

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

आयकर अपील सं./I.T.A. No.3376/Chny/2018  
निर्धारण वर्ष/Assessment Years: 2011-12

M/s. Saravana Foundation,  
15, Bajanaï Koil Street,  
Besant Nagar, Chennai 600 090.

Vs. The Income Tax Officer,  
Non Corporate Ward 15(4),  
Chennai.

**[PAN:ABMFS6610H]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Y. Sridhar, CA  
प्रत्यर्थी की ओर से/Respondent by : Shri S. Chandrasekaran, JCIT  
सुनवाई की तारीख/ Date of hearing : 06.09.2022  
घोषणा की तारीख /Date of Pronouncement : 16.09.2022

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

The appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-16, Chennai dated 17.09.2018 relevant to the assessment year 2011-12 challenging confirmation of penalty levied under section 271B of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that a survey under section 133A of the Act was conducted at the assessee's business premises on 05.10.2012

and during the course of survey, it was found that the assessee has received gross receipt of around ₹.1.5 crores for every financial year starting from the financial year 2007-08 but has not filed its returns of income properly. As survey was conducted under section 133A of the Act, evidences were found in respect of escapement of income earned and in order to assess the escaped Income, the assessment for the assessment year 2008-09 to 2012-13 were reopened under section 147 of the Act. For the assessment year 2011-12, notice under section 148 of the Act was issued to the assessee on 19.07.2013. In response to the notice, the assessee has filed its return of income on 21.10.2014 admitting his income of ₹.6,81,745/-. Thereafter, notice under section 143(2) of the Act was issued to the assessee on 31.10.2014 and was served on the assessee. After considering the submissions of the assessee, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 147 of the Act dated 30.03.2015 and assessed the total income of the assessee at ₹.20,38,090/- after making disallowance of expenditure claimed by the assessee.

3. In the assessment order, the Assessing Officer has also observed that as per the tax audit report filed along with the return of income filed on 29.10.2013, it was noticed that the books of accounts of the assessee

was audited by the Chartered Accountant only on 29.09.2014. As per the provisions of section 44AB of the Act, the assessee has to get his accounts audited by the Accountant before 30.09.2011, but, the assessee got his account audited only on 29.09.2014. As the assessee has failed to get his accounts audited, penalty under section 271B of the Act is liable to be levied. Accordingly, the Assessing Officer has initiated penalty proceedings under section 271B of the Act. After considering the submissions of the assessee in response to the penalty notice, the Assessing Officer levied penalty of ₹.1,07,768/- under section 271B of the Act towards belated filing of tax audit report under section 44AB of the Act. On appeal against penalty order, after considering the submissions of the assessee, the Id. CIT(A) confirmed the penalty levied under section 271B of the Act.

4. Against confirmation of penalty levied under section 271B of the Act, the assessee is in appeal before the Tribunal. By reiterating the submissions as made before the Id. CIT(A), the Id. Counsel for the assessee prayed for deleting the penalty levied under section 271B of the Act.

5. On the other hand, the Id. DR supported the orders of authorities below.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against levy of penalty under section 271B of the Act, the assessee has submitted the reasons for the delay in filing the audit report before the Id. CIT(A) that the accounts audited under section 44AB of the Act belatedly as the assessee was not keeping good health and the Accountant has left without prior notice. It was further submission that the books of accounts could not be audited in time even the Accountant took away important letters and documents which hampered the audit work. It was further submission that accounts were audited before filing the return of income for the relevant assessment year and therefore, it was prayed for deleting the penalty levied under section 271B of the Act and relied upon the decision in the case of Ravikumar reported in 29 ITD 537.

6.1 The case of the Department is that the assessee has not furnished the tax audit report on or before the due date i.e., 30.09.2011 and therefore, levy of penalty under section 271B of the Act is warranted. The case of the assessee is that tax audit report under section 44AB of the Act was not filed before the due date of filing the same, due to the reasons beyond his control, but it was filed along with the filing of return of income. We also find that in the assessment order under section

143(3) r.w.s. 147 of the Act, the Assessing Officer as admitted that the assessee has filed the return of income along with tax audit report. Considering the explanations that the assessee was prevented by reasonable cause for the delay in filing the tax audit report under section 44AB of the Act, we are of the considered opinion that the penalty levied under section 271B of the Act is liable to be deleted. Accordingly, the penalty levied of ₹.1,07,768/- under section 271B of the Act is deleted.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 16<sup>th</sup> September, 2022 at Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 16.09.2022

Vm/-

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