



आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

श्री अमित शुक्ला, न्यायिक सदस्य
श्री राजेश कुमार, लेखा सदस्य एवं के समक्ष ।

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA No. : 6929/Mum/2014
(Assessment year: 2010-11)

प्रभा इंजीनियर्स प्राइवेट लिमिटेड Prabha Engineers P Ltd, Plot No.38, MIDC Central Road, Andheri (East), Mumbai -400 093 PAN: AAACP 7472 Q	Vs	DCIT-Cir.8 (2), Aayakar Bhavan, Mumbai -400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by		श्री भूपेंद्र शाह Shri Bhupendra Shah
Respondent by		श्री आर के साहू Shri R K Sahu

सुनवाई की तारीख /Date of Hearing : 19-10-2016
घोषणा की तारीख /Date of Pronouncement : 19-10-2016

आदेश
ORDER

श्री अमित शुक्ला, न्यायिक सदस्य
PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against impugned order dated 21.08.2014, passed by Ld. CIT(Appeals)-17, Mumbai in relation to penalty proceedings under section 271B for the AY 2010-11.

2. The brief facts of the case are that, the assessee has filed its return of income for the AY 2010-11 on 30.03.2011 declaring "Nil" income after claiming brought forward losses of Rs.7.96 crores. As against the said return of income, the assessment under section 143(3) was completed vide order dated 06.12.2012 on book profit of Rs.57,92,128/-. Under the normal provisions, the income was assessed at "Nil". During the course of the assessment proceedings, the Assessing Officer noted that assessee has filed Tax Audit Report in Form 3CA and 3CD was obtained on 28.03.2011 was furnished to the Assessing Officer on 30.03.2011. Since the Audit report was filed beyond the stipulated time, accordingly, the Assessing Officer initiated the penalty proceedings under section 271B. In response to the show cause notice the assessee gave the following reasons for non-filing of Audit Report in time:-

"Assessee has filed return of income for Asst. Year 2010-11 on 30.03.2011, after giving effect to the order of Bombay High Court sanctioning the scheme of Amalgamation of Prabhu Exports Pet. Ltd. with the assessee. The Audit Report under section 44AB was signed on 28th March 2011. Though the said Audit Report was kept in September, 2010 but could not be signed by Auditors in view of delay in court judgment.

The order of Bombay high Court sanctioning the scheme of Amalgamation of Prabhu Exports Pet. Ltd. with Prabhu Engineering Pvt. Ltd is received by the assessee on 25/01/2011. The copy of the order from High Court was received by the assessee on 25/01/2011.

As the order of the Bombay High Court sanctioning the amalgamation w.e.f. 01.04.2009 was received by the assessee very late i.e. on 25/01/2011 after the due date prescribed in Income Tax Act. Accordingly, the AUDIT Report was obtained after the said order. The Audit Report of the amalgamated accounts could not have been obtained before the Order of the High Court sanctioning the Amalgamation.

Because of this impossibility, the Audit Report of the amalgamated company could not be obtained before the due date. It is well settled law and in many cases by Supreme

Court has held the law does not contemplate or require the performance of an impossible act lex non cogit ad impossibilia. Accordingly, Audit Report of Amalgamated company, could not be obtained before the due date. We have also to point out that the assessee company was never late in submitting Audit Report and filing of return of Income in the past”.

However, the Assessing Officer rejected the assessee's contention. He observed that, in the case of Prabha Export Pvt. Ltd, which stood amalgamated with the assessee as per the scheme of amalgamation, had filed its return of income on 15.10.2010 and had also obtained the Audit Report by that time, whereas in the case of the assessee return has been filed on 30.03.2011 and Audit Report has been obtained on 28th March, 2011, therefore this cannot be treated as reasonable explanation. The assessee has not specified the how the order of Bombay High Court sanctioning the scheme of amalgamation has caused delay in obtaining the Audit report. Further the total turnover disclosed by the assessee has not been affected as a result scheme of amalgamation. Accordingly, he levied the penalty of Rs. 1 lakh. The Ld. CIT(A) too after detailed discussion has endorsed the view taken by the Assessing Officer and further observed as under:-

“I am not in agreement with the observation of the Ld. AR of the appellant stating that appellant was not required to furnish any Audit report with the Return of Income filed electronically. Further, there is no merit in the argument of the appellant that it was not possible to obtain the Audited Accounts, Tax Audit Report as the order of the Bombay High Court sanctioning the amalgamation was not received. As the order itself was received late after 30.09.2010, appellant has obtained the tax audit report of

amalgamated accounts after 25.01.2011, the date of receipt of order of the Bombay High Court sanctioning the amalgamation Scheme. This is quite amazing as how come the appellant know that the order is likely to be received so soon so as to postpone the audit for the year under consideration and if not received will it wait till next year more to get his account audit. If the appellant could not have filed the Final accounts of the amalgamated company before the order of the High Court sanctioning the amalgamation but what prevented it to file the audit report of the company before the amalgamation. 1 the case of APL (India) Private Limited (supra) relied upon by the appellant wherein one of the reasons for delay in submitting the audit report was that the personnel from the statutory auditor's office were not conversant with the accounting systems and records maintained by the assessee company which resulted into delay for finalization of tie audited accounts for the year. The Hon'ble Mumbai Tribunal held that without completing statutory audit, the assessee could not have obtained tax audit report, which constitutes reasonable cause. This plea was raised by the assessee even before the AO and AO has not doubted such contention of the assessee. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Punjab State Leather Development Corporation Ltd. (171 CTR 451) has held that delay in completion of statutory audit was reasonable cause for non-compliance with section 44AB and it was held that the Tribunal was right in cancelling penalty levied under section 271B. I find that the appellant case is distinguishable on facts and the appellant was not prevented by sufficient cause to file the audit report. Thus the penalty under the circumstances is exigible in the appellant case and the same is being upheld. This ground of appeal is thus dismissed.

3. After hearing both the parties and on perusal of the impugned orders, we find that the main reason for obtaining the audit report on 28th March, 2011 and filing it along with the return of income on 31.03.2011 was that, the order of the Bombay High Court sanctioning the scheme of amalgamation of Prabha Export Pvt. Ltd with the assessee was received by the assessee only on 25.01.2011. The said amalgamation was effective from 1st April, 2009. The assessee had to take cognizance of such amalgamation, assets and liabilities etc. It may not be necessary that there would be impact on turnover as held by AO, but before finalizing the accounts the Auditors have to incorporate all the financial aspects of the merger and its impact in the balance sheet and accounts and that is why there was delay in filing of return of income also. It is because of this impossibility the Audit report of the amalgamated company could not be obtained before the due date. Otherwise, it is an admitted fact that, the audit report was there before the Assessing Officer during the course of assessment proceedings. In such a event and circumstances, assessee's do fall within the domain of "reasonable cause" as envisaged under section 273B, which provides that, no penalty shall be imposable for any failure, if the person proves that, there was a reasonable cause for the said failure. The Bombay High Court order sanctioning the scheme of amalgamation would definitely have had an impact on the annual accounts of the assessee and without taking cognizance of such a scheme of amalgamation, the assessee could not have finalized its account and certified by the Auditors. Thus, we hold that, there was a reasonable cause in obtaining and filing the Audit report belatedly. Accordingly,

we delete the penalty of Rs.1 lakh on the ground of “reasonable cause” within the scope of section 273B.

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

Order pronounced in the open court on 19th October, 2016.

Sd/-
(राजेश कुमार)
लेखा सदस्य
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(अमित शुक्ला)
न्याईक सदस
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 19th October, 2016.

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT (Appeal) -17, Mumbai.
 - 4) The CIT-8, Mumbai
 - 5) विभागीय प्रतिनिधि “सी”, आयकर अपीलीय अधिकरण, मुंबई/
The D.R. “C” Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हाण व.नि.स

*Chavan, Sr.PS