

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.349/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2010-11)

Lalit Jalan	Vs.	ITO, Ward – 32(3), Kolkata
26, Shakespeare Sarani, Kolkata – 700 017.		10B, Middleton Row, Kolkata – 700 071.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : ACXPJ 5133 G		
(Appellant)	..	(Respondent)

Appellant by : Shri Subash Agarwal, Advocate

Respondent by : Shri Soumyajit Dasgupta, Addl. CIT(Sr. DR)

सुनवाईकीतारीख/ **Date of Hearing** : **02/05/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **30/05/2018**

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2010-11, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-9, Kolkata in appeal No.324/CIT(A)-9/Wd-32(3)/2014-15/Kol, dated 18.12.2015, which in turn arises out of a penalty order passed by the Assessing Officer u/s 271B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated,13.09.2013.

2. In this appeal the assessee has challenged the order of CIT(A) whereby the CIT(A) has confirmed the order of AO imposing penalty of Rs.1,00,000/- u/s 271B of the Act.

3. The brief facts qua the issue are that during the assessment proceedings, the Assessing Officer noted that assessee has entered into a huge volume of share trading with M/s Kotak Securities Limited and M/s IIFL. The Assessing Officer on perusal of CIB information, noted that the assessee has made various share transactions amounting to Rs.4,21,63,026/- through these stock brokers. From the ledger accounts furnished before the AO in respect of M/s Kotak Securities Limited and M/s IIFL, the AO noticed that the positives and negative differences exceeded the limit prescribed in section 44AB of the I.T Act, 1961 and the assessee did not get the accounts audited. As a result, the assessee found to have failed to comply, with the provisions laid down in section 44AB of the I.T Act, 1961. The assessee was liable to get its accounts audited u/s 44AB of the Act, as the turnover exceeded beyond prescribed limit of Rs. 40,00,000/-. Since the assessee failed to get the account audited and has failed to include the turnover of share trading in the tax audited report, therefore, Assessing Officer imposed penalty u/s 271B of the Act, amounting to Rs.1,00,000/.

4. Aggrieved by the stand of the Assessing Officer, imposing penalty under section 271B of the Act, assessee carried the matter in appeal before the CIT(A) but without any success. The assessee is aggrieved, and is in further appeal before this Tribunal.

5. Learned counsel for the assessee begins by pointing out that the assessee has submitted the tax audit report before the Assessing Officer during the assessment proceedings and this is evident by the assessment order, vide Para No. 3c at Page 7 of assessment order wherein the Assessing Officer stated as follows:

“3c. Further, in the audit report it has been reported that Rs.15029/- was debited to the profit and loss account relating to the Sales Tax of earlier years. The said expense is an inadmissible expense, hence, disallowed and added to the income of the assessee.”

It is abundantly clear, from the above mentioned para in the assessment order that assessee has submitted tax audit report before the assessing officer and the assessing officer admitted this fact. The Id. Counsel for the assessee further submitted that assessee had got the books audited u/s 44AB of the Act, but failed to include the turnover of share transactions, because of the reasons beyond his control. The assessee is not a commerce graduate and does not know about Income tax Act and he has always been depending on the accountants and professionals, who has not guided him properly. The Id. counsel submitted that during the assessment proceedings, the assessee has explained the reasons beyond his control, which are given below:

“That I have entrusted all my I.T matter for the above Assessment Year to the person who was looking after my I.T. matter to file my return of income for the above Assessment Year. I was under the bona fide belief that the person has filed my return of income for the above Assessment Year giving full details of my income from my proprietary concern M/s. Orient Distributors, my salary income from M/s. Reliance Infrastructure, income from future and option by shares, short term profit from shares, and dividend income. On receipt of your Honour’s above mentioned letter as well as letter dated 14.08.2012, 03.10.2012 and 21.12.2012, I tried to contact the person who was looking after my I.T. matter, but I could not succeed as he was at his native place and lying sick there. He came to Kolkata in the third week of December, 2012. I asked him about my return of income. He has shown me the acknowledgement receipt regarding filling of return. On going through the receipt I found that the return for income only of my proprietary concern was filed. On being asked about my other income, he stated that documents pertaining to other incomes are missed and I could not inform you about the same. This has resulted in non-filing of return for the other income. In the meantime, your Honour’s abovementioned letter was received. I have arranged all the papers and in compliance I am enclosing a statement of P/L A/c, Balance Sheet & computation of income. That a sum of Rs.16,63,008/- was determined as payable by me which has been paid by me.

That I am a very busy person and on a responsible post in the company M/s. Reliance Infrastructure and as such I could not get time to inquire into the matter & except depending on the Staff. This has caused the non-filing of Return of my other Income as well as filing of recomputed P/L. A/c. & balance sheet

&computation of income. There are neither international or deliberate but due to the circumstances beyond my Control and as such the same is required to be condoned and, the enclosed documents are required to be accepted for which your Honour's kind order is needed.

It is therefore prayed that your Honour would graciously be pleased to condone the delay in filing the documents as well as non-filing of return for other income and accept the enclosed documents.....”

6. On the other hand, the Id. DR for the Revenue has primarily reiterated the stand taken for the Assessing Officer which we have noted in our earlier para and is not being repeated for the sake of brevity.

7. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that Page No. 7 the assessment order, vide para No.3c, the Id. Assessing Officer himself admitted that assessee had submitted the audit report. At the cost of repetition, we reproduce the para No.3c, of the assessment order, for ready reference, as follows:

“3c. Further, in the audit report it has been reported that Rs.15029/- was debited to the profit and loss account relating to the Sales Tax of earlier years. The said expense is an inadmissible expense, hence, disallowed and added to the income of the assessee.”

From the above para, it is abundantly clear that Tax Audit Report was on record of the assessing officer. Hence, it is undisputed fact that the assessee get the tax audited done under section 44AB of the Act, in respect of his transaction but he forgot to include the turnover of the shares and securities, because of the reasons beyond his control. Therefore, we note that it is not a fit case to levy penalty u/s 271B, as the assessee has furnished the tax audit report before the assessing officer. We note that non-inclusion of sale of share trading transactions in the tax audit report does not attract the penalty under section 271B of the Act, however, for argument's sake this issue might have triggered proceedings u/s 271(1)(c)

of the Income Tax Act. Since tax audit report u/s 44AB was being used by the Assessing Officer during the assessment proceedings and he took assistance of it, as para No 3C of the assessment order spells out this fact clearly, therefore, no penalty u/s 271B of the Act can be imposed on the assessee. At this juncture, it is appropriate to quote the provisions of section 271B of the Income Tax Act, which are as follows:

"Section 271B: Failure to get accounts audited.

If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under s. 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less."

We may draw the conclusion from the plain language, of section 271B of the Act, mentioned above, that there can be two circumstances, where penalty can be imposed:

- (1) If any person fails to get his accounts audited in respect of any previous.
- (2) Fails to furnish a report of such audit as required under section 44AB.

From the facts narrated above, none of the circumstances applies to the assessee under consideration. The assessee under consideration got the accounts audited and submitted before the assessing officer during the assessment proceedings, therefore, the first circumstance does not apply to the assessee. The assessee has furnished the tax audit report before the due date of filing return of income under section 139(1) read with section 44AB of the Act, therefore, the second circumstance does not

apply to the assessee. Hence, the penalty under section 271B should not be imposed on the assessee, therefore, we quash the penalty order.

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

Order is pronounced in the open court on 30.05.2018.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 30/05/2018

(RS, SPS)

Sd/-
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- Lalit Jalan
2. प्रत्यर्थी/ The Respondent- ITO, Ward – 32(3), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.