

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No.707/JP/16
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Vijay Food Products, HMT Industrial Area, Beawar Road, Ajmer	बनाम Vs.	The ITO, Ward 1(3), Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN No. AAFV 8690 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकी ओर से / Assessee by : Shri Subhash Porwal (CA)

राजस्व की ओर से / Revenue by : Shri R.A.Verma (Add.CIT)

सुनवाई की तारीख / Date of Hearing : 29.03.2017
घोषणा की तारीख / Date of Pronouncement: 31/03/2017.

आदेश / ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Ld.CIT(A), Ajmer dated 09.06.2016 wherein the assessee has challenged the levy of penalty of Rs.77,170/- u/s 271B read with section 274(1) of the Act.

2. Briefly the facts of the case are that the AO observed that the assessee has e-filed its return of income on 18.09.2013 for the subject assessment year but the audit report in form No. 3CA/3CB,3CD and 3CEB has not been submitted in electronic form as per Notification No. 34 dated 01.05.2013 issued by the CBDT and a show cause notice for levy of penalty u/s 271B of the Act was issued to the assessee. In response to the show-cause notice, the

assessee has submitted that it has obtained the tax audit report on 04.09.2013 from its auditor M/s Sunil Porwal & Co. and the particulars about the tax audit report were also furnished in the Income Tax Return which was e-filed on 18.09.2013. It was further submitted that due to some technical snag in the e-filing system of tax department, the audit report filed seems not been reflected in the system. However, the said submission of the assessee did not find favour with the AO and he held that the assessee has failed to furnish report of auditor before due date as prescribed u/s 139 and imposed a penalty of Rs. 77,170/- under section 271B of the Act.

2.1 Being aggrieved, the assessee carried the matter in appeal before the Id.CIT(A), the Id. AR reiterated its submission made before the AO and submitted that the e-return filed on 18.09.2013 is based on the audit report and the audited financial statements, and the necessary particulars about the audit report have been disclosed as part of the e-return filed electronically. It was further submitted that due to technical snag in the e-filing system of tax department, the income tax return alongwith audit report was uploaded and filed, however, the audit report could not be viewed by the AO due to some system technical error which is beyond the control of the assessee. The contentions of the Id. AR did not find favour with the Ld. CIT(A) and he has held that the appellant has not been able to show that it had filed audit report obtained u/s 44AB for the year under consideration. Further, in support of the contentions of the appellant that audit report could not be uploaded due to some technical snag, no documentary evidence has been submitted. In view of the same, the levy of penalty u/s 271B for non-filing of audit report was confirmed.

2.2 Against the said order of the Id. CIT(A), the assessee has now come in appeal before this Bench. The Id. AR reiterated the submission made before the lower authorities and drawn our attention to the return of income e-filed on 18.09.2013 wherein particulars relating to audit information has been disclosed which read as under:

	Whether liable to maintain accounts as per section 44AA	Y
	Whether liable for audit u/s 44AB	Y
	If (b) is yes, whether the accounts have been audited by an accountant? If yes furnish the following information.	
a.	Date of furnishing of the audit report (DD/MM/YYYY)	2013-09-18
b.	Name of the auditor signing the tax audit report	Sunil Porwal
c.	Membership No. of the auditor	071805
d.	Name of the auditor (Proprietorship/ firm)	M/s Sunil Porwal & Co.
e.	Permanent Account Number (PAN) of the proprietorship/firm	ACEPP3552C
f.	Date of Audit report	2013-09-04

2.3 Further, the Id. AR has drawn our reference to the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs. State of Orissa (83 ITR 26) wherein it was held that the penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum

penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.

2.4 It was further submitted by the Id AR that as soon as the assessee became aware about the technical snag regarding tax audit report in e-filing system of tax department, the tax audit report has been freshly uploaded in the Income Tax system and a hard copy thereof filed with the AO. It was accordingly submitted that the return of income has been filed based on the tax audit report and the tax audit report both electronically and hard copy has been duly submitted with the AO.

2.5 The Id. DR is heard who has relied on the order of the lower authorities.

2.6 We have heard the rival contentions and perused the material available on record. The return of income has been electronically filed by the assessee on 18.09.2013 wherein the particulars regarding the audit report have been duly disclosed by the assessee. In the said return it has been stated clearly that Mr. Sunil Porwal, the auditor of the company has signed the audit report on 04.09.2013 and the said audit report has been furnished on 18.09.2013. The said income tax return which has been filed electronically and contents thereof including the audit particulars have not been disputed by the Revenue. It is therefore not in dispute that the audit report has been obtained before due date of filing of the return of income and the particulars thereof have been duly disclosed in the return of income electronically filed. It was further submitted by the Id AR that the audit report in Form 3CB/3CD has been

uploaded on the same date ie, 18.9.2013 as date of filing of the return of income but due to some technical snag in the e-filing system of I.T system, the same could not be viewed later on by the AO, at the same time, the Id AR has not been able to furnish any confirmation that the audit report has been uploaded electronically on 18.09.2013. It is also a fact that the audit report has subsequently been uploaded afresh after the assessee become aware of the technical snag and also a hard copy has been furnished before the AO which is again not disputed by the Revenue. The intention behind carrying out the audit u/s 44AB and furnishing a copy of the audit report to the AO is to aid and assist the latter in completing the assessment proceedings. It is not the case of the Revenue that any prejudice or hindrance is caused to the Revenue or the audit report has been filed after the close of the assessment proceedings. Taking into consideration the intention of the legislature, and the fact that the audit report has subsequently been uploaded electronically and also hard copy has been furnished before the AO before the completion of the assessment proceedings, non furnishing of the return electronically on 18.09.2013 is merely a technical breach of the provisions of the Act and respectfully following the decision of the Hon'ble Supreme court in the case of Hindustan Steel Ltd. vs. State of Orissa (supra), penalty levied u/s 271B of the Act is hereby directed to be deleted.

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

Order pronounced in the open court on 31/03/2017.

Sd/-
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 31/03/2017

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

1. अपीलार्थी / The Appellant- M/s Vijay Food Products. Ajmer
2. प्रत्यर्थी / The Respondent- The ITO, Ward 1(3), Ajmer
3. आयकर आयुक्त / CITAjmer
4. आयकर आयुक्त(अपील) / The CIT(A) Ajmer
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.707/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.