

आयकर अपीलिय अधिकरण , अहमदाबाद न्यायपीठ , अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" SMC " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1197/AHD/2024
निर्धारण वर्ष/Asstt. Year: 2012-2013

Vardhabhai Jethabhai Patel, At Changwada PO. Changwada, Tal.Deodar, Dist. Banaskantha, Banaskantha-385330. PAN: AGWPP4272F	बनामVs	The Income Tax Officer, Ward-1(Previously Ward-3), Palanpur.
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(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)
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Assessee by :	Shri S N Divatia, with Shri Samir Vora, ARs
Revenue by :	Shri N J Vyas, Sr. DR

सुनवाई की तारीख/Date of Hearing : 05/12/2024
घोषणा की तारीख/Date of Pronouncement: 09/12/2024

आदेश/O R D E R

PER SUCHITRA KAMBLE, JM:

The captioned appeal has been filed at the instance of the Assessee against the order dated 05.04.2024 passed by the National Faceless Appeal Centre(NFAC)/CIT(A), arising in the matter of penalty order passed under s. 271B of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:

1. *The Ld. CIT (A) has erred in upholding the imposition of Penalty made by the Ld.AP of Rs.66,152/- u/s.271B is nor proper looking to the facts of the case.*
2. *The appellant therefore requests your Honour to kindly delete the imposition of Penalty made by the AO, which was confirmed by the Ld.CIT(A) looking to the merits of the case.*
3. *The appellant craves the right to add, amend, alter or modify any of the grounds stated herein above either before or at the time of hearing.*

3. The assessee filed return of income for AY 2012-13, showing total income of Rs.3,57,350/- on 26.03.2013. Based on the information received from ITO Ward-1(1)(3) Ahmedabad, along with NMS data regarding the assessee, it revealed that the assessee has received contract receipt u/s.194C to the tune of Rs.1,32,30,498/-. After recording the reasons for reopening of the case and obtaining necessary approval from PCIT-4, Ahmedabad, the case was re-opened u/s.147 of the Act. The reopened assessment proceedings was finalized u/s.143(3) r.w.s 147 of the Act on 27.12.2018, determining the total income at Rs.13,23,50,000/- after making addition of Rs.9,65,700/- on account of profit earned on contract receipt. During the reopened assessment proceedings, the AO observed that the assessee was required to get the accounts Audited in accordance with the provisions of section 44AB of the Income-tax Act 1961, as the gross receipt exceeds the limit of Rs.60,00,000/- as per the time limit provided in the Act. The assessee failed to get his account Audited as mentioned by the AO and therefore committed defect u/s.24AB of the Act and liable to be pay penalty u/s.271B of the Act and imposed the penalty of Rs.66,152/- vide order dated 27.06.2019.

4. Being aggrieved by the penalty order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A), dismissed the appeal of the assessee.

5. The Ld.AR submitted that the Ld.CIT(A) that the assessee has Audited his books of accounts and Audit report was received on 30.09.2012 from the Auditors. As per the provisions of section 44AB of the Act, in the assessment year 2012-13 the Audit report has to be filed with the return of income and the same was filed on 26.0.2013. The Ld.AR submitted that the Ld.CIT(A) erred in imposition of penalty u/s. 271B of the Act, as the assessee has not violated the provision of the Act u/s.271B as the assessee has Audited his accounts as per the provisions of section 44AB of the Act within the stipulated time but only filed the same belatedly. Thus, the Ld.AR submitted that the Ld.CIT(A) should have accepted the Audit report.

6. The Ld.DR submitted that the AO as well as the Ld.CIT(A) has rightly observed that the assessee filed the Audit report on 26.03.2013 which is much prior to the date of filing the return of income on 30.09.2012. The Ld.DR relied upon the assessment order and the order of the Ld.CIT(A).

7. Heard both the parties and perused the material available on record. It is pertinent to note that section 271B of the Act which is a levy of penalty in respect of the accounts should be Audited in accordance with the provision of section 44AB of the Act, when the gross receipt exceeds the limit of Rs.60,00,000/-. In the present case, it is not disputed that the assessee has audited his books of accounts as per the section 44AB of the Act. The only point remain is that the assessee filed the Audit report after filing of return of income i.e 26.03.2013 but in fact the return of income was

also filed on 26.03.2013 and the proceedings conducted by the AO is u/s.147 of the Act for which the notice u/s.148 was issued. Thus the observation of Ld.CIT(A) that the assessee has not filed return of income but also the Audit report beyond the due date is to the extent that the imposition of penalty u/s.271B of the Act will not come into picture. Therefore, the penalty levied is not justifiable. Hence, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 09th December, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

(True Copy)
अहमदाबाद/Ahmedabad, दिनांक/Dated 09/12/2024

Manish, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC)
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad