

IN THE INCOME TAX APPELLATE TRIBUNAL
Pune Bench B , Pune

Before Shri I.C. Sudhir (JM)
and Shri G.S. Pannu (AM)

ITA No. 477/PN/2010
(Asstt. Year : 2006-07)

Shramjivi Nagari Sahakari Pat Sanstha Appellant
Maryadit, Main Road, Vijaynagar,
Kalewadi Pimpri, Pune 411 017
PAN: Not available.

v.
Additional Commissioner of Income-tax Respondent
Range 6, Pune

Appellant by : Shri Sunil Ganoo
Respondent by : Shri. A.S. Singh

ORDER

Per I.C. Sudhir, JM

The present appeal has been fixed for hearing on Ground No. 3 of the main appeal which remained to be adjudicated by the Bench in its order dated 11.6.2010 in the appeal. The assessee moved an application i.e. M.A. No. 144/PN/2010 arising out of the said order of the Tribunal in the appeal with this submission that the issue raised in Ground No. 3 has remained to be adjudicated upon by the Tribunal while deciding the appeal vide order dated 11.6.2010. The Tribunal vide its order dated 9th February 2011 has allowed the said application of the assessee with direction to the Registry to fix the appeal for hearing on the issue raised in Ground No. 3 of the appeal, so that same may be adjudicated upon for rectification of the order dated 11.6.2010. The appeal was accordingly fixed for hearing and both the parties advanced their arguments on the issue raised in Ground No. 3. The said Ground reads as under :

"3. Since in the facts and circumstances of the case and in law, both the lower authorities have conveniently ignored the binding decisions of the Hon. I.T.A.T. Pune Bench as well as the

decisions of the Hon. Jurisdictional Bombay High Court, the impugned penalty has caused serious injustice, prejudice and harassment to the appellant assessee for which the appellant assessee may please be awarded substantial cost u/s. 254(2B) of the I.T. Act 1961 from the Respondent Revenue."

2. In support of the Ground, the Ld. A.R. submitted that the appellant is a Credit Co-operative Society dealing only with its Members. Penalty u/s. 271E of the Act was levied against the assessee by the A.O which was confirmed by the Ld CIT(A). It was explained to both the lower authorities by the appellant that the appellant entertained a bonafide belief that provisions of Section 269SS and 269T were not applicable to it. It was pointed out that most of the members of the Managing Committee of the appellant are not much educated and thus have no knowledge of intricate provisions of taxation laws. The staff of the appellant and the members of the managing committee of the appellant were under the bonafide belief that since the appellant is a credit co-operative society, dealing only with its members, the provisions of Sections 269SS and 269T of the I.T. Act 1961 were inapplicable to it. This bonafide belief was further re-inforced by the fact that neither the statutory auditors nor the tax auditors of the appellant Society apprised it about the correct legal positions.

3. The Ld. A.R. pointed out that on coming to know about the correct legal provisions, the appellant Society in its Annual General Meeting held on 9.8.2009 took a conscious decision of strictly complying with the provisions of Sections 269-SS and 269-T of the Act. An affidavit as executed on 28th August 2009 by the Chairman of

the appellant society in this regard was filed before the authorities below.

4. He submitted that it was explained before the A.O that the bonafide belief entertained by the appellant Society constituted a reasonable cause within the meaning and provisions of Section 273B of the Act for alleged non-compliance. In support, reliance was placed on the following case laws :

- i. Vishal Purandar Nagari Sahakari Pat Sanstha Maryadit, ITA No. 1290/PN/2008
- ii. CIT v/s. Bandhakam Khate Sevakanch Sahakari Patsanstha Maryadit decided by Hon'ble Bombay High Court on 18.3.2009 in I.T. Appeal No. 156 of 2009.

5. The Ld. A.R. submitted that the A.O accepted the contentions of the appellant for default u/s. 271D of the Act and dropped the penalty proceedings but surprisingly, the A.O on the same set of facts levied the penalty u/s. 271E of the Act rejecting the contentions of the appellant. He submitted that this fact was specifically brought to the notice of the Ld CIT(A). Reliance was also placed on letter bearing No. F.No. 415/6/2000-IT (Inv I) dated 25th March 2004 issued by Under Secretary, Ministry of Finance to CCIT and DGIT clarifying the stand of CBDT in the matter. However, the Ld CIT(A) quietly ignored the arguments put forward by the appellant as well as the binding decisions of ITAT Pune and Hon'ble Bombay High Court and confirmed the penalty.

6. The Ld. A.R. submitted further that it is also pertinent to note that the Ld CIT(A) passed the impugned order on 3rd February 2010

which was served on the appellant after 31st March 2010. However, the impugned order was sent to the A.O. immediately, who attached the Bank Accounts of the appellant u/s. 226(3) of the Act on 29.3.2010. The administrative intervention of the Ld CIT –II on the request of the appellant, a xerox copy of the order passed by the Ld CIT(A) was given to the appellant on 30th March 2010 at 1540 hrs. The Departmental authority were bent upon recovering the illegal demand from the appellant for achieving its recovery targets. The appellant had to move before the Tribunal with its Stay Application on the same day i.e. 31st March 2010. The A.O had disobeyed the said stay order passed by the Tribunal in the matter on 12.4.2004 in S.A. No. 19/PN/2010. The authorities have even flouted the Circular No. PN/CC/Judl/Cir/2008-09/2628 dt. 10.9.2008 issued by the Ld Chief Commissioner of Income Tax, Pune (copy supplied) conveying therein to stay the demand arising out of penalties imposed u/s. 271-D and 271-E in the cases of Co-operative Credit Societies.

7. The Ld. A.R. submitted that from the sequence of events quoted above, it is crystal clear that all the tax authorities have behaved in a arbitrary, illegal and high handed manner by abusing the judicial powers vested in them solely with a view to achieve the recovery targets fixed up for them. He submitted that due to arbitrary and high handed behavior on the part of the tax authorities, the appellant was forced to approach the Tribunal by way of filing an appeal and Stay petition. This has put the appellant in substantial monetary loss apart from the mental torture and defamation in the society as its bank account was illegally attached.

8. The Ld. A.R. submitted further that appellant had to incur following expenditure

- i. Fees paid to I.T.A.T. for Stay Petition Rs. 500.00
- ii. Fees paid to I.T.A.T. for appeal Rs. 500.00
- iii. Fees paid to Mr. Sunil Ganoo C.A. Rs. 65,000.00 Copy of bill and receipt are enclosed. Out of total bill for Rs. One lack the appellant is claiming the bill for proceedings before I.T.A.T. only.
- iv. Rs.35,000.00 or the amount that may be deemed fit and proper by the Hon. Bench as exemplary damages."

9. The Ld. A.R. also placed reliance on the following decisions with this prayer that it is a fit case for awarding the cost as prayed for in view of the provisions of the Section 254(2B) of the Act :

- i. Chiranji Lal Tak v/s Union of India, 252 I.T.R 0333 (Raj.)
- ii. Union of India v/s. Raja Mohammed Amir Mohammad Khan,
reported in AIR 2005 S.C. 4383
- iii. Shri Shantaram R. Patil v/s. ITO, ITA Nos. 308 & 309/PN/03
, order dated on 30/06/2004 (Pune)
- iv. KEC International Ltd. v/s. B.R.Balkrishnan, 251 ITR 158(Bom.)

10. The Ld. D.R., on the other hand, opposed the above contentions and request of the Ld. A.R. with this submission that the authorities below have only performed their duties which they are bound to follow as per the provisions of the law. He submitted that the A.O finding that there was reasonable explanation for the default found in relation to **Section 269-SS, had deleted the penalty levied u/s. 271-D.** He, however, did not find substance in the explanation of the assessee so far as violation of the provision u/s. 269-T of the Act is concerned and

, accordingly, levied the penalty u/s. 271-E of the Act. The Ld CIT(A) after considering the submissions of the assessee and the action of the A.O has also upheld the penalty levied u/s. 271-E of the Act. Thus, no inference can be drawn from the actions of these authorities that they were biased with the appellant or they were having any intention to cause prejudice to the assessee. He submitted that while pressing for the recovery of the demand, the A.O was not aware that the assessee has not been supplied with the first appellate order on the basis of which recovery action was taken. The actions of the authorities below were under their bonafide belief. These orders have been passed in the last week of the Financial Year. He submitted that there was no malafide on the part of the authorities below in taking the action against the appellant as their action was well within the provisions of the law. He submitted further that the decisions relied upon by the Ld. A.R. are of no assistance to the assessee as they are having different facts.

11. Considering the above submissions, we find that the Revenue has not met out the above submission of the Ld. A.R. that despite having made aware of the authorities below about CBDT Letter F. No. 415/6/2000-IT (Inv. I) dated 25th March 2004 and Circular dated 10.9.2008 issued by the Office of the Ld. Chief Commissioner of Income Tax, Pune again conveying the advice of the CBDT, the same were ignored by them. In the letter dt. 25th March 2004, the CBDT has advised that penalties u/s. 271-D and 271-E for violation of the provisions of Section 269-SS and 269-T, respectively, should not be indiscriminately imposed. The provisions of Section 273-B should be taken in view before imposing the penalties. Based upon the said advice, the Ld. Chief Commissioner of Income Tax, Pune, vide its letter

dated 10.9.2008 has conveyed to the Commissioners of Income Tax to stay the demand arising out of penalties imposed u/s. 271-D and 271-E in cases of Co-Operative Credit Societies. In this regard, the Ld Chief Commissioner of Income Tax has also cited 3 decisions out of which, 2 decisions have been pronounced by the Pune Bench of the Tribunal. In the case of Union of India and Anr. v/s. Raja Mohammed Amir Mohammed (Supra), the Hon'ble Supreme Court has been pleased to express its concern over dangerous attitude developing amongst Executive resulting in institutional damage. The Hon'ble Bombay High Court in the case of KEC Interntional Ltd v/s. B.R. Balakrishnan (Supra) has been pleased to hold that generally coercive measures may not be adopted during the period provided by the Statute to go in appeal. In the present case, it remained the allegation of the appellant that recovery action was taken by the A.O by attaching bank account of the appellant u/s. 226(3) on 29.3.2010 on the basis of first appellate order passed on 3rd Februry 2010 and was served upon the assessee on 31st March 2010. Noting these material facts and the above submissions of the Ld. A.R. which have not been successfully rebutted by the Revenue before us, we are of the view that the events in the present case are sufficient to make us of the belief that the appellant a Credit Co-operative Society dealing only with its members has been unnecessarily subjected to the harassment caused by the actions of the authorities below which were not warranted under the facts and circumstances of the present case. It is thus a fit case for invoking the provisions laid down u/s. Sub-sections 2(B) of Section 254 of the Act to impose cost on the Revenue to be paid to the appellant to compensate the harassment caused by the officers of the Revenue at fault to the appellant to some extent. We, accordingly award a cost of Rs. 5000/- against the

Revenue which is to be paid to the appellant Credit Society within 3 months from the end of the month in which order of the Tribunal is received by the Ld Commissioner of Income Tax concerned. The Ground No. 3 is accordingly allowed in favour of the assessee.

12. In result, appeal is allowed.

The order is pronounced in the open Court on 8th June 2011.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Pune, dated the 8th June, 2011

US

Copy of the order is forwarded to :

1. The Appellant
2. The Respondent
3. The CIT – III, Pune
4. The CIT(A)- III, Pune
5. The D.R. "B" Bench, Pune
6. Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Pune