

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

I.T.A. No. 741/HYD/2016

Assessment Year: 2006-07

M/s. Sai Baba Paper Mart,
HYDERABAD
[PAN: AAKFS2012G]

Income Tax Officer,
Vs Ward-7(4),
HYDERABAD

(Appellant)

(Respondent)

For Assessee : Shri Naveen Malpani, AR
For Revenue : Smt U. Minichandran, DR

Date of Hearing : 28-09-2016
Date of Pronouncement : 30-09-2016

ORDER

PER B. RAMAKOTAIAH, A.M. :

This is an appeal by assessee against the order of the Commissioner of Income Tax (Appeals)-10, Hyderabad dated 22-03-2016, against the levy of penalty u/s. 271FB of the Income Tax Act [Act] for delay in filing the return of Fringe Benefit Tax [FBT]. Assessee has raised the following grounds:

"1. The order of the CIT(A) erred in sustaining the penalty at Rs. 60,400.00 which is totally contrary to the facts and evidence on record.

2. The Learned CIT(A) failed to note that this was the first year of FBT Provisions and the appellant was under the bonafide belief that the return filed by the appellant was in order.

3. *The Learned CIT(A) erred in holding that the appellant was not provided with reasonable and sufficient cause in not filing the FBT return in time.*

4. *The Appellant was ignorant of the provisions of FBT initially and therefore was no intention to non comply with the statutory provisions governing FBT and therefore the CIT(A) ought to have cancelled the entire penalty of Rs. 1,00,400.00 and without sustaining the penalty of Rs. 60,400.00.*

5. *The Learned CIT(A) failed to note that the appellant has filed FBT returns for the subsequent years in time and therefore this being the first year of FBT return ought to have cancelled the penalty in entirety.*

Ground No. 6 is general in nature.

2. Brief facts of the case are that assessee, a dealer in duplex board, rough paper and waster rubber etc., filed return of income for AY. 2006-07 on 29-09-2006 declaring total income at Rs. 6,91,540/-. During the course of assessment proceedings, the Assessing Officer (AO) noticed that certain expenses which attract FBT were debited to P&L A/c. No return of FBT was filed by assessee and a notice u/s. 115WH of the Act was issued in response to which, assessee filed return of FBT on 02-07-2009 declaring fringe benefit of Rs. 1,39,930/-, as intimated by AO after the notice was issued. AO completed the assessment of fringe benefits vide order dt. 11-12-2009 u/s. 115WE(3), during the course of which, penalty proceedings u/s. 271FB were initiated.

2.1. During the course of penalty proceedings, the AO sought explanation of assessee and assessee contended that he could not file the return in time as it was first year and return forms were not available. He further stated that Finance Minister has announced in the budget speech that in the first year of FBT,

the I.T. department could be lenient. However, the AO did not accept the explanation for the following reasons and penalty was calculated @ 100 per day for delay of 1004 days and levied accordingly.

1. *“The return forms were not available is incorrect. The return forms were available with the Department as well as in the open market. The delay in filing the return of fringe Benefits is more than two and half years and there is no question of non-availability of forms for more than two and half years does not arise.*
 2. *Inspite of debiting expenditure of Rs. 6,63,341/- to the P&L account, the assessee did not care to file the return of FBT till a notice u/s. 115WH of the Act is issued to the assessee. the assessee is a very old assessee and engaged the services of an Accountant and a Chartered Accountant and the payments made to them were booked as expenditure to its Profit & Loss account.*
 3. *The question of taking lenient view comes only where a particular head of expenditure falls under the purview of fringe Benefits or not in the cases of non-filing of return till the date of receipt of notice by the Department requiring the assessee to file return of fringe benefits”.*
3. Before the Ld. CIT(A), it was contended that:
- i. Due date for filing FBT return for AY. 2006-07 was extended as per circular No. 142/41/2005-TPL(PT) and the number of days delayed comes to 973 days instead of 1004 days computed by the Assessing Officer;
 - ii. FBT was introduced for the first year w.e.f. 2006-07;
 - iii. The assessee was ignorant in filing separate returns for FBT;
 - iv. The return was filed immediately after AO issued notice u/s. 115WH;
 - v. Tax dues and interest thereon was deposited;

3.1. Assessee also relied on various decisions viz., Woodward Governor India Pvt. Ltd., Vs. CIT [253 ITR 745] Delhi. Motilal Padampat Sugar Mills Co., Ltd., Vs. State of UP [118 ITR 326] (SC). Adesh Gram Udyog Samithi (Reg) Vs. ITO, Firozpur (ITAT, Amritsar), Ashok Trading Co Vs. ITO, Kolkata, ITA No. 141/KOL/2013 and Core Drivel Ines India P. Ltd., Vs. ITO, Mumbai, ITA No. 2622/Mum/2010.

4. Ld. CIT(A) did not agree fully but partly confirmed the penalty by stating as under:

“6.5. The submissions of the assessee have been considered. It is seen that notice u/s. 115WH was issued on 16.03.2009 and the return of FBT was filed on 02.07.2009. This period of 107 days cannot be excluded as notice was issued by the Assessing Officer and no reason was adduced for delay in filing the return of FBT even after issue of notice calling for return of FBT. It is seen that from AY. 2007-08 onwards the assessee computed fringe benefit tax liability as per the ITR-V for the AY. 2007-08 and form 3CD and 3CB for AY. 2007-08 value of fringe benefits in terms of Sec. 115WC r.w.s. 115WB in Annexure-II were filed. The return of fringe benefit was filed within due dates for subsequent years.

6.6. The return of income for AY. 2007-08 was filed on 29.10.2007 where FBT was included which suggests that the assessee was aware of the provisions of FBT by 29.10.2007 but no return of FBT was filed for AY. 2006-07. The period from 29.10.2007 to 16.03.2009 cannot be considered for any lenient view as the assessee was aware of his liability to file return of FBT. The return of income for AY. 2006-07 was filed on 29.09.2006 and FBT return was not filed. As this is first year of introduction of FBT lenient view can be taken for the period till FBT return was filed for AY. 2007-08. The assessee's contention that return form was not available is not a reasonable cause, as Annexure II to form 3CD is to be filed by the assessee. the Assessing Officer is directed not to levy penalty for the period 29.09.2006 to 29.10.2007 i.e. 395 days. For the balance period i.e. 29.10.2007 to 02.07.2009 the penalty is sustained as there is no reasonable cause for not filing the return of FBT. This ground of appeal is partly allowed”.

5. Ld. Counsel reiterated the submissions and relied on the following case law:

- i. Decision of ITAT, Mumbai in ITA No. 2622/Mum/2010 in the case of Core Drivelines India P. Ltd., Vs. ITO dt. 24th July, 2013;
- ii. Decision of ITAT, Kolkata in ITA No. 141/Kol/2013 in the case of M/s. Ashok Trading Co., Vs. ITO dt. 06th August, 2015;
- iii. Decision of ITAT, Amritsar in ITA No. 172(Asr)/2014 in the case of M/s. Adesh Gram Udyog Samiti (Regd) Vs. ITO dt. 27-11-2015;

6. Ld. DR distinguished the case law and relied on the order of Ld. CIT(A).

7. We have considered the rival contentions and perused the material placed on record. There is no dispute with reference to the facts. It is also a fact that this is the first year of applicability of FBT provisions. Even the Hon'ble Finance Minister advised the department to be lenient being the first year. Being the first year of applicability of these provisions, benefit of doubt can be extended to assessee, for the contention that the provisions are applicable from AY. 2007-08. Considering the fact that it filed the FBT return from next year in time and on receipt of notice, assessee complied with the payment of tax first and filing of return immediately thereafter and also paid the further demand of interest raised after the order, we are of the opinion that the case of the assessee falls under the category when the failure in compliance of

the provisions was due to a 'reasonable cause' in terms of Section 273B of the I.T. Act. The said provision provides that no penalty can be levied on assessee for any failure to comply with the provisions if he has a reasonable cause for such failure. We find that this being the first year of applicability and assessee having furnished all the details in the return of income which is the basis for the notice, the facts of case does not warrant imposition of such amount of penalty. In view of the above, the penalty levied by AO but partly confirmed by Ld. CIT(A) is hereby deleted.

8. In the result, appeal of assessee is allowed.

Order pronounced in the court on 30th September, 2016

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 30th September, 2016

Copy to :

1. M/s. Sai Baba Paper Mart, Hyderabad C/o. Kapasi Bangad & Co., Chartered Accountants, 3-6-140/A, Flat No. 402, City Centre, Himayat Nagar, Hyderabad.

2. The Income Tax Officer, Ward-7(4), Hyderabad.

3. CIT (Appeals)-10, Hyderabad.

4. CIT-(IT & TP), Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.