

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' 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.603/Chny/2022
निर्धारण वर्ष/Assessment Year: 2011-12

Shri Ramunaicker Raja,
Prop: M/s. R.R. Plaza, No. 6,
Thayumanavar Street,
Attur 636 102.
[PAN:ACCPR2046P]

Vs. The Assistant Commissioner of
Income Tax,
Circle 2(1), Salem.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate (Erode)
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 08.02.2023
घोषणा की तारीख /Date of Pronouncement : 15.02.2023

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 13.06.2022 relevant to the assessment year 2011-12 passed under section 271B of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that the assessee has filed his return of income on 03.04.2016 for the assessment year 2011-12 declaring

total income of ₹.9,55,080/-. The assessee has not filed the return of income for the assessment year 2011-12 within the time allowed under section 139(1) of the Act. The assessee has also not filed the return of income before the end of the assessment year. The assessee had made cash deposits into the bank accounts during the financial year 2010-11 relevant to the assessment year 2011-12 and there was reason to believe that incomes chargeable to tax of more than ₹.1 lakh has escaped assessment within the meaning of clause (b) to explanation 2 of section 147 of the Act. Accordingly, the Assessing Officer issued notice under section 148 of the Act dated 24.03.2018 and served on the assessee on 07.04.2018. After following due procedures and 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 16.12.2018 determining the total income of the assessee at ₹.20,71,110/-.

3. Subsequently, the Assessing Officer initiated penalty proceedings under section 271B of the Act for late filing of audit report under section 44AB of the Act. Since the gross receipt of the assessee for the year under consideration was ₹.1,67,35,870/-, the assessee was required to get their accounts audited and liable to file the tax audit

report as required under section 44AB of the Act before the due date. Since the assessee has not filed the tax audit report within due date and in view of the provisions of section 271B of the Act, the Assessing Officer levied minimum penalty of ₹.83,680/-. On appeal, the Id. CIT(A) (NFAC) confirmed the penalty levied under section 271B of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the auditing of accounts of the earlier two assessment years constituted delay in getting the accounts audited in the impugned assessment year. It was further submission that the audit report under section 44AB of the Act were furnished along with return of income before the completion of assessment and by relying upon the decision of the Tribunal in the case of *Balaji Logistics v. ACIT* in I.T.A. No. 2248/Chny/2019 dated 07.09.2022, the Id. Counsel prayed for deleting the penalty levied under section 271B of the Act.

5. On the other hand, the Id. DR strongly 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. In the penalty

order, the Assessing Officer had noted that the assessee's gross receipt in the year under consideration were to the tune of ₹.1,67,35,870/-. Therefore, the assessee was required to get his accounts audited under section 44AB of the Act and filed within the due date. Since the assessee has not filed the tax audit report under section 44AB of the Act before the due date, the Assessing Officer levied penalty of ₹.83,680/- under section 271B of the Act, which was confirmed by the Id. CIT(A)(NFAC). Before us by assigning reasons for the delay, it was submitted that the audit report under section 44AB of the Act were furnished along with return of income before the completion of assessment.

6.1 Similar issue on an identical fact was subject matter in appeal before this Tribunal in the case of Balaji Logistics v. ACIT in I.T.A. No. 2248/Chny/2019 dated 07.09.2022 for the assessment year 2015-16, wherein, the Tribunal has observed as under:

“6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is an admitted fact that although the assessee has filed Tax Audit Report in Form 3CB as required u/s.44AB of the Act, beyond due date specified u/s.139(1) of the Act, but such Tax Audit Report was made available to the AO before completion of assessment proceedings u/s.143(3) of the Act, on 22.11.2017. It is evident from the fact that the assessee has obtained Tax Audit Report from an Accountant on 28.03.2016 and furnished before the AO during the course of assessment proceedings. Therefore, we are of the considered view that when the Tax Audit Report was made available to the AO before completion of assessment proceedings, then for venial technical breach without any mala fide intention, penalty cannot be levied u/s.271B of the Act. Further, a similar issue has been considered by the co-ordinate Bench of the Tribunal in the case of M/s. T P D 101 Uthangarai Milk Producers Co-operative Society

Ltd.(supra), where on identical set of facts, penalty levied u/s.271B of the Act, has been deleted. The relevant findings of the Tribunal are as under:

“...7. We have heard both the parties and perused the materials available on record and gone through the orders of the authorities below. The assessee supposed to have been filed audit report as required u/s.44AB of the Act, on or before 31.10.2015. However, such audit report has been filed on 05.03.2016, which is before the date of completion of assessment proceedings u/s.143(3) of the Act. In other words, although the assessee has filed tax audit report beyond the stipulated period, but such tax audit report was made available to the AO before he completes assessment proceedings. The assessee has given reasons for delay in filing tax audit report. As per which, the audit of accounts of society done by the Dept. of Cooperative Audit, could not be completed on or before 31.10.2015 and said delay was not in the hands of the assessee. Therefore, there is a reasonable cause for not filing the tax audit report within prescribed time limit ad thus, penalty cannot be levied. We find merits in the submission of the assessee for the simple reason that non-filing of audit report within the due date is a venial technical breach without any mala fide intention on the part of the assessee. Because, completion of audit of books of accounts of the society is under the control of Dept. of Cooperative Audit and thus, unless the Dept. of Cooperative Audit completes audit, the assessee cannot file return of income along with tax audit report. Therefore, we are of the considered view that reasons given by the assessee for not filing tax audit report prescribed u/s.44AB of the Act, is neither intention nor any mala fide intention, but it is venial technical breach and for this reason, penalty u/s.271B of the Act, cannot be levied. This principle is supported by the decision of the Hon’ble jurisdictional High Court in the case of P.Senthil Kumar v. PCIT reported in 416 ITR 336, where an identical issue had been considered by the Court and held that for venial technical breach without any mala fide intention, penalty cannot be levied. The ITAT Cochin Bench in ITA No.411/Cochin/2018 vide order dated 05.02.2019 had held that once audit report has been made available before the AO, when the assessment proceedings were completed, then, there is no reason for levy of penalty.

8. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that reasons given by the assessee for not filing tax audit report within due date comes under reasonable cause as provided u/s.271B of the Act, and thus, the AO is erred in levying penalty u/s.271B of the Act. Hence, we direct the AO to delete penalty levied u/s.271B of Act.”

7. *In this view of the matter and by following the decision of the coordinate Bench of the Tribunal in the case of M/s.T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), we direct the AO to delete penalty levied u/s.271B of the Act.*

8. *In the result, the appeal filed by the assessee is allowed.*

6.2 Respectfully following the above decision of the Coordinate Benches of the Tribunal in the case of Balaji Logistics v. ACIT (supra) for the assessment year 2015-16, we are of the considered opinion that it is not a fit case for the levy of penalty under section 271B of the Act and accordingly, the penalty levied stands deleted.

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

Order pronounced on 15th February, 2023 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 15.02.2023

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.