

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 810/Mds/2017

निर्धारण वर्ष / Assessment Year : 2004-05

The Deputy Commissioner of
Income Tax,
Corporate Circle 1(2),
Chennai - 600 034.

v. M/s Best Cast IT Ltd.,
No.6, Poonamallee High Road,
Vellappanchavadi,
Chennai - 600 077.

(अपीलार्थी/Appellant)

PAN : AAACB 1423 H

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Smt. Pavuna Sundari, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri A.R. Ahmed Sheriff, FCA

सुनवाई की तारीख/Date of Hearing : 31.05.2017

घोषणा की तारीख/Date of Pronouncement : 09.06.2017

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -1, Chennai, dated 30.01.2017 and pertains to assessment year 2004-05 deleting the penalty levied by the Assessing Officer under Section 271B of the Income-tax Act, 1961 (in short 'the Act').

2. Smt. Pavuna Sundari, the Ld. Departmental Representative, submitted that the assessee failed to file the audit report within the due date. According to the Ld. D.R., the due date for filing the audit report was 31.10.2004. However, the audit report was filed on 25.10.2005. Therefore, the Assessing Officer levied penalty of ₹1 lakh. The CIT(Appeals), however, deleted the penalty levied by the Assessing Officer by referring to circular issued by CBDT. According to the Ld. D.R., the CIT(Appeals) failed to consider the delay in filing the audit report.

3. We have heard Shri A.R. Ahmed Sheriff, the Ld. representative for the assessee, also. Admittedly, the audit report was filed on 25.10.2005 even though the due date for filing of audit report was 31.10.2004. It is well settled principle of law that the filing of audit report is mandatory but, time limit for the same is discretionary. The audit report is only to assist the Assessing Officer to complete the assessment determining the taxable income. In this case, determination of taxable income was not jeopardized by non-filing of audit report within the due date. As rightly observed by the CIT(Appeals), merely because the assessee could not file the audit report along with the return of income or within the due

date, that alone would not attract penalty under Section 271B of the Act. The CBDT vide its Circular No.3 of 2009 has clarified the same and it was rightly relied on by the CIT(Appeals). This Tribunal is of the considered opinion that the circular issued by the CBDT is binding on all the authorities, therefore, the CIT(Appeals) has rightly deleted the penalty levied by the Assessing Officer under Section 271B of the Act. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

4. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 9th June, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 9th June, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)-1, Chennai

4. Principal CIT, Chennai-1, Chennai

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF.