

## IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'C' KOLKATA

[Before Hon'ble Shri N.V.Vasudevan, JM &amp; Shri Waseem Ahmed, AM ]

**ITA No1228/Kol/2015**  
**Assessment Year : 2009-10**Gobindapur Samabay K.U.S.Ltd.  
Hooghly  
(PAN:AAALG 0017 B)  
(Appellant)

-versus-

A.C.I.T.-Circle-1,  
Hooghly.  
(Respondent)For the Appellant: Shri Soumen Biswas, FCA  
For the Respondent: Shri S.Dasgupta, Addl. CIT(DR)

Date of Hearing : 16.01.2018.

Date of Pronouncement : 02.02.2018.

**ORDER****PER N.V.VASUDEVAN, JM:**

This is an appeal by the Assessee against the order dated 23.03.2015 of C.I.T.(A)-6, Kolkata relating to A.Y.2009-10.

2. In this appeal the assessee has challenged the order of CIT(A) whereby the CIT(A) confirmed the order of AO imposing penalty on the assessee u/s 271B of the Income Tax Act, 1961 (Act).

3. Under the provision of section 271B of the Act if any person who is required to get its accounts audited and furnish report of such audit u/s 44AB of the Act fails to do so he shall be liable to penalty equal to one half percent of the total sales, turn over or gross receipts in business during the relevant previous year or a sum of Rs. 1 lakh, whichever is less. It is not disputed that the assessee was obliged to get his accounts audited u/s 44AB of the Act. It is also not in dispute that the assessee got his accounts audited by a Chartered Accountant and obtained report of such audit before the specified date i.e. 30<sup>th</sup> day of September of the relevant assessment year. In this case the assessee ought to have furnished tax audit report by filing the same on or before 30.09.2009. The assessee filed the return of income in this case only on 05.03.2010.

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4. It is the plea of the assessee that though he had obtained the tax audit report of a chartered accountant before the specified date he could not furnish the same before the specified date because from A.Y.2009-10 returns had to be filed electronically. The CBDT in Circular No.3/2009 dated 21.05.2009 in paragraph-7 clarified that whether returns are filed electronically the tax audit report need not be filed along with the return of income and that it would be sufficient if the details of the tax audit report are mentioned in the return of income in the relevant column. Para – 7 of the said circular is as follows :-

*“7. Following clarifications are also issued in respect of certain issues arising from furnishing the returns in the above mentioned forms:*

*(i) An assessee should obtain the report of audit from an accountant under section 44AB of the Act on or before the due date of the furnishing of the return and should fill out the relevant columns of the return forms on the basis of such report. However, the report of audit should not be attached with the return or furnished separately any time before or after the due date. The assessee should retain the report with himself. If called for by any income-tax authority during any proceeding under the Act, it shall be incumbent upon the assessee to furnish/produce the same in original. No penalty under section 271B shall be initiated or levied for not furnishing the tax audit report on or before the due date. However, if the audit report has not been obtained before the due date, provisions of section 271 B shall continue to be attracted.*

*(ii) These returns are not to be accompanied with any other document including any statutory form or report of audit (other than the report under section 92E), which is otherwise required to be furnished before the due date or along with the return for making any claim. The provisions of the law shall be deemed to have been complied with in respect of the requirement of the filing of the attachments or documents or reports along with the return. No penalty shall be initiated/levied for not furnishing such documents if such documents were otherwise obtained before the specified date, if any, provided in the statute. All these documents should be retained by the taxpayers. If called for by any income-tax authority during any proceeding under the Act, it shall be incumbent upon the assessee to furnish/produce the same, in original.*

*(iii) The report as required under section 92E of the Income-tax Act should not be furnished along with the return. However, it should be separately furnished before the date specified in rule 10E.”.*

5. Both the AO and CIT(A) did not agree with the stand taken by the assessee. They were of the view that had the assessee filed the return of income on or before the due date u/s 139(1) of the Act then the plea of the assessee could be accepted. Since the assessee had filed the return of income in the present case only on 05.03.2010, the revenue authorities were of the view that the assessee cannot get the benefit of the circular. They also held that there was no reasonable cause for the failure to furnish the tax audit report before the specified date. Accordingly imposed penalty of Rs.62,721/- u/s 271B of the Act.

6. Aggrieved by the order of CIT() the assessee has preferred the present appeal before the Tribunal.

7. We have heard the rival submissions. The Id. DR relied on the orders of the revenue authorities. The Id. Counsel for the assessee relied on CBDT Circular referred to in the earlier part of this order.

8. We have considered the rival submissions. It is clear from para-7 of the CBDT Circular No.3/2009 that furnishing of tax audit report, when a return is filed electronically, along with the return was dispensed with. There is nothing on record to show that the assessee had not obtained the tax audit report before the specified date. The fact that the return was filed belatedly beyond the period allowed u/s 139(1) of the Act cannot be the basis to hold that the assessee failed to comply with the requirement of furnishing the tax audit report before the specified date u/s 44AB of the Act. In the light of Circular No.3/2009 it could not be said that furnishing of tax audit report u/s 44AB of the Act was an independent obligation not linked with the filing of the return of income. Since the CBDT Circular is silent on the belated filing of the return vis-a-vis provision of section 271B of the Ac, the assessee is entitled to the benefit of the circular. It cannot therefore be said that there was a failure on the part of the assessee u/s 44AB of the Act. There is no material on record to suggest that the assessee had not obtained the tax audit report before the specified date. In these

circumstances we are of the view that penalty ought not to have been imposed on the assessee. We accordingly direct that penalty imposed on the assessee be cancelled.

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

**Order pronounced in the open Court on 02.02.2018.**

Sd/-

[Waseem Ahmed]  
Accountant Member

Sd/-

[ N.V.Vasudevan ]  
Judicial Member

Dated : 02.02.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1. Gobindapur Samabay K.U.S.Ltd., Nasibpur, Hooghly (W.B.)
2. A.C.I.T., Circle-1, Hooghly. (W.B.)
3. C.I.T.(A)-6, Kolkata.                      4. C.I.T.-8, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches