable under section 271FAA of the Act. Thus, the Id. Counsel prayed for deleting the penalty levied under section 271FAA of the Act for the Calendar Years 2017, 2018 and 2019.

5. On the other hand, the Id. DR has filed written submissions by stating as under:

Written Submission

Finance Act 2014 with effect from 01/04/2015 mandated prescribed Financial Institutions to report specified high value transaction/asset of residents of 85 countries by amendment to section 285BA of the Act. This reporting was mandated as per the treaty obligation between these countries and India to plug tax evasion by way of off-shore parking of funds by residents of the treaty countries.

The above mentioned reporting of specified high value transaction/asset of residents of 85 countries has to be done by 31st May following the calendar year by each of the prescribed Financial Institutions so as to facilitate sharing of such details with the Treaty countries in time to enable them to take action as per their domestic law.

In time reporting is the fundamental requirement, as every law has time limitation by which any action on defaulting taxpayer could be initiated. To ensure complete reporting of all reportable transaction/asset, sub-section (7) of section 285BA has mandated every such reportable entity to put in place 'Due diligence' process to ensure no reportable transaction/asset is missed out from in time reporting. What are the 'Due diligence' processes to be put in place by such reportable entities, has been laid out in detail under Rule-114H of the IT Rules, 1962. Considering the seriousness of such cent-percent reporting of all reportable transaction in time and considering that there could be such failure in the first instance of reporting, the law has factored by way of sub-section (6) of section 285BA, to every such reporting entity to inform the Department voluntarily of the errors/omission within 10 days of such initial reporting and file a revised statement. A penalty u/s 271FAA was introduced to ensure due compliance to this 'Due diligence' requirement considering the seriousness of such reporting requirement as per the tax treaties with various countries on exchange of information.

The captioned assessee in appeal, a foreign bank was found, under reporting of certain reportable transactions of three Calendar years 2018, 2019 and 2020. This was detected during the course of random inspection by the Department in March, 2021. This detection of omission to report by the Department was almost nearly after three years, two years and one year from the respective year's original statement furnishing. It was only after the Department had pointed out the omission, in reporting of some vital high value transaction/asset, did the assessee bank re-look at their 'Due diligence' process which further lead to detection of 1192 transaction in Calendar year 2018, 855 transaction in the Calendar year 2019 and 510 transaction in the Calendar year 2020.

The assessee's counsel claims that under reporting of reportable transaction happened due to the software bug which put in place to carry out the electronic searching of the reportable transaction/asset. This bug in its electronic search software was detected only when the Department flagged the issue through its notice. The reason put forth by the counsel of the assessee bank reflects the casual approach adopted by the assessee bank complying with such a in time critical reporting requirement mandate that too which relates to sharing of information between countries based on tax treaties. In other words, such admission amounts to acceptance of the fact that the assessee bank had not carried out complete testing of the software application of its robustness before deploying it in its production environment. This is a serious matter which could lead or could have led to tax evasion in such countries on account of limitations in initiation of action as per their respective laws of the country. The excuse put forth by the assessee could have been acceptable if years under the consideration were to be the first year of reporting mandate. Considering the seriousness of the lapse, the penalty levied of Rs.50,000/- per calendar year is just and need to be upheld as such punitive action would ensure such lapses are not repeated in future. The assessee's counsel has also heavily relied on sub-section (4) of section 285BA and stated that without default, within the notice timeline given of 30 days, the assessee bank had filed voluntarily its corrected

statement including entries which the Department had not detected and hence there is no default which would attract penalty. It may be mentioned that nowhere in the sub-section (4), it has been stated that the assessee who comply by filing rectified statement with the timeline specified will be absolved of payment of penalty. Secondly, this compliance, cannot under any stretch of imagination, could be treated as voluntary compliance on the part of the assessee bank. The compliance came only after nearly three years that too after the Department identified omission. More importantly, the penalty in the assessee's case was levied under clause (a) of section 271FAA for non-compliance to the Due diligence' process as required sub-section (7) of section 285BA read with rule 114H of IT Rules and not on account of non-furnishing of a rectified statement within the timeline permitted under sub-section (4) of the section 285BA. It is requested that the above written submission may kindly be taken on record while passing the order.

6. Per contra, the Id. Counsel for the Reporting Entity has filed separate but identical written submissions for each assessment years of the Reporting Entity. The written submissions for the assessment year 2018-19 are reproduced as under:

***Assessment Year 2018-2019
Appeal No. ITA 440/CHNY/2023***

This is with reference to the captioned appeal for the assessment year 2018-2019. The facts are as follows:

- 1. KEB Hana Bank is a foreign bank operating in India as Scheduled Commercial Bank.*
- 2. KEB Hana Bank filed Form 61B under section 285BA for the calendar year 2017 on 30.5.2018, within the time allowed (Statement ID 602557816300518).*
- 3. KEB Hana Bank was advised by the Income Tax Officer, Intelligence and Criminal Investigation, Chennai, vide letter dated 30.3.2021, to rectify the discrepancy in the filed Form 61B.*
- 4. KEB Hana Bank filed revised Form 61B on 8.4.2021 (Statement ID 493055004080421) and a further revised Form 61B on 15.4.2021 (Statement ID 171712880150421). The revised forms were filed within the time allowed in terms of section 285BA(4).*
- 5. Section 285BA(4) reads "where the prescribed income-tax authority considers that the statement furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such statement and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said income-tax authority may, in his discretion, allow; and if the defect is not rectified*

within the said period of thirty days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the provisions of this Act shall apply as if such person had furnished inaccurate information in the statement".

6. The Addl. DIT/JDIT(1&CI) levied a penalty of Rs.50,000/- under section 271FAA vide order dated 26.11.2021 received by the assessee on 9.2.2022.

7. Demand notice under section 156 was not received along with the order.

8. The Commissioner of Income Tax (Appeals), Chennai upheld the order passed by Addl. DIT/JDIT(1&CI) by order dated 9.2.2023.

9. In terms of section 271 FAA penalty is leviable only if the person referred to in sub section (1) of section 285BA, who is required to furnish a statement under that section, provides inaccurate information in the statement, Form 61B.

10. Form 61B filed by KEB Hana Bank, duly revised /rectified by KEB Hana Bank within the time allowed by section 285BA(4), did not contain inaccurate information.

11. The FAQ to The User Guide issued by the Income Tax Department for Report Generation Utility (61B) at question no. 19 reads:

"What are the consequences of failure to correct inaccurate or defective statement of financial account filed?"

The answer is section 271 FAA (Annexure A)

KEB Hana Bank has revised/rectified Form 61B within time provided by the law. There is no failure to correct inaccurate or defective statement of financial account filed. Hence, no penalty is leviable.

Grounds of appeal and objections to the penalty order:

1. No penalty is leviable under section 271 FAA, since, as explained above, the defects pointed out by the Income Tax Officer, Intelligence and Criminal Investigation, Chennai vide his letter dated 30.3.2021 were duly rectified and revised/rectified Form 61B was filed on 8.4.2021 and 15.4.2021, within the time allowed under section 285BA(4).

2. No penalty is leviable under section 271 FAA since there was no inaccuracy in the revised/rectified Form 61B filed by KEB Hana Bank.

3. There is no loss to the revenue.

4. It is an acknowledged and judicially recognized fact that the tax laws of this country are complex and complicated. It is equally well known fact that the legislation in this field undergoes so frequent changes and amendments that it is not possible for the Banks software to be updated so frequently. Also, due to the mammoth data base at the bank, it is not practical nor possible to manually gather data for this reporting. Case laws in support of our contention (As per Annexure B):

[2016] 74 taxmann.com 97 (Kolkata - Trib.) IN THE ITAT KOLKATA BENCH 'B' - Durgapur Steel Peoples' Cooperative Bank Ltd. v. Director of Income-tax (Intelligence & Criminal Investigation), Kolkata

[2016] 72 taxmann.com 306 (Kolkata - Trib.) [03-08-2016] - IN THE ITAT KOLKATA BENCH 'A'- Malda District Central Co-op Bank Ltd. v. Director of Income-tax (I & CI), Kolkata

[2023] 150 taxmann.com 366 (Jaipur - Trib.) IN THE ITAT JAIPUR BENCH 'SMC - Jhalawar Kendriya Sahakari Bank Ltd. V. Additional/Assistant Director of Income-tax (I&CI) Jaipur [ASSESSMENT YEAR 2019-20] - JANUARY 11, 2023

5. *In view of the foregoing, it would be incorrect to say that due diligence was not exercised in preparing and submitting the prescribed statement.*

6. *That in view of the facts and circumstances of the case, the Addl. DIT/JDIT(I&CI) has erred in law and on facts in levying a penalty of Rs.50,000/- under section 271 FAA of the Income Tax Act, 1961.*

7. *That the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially interpreted and the same do not justify the penalty imposed.*

8. *That the penalty imposed is based on mere surmises and conjunctures and the same cannot be justified by any material on record and against the principle of natural of justice.*

Prayer:

In view of the above facts, arguments and objections, it is pleaded that the present appeal of the assessee against the levy of penalty of Rs. 50,000/- should be allowed.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the present case, the Prescribed Authority has noticed that the Reporting Entity had not reported 16 accounts in the statements filed for CY 2017, 2018 & 2019 on account of omission of one saving of Mr. SinmoSoan (Account No. 8206000515) and 15 Term Deposit accounts of the same person. Accordingly, the Reporting Entity was requested to rectify Form 61-B and

furnish the details for the same vide letter dated 30.03.2021 for the CYs 2017, 2018 and 2019. The Reporting Entity duly rectified the defects pointed out by the Prescribed Authority and revised/rectified Form 61-B was filed on 13.04.2021, 13.04.2021 and 15.04.2021 within the time allowed under section 285BA(4) of the Act for the CY 2017, 2018 and 2019 respectively. The Reporting Entity has also furnished its explanation as well as copy of the excel sheets were uploaded for the CY 2017, 2018 and 2019. However, the Prescribed Authority has levied penalty of ₹.50,000/- each for the CY 2017, 2018 & 2019 under section 271FAA of the Act for the reason that the Reporting Entity had revised the Statement of Reportable Account only after the omission was brought to the notice of the Reporting Entity on the basis of details available with the Department and not on its own. On appeal, the Id. CIT(A) has observed that the time allowed for correction of defects/discrepancy was not duly met by the Reporting Entity and accordingly, confirmed the penalty levied by the Prescribed Authority for the CY 2017, 2018 and 2019.

6.1 Before us, the Id. Counsel for the Reporting Entity has contended that the Reporting Entity has duly rectified the defect and revised/rectified Form 61-B was filed within the time allowed under section 285BA(4) of

the Act. We have perused the relevant provisions of section 285BA(4) of the Act and the same are reproduced as under:

(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.

6.2 In this case, the Prescribed Authority has notified the discrepancies vide his letter dated 30.03.2021 to the Reporting Entity to rectify the defects and accordingly, the revised/rectified Form 61-B was filed on 13.04.2021, 13.04.2021 and 15.04.2021 for the CY 2017, 2018 and 2019 respectively, which appears to be well within the time allowed under section 285BA(4) of the Act. Therefore, the Id. CIT(A) was not correct in confirming the order of the Prescribed Authority that the assessee has not rectified the defects within time. We find that the provisions of sub-section (4) of section 285BA of the Act mandate that the defect should be rectified within a period of one month from the date of such intimation and in the present case, the Reporting Entity has rectified the defects within the time limit as provided under section 285BA(4) of the Act. In view of the above, we set aside the order passed by the Id. CIT(A) and delete the

penalty levied under section 271FAA of the Act for the assessment years 2018-19, 2019-20 and 2020-21.

7. In the result, all the appeals filed by the Reporting Entity are allowed.

Order pronounced on 10th August, 2023 at Chennai.

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 10.08.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.