

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.2139 & 2140/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Maharashtra Erectors Pvt. Ltd.,
S. No. 92, Tathawade,
B/h Indira School of Management,
Pune - 411033

PAN : AABCM1792R

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle - 9, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar
Revenue by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 15-10-2018

घोषणा की तारीख / Date of Pronouncement : 29-11-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals have been filed by the assessee. In ITA No. 2139/PUN/2016 the assessee has assailed the order of Commissioner of Income Tax (Appeals)-6, Pune in confirming levy of penalty u/s. 271F of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2010-11. ITA No. 2140/PUN/2016 is directed against the order of Commissioner of Income Tax (Appeals)-6, Pune against confirming

the levy of penalty u/s. 271B r.w.s. 274 of the Act for the assessment year 2010-11. Both the impugned orders are of even date i.e. 22-06-2016.

First we will take the appeal of assessee in **ITA No. 2139/PUN/2016.**

2. Shri C.H. Naniwadekar appearing on behalf of the assessee submitted that the assessment for assessment year 2010-11 was completed by Assessing Officer u/s. 143(3) r.w.s. 147 of the Act vide order dated 22-03-2013. Since, the assessee failed to file return of income for the impugned assessment year. Penalty proceedings u/s. 271F were initiated. The ld. AR submitted that the assessee company is owned by Sanghvi family (brothers). Shri C.P. Sanghvi and Shri A.P. Sanghvi, Directors of the company are having serious disputes amongst themselves, as a result the accounts of the company could not be finalized and audited in time. The final accounts of the assessee for the Financial Year 2006-07 could be prepared in December, 2010. Since, earlier years accounts were finalized after considerable delay, the assessee could not file return of income and Audited Balance Sheet for the assessment year under appeal in time.

3. On the other hand Shri Sanjeev Ghei representing the Department vehemently supported the order of Commissioner of Income Tax (Appeals) in confirming levy of penalty u/s. 271F of the Act.

4. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The solitary reason for not filing return of income for assessment year 2010-11 is dispute amongst the brothers/Directors of the assessee company has caused delay in finalization of accounts and audit of accounts.

Consequently, the return of income could not be filed. We are of considered view that dispute amongst brothers cannot be a 'reasonable cause' within the meaning of section 273B of the Act for non-filing of return of income. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in confirming levy of penalty u/s. 271F of the Act. Accordingly, the order of Commissioner of Income Tax (Appeals) is upheld and the appeal is dismissed.

ITA No. 2140/PUN/2016

5. In ITA No. 2140/PUN/2016 the assessee is aggrieved against confirming of levy of penalty Rs.1,50,000/- u/s. 271B of the Act for failure to submit Tax Audit Report for the Financial Year 2009-10. The ld. AR submitted that due to on-going dispute between the brothers the affairs of assessee company are not conducted in the desired manner. Consequently, the accounts of assessee company could not be finalized. Hence, statutory Tax Audit could not be conducted. The ld. AR pointed that in the assessment year 2009-10 the penalty u/s. 271B levied by the Assessing Officer was deleted by the Commissioner of Income Tax (Appeals) vide order dated 07-02-2014 on same set of facts and reasoning.

5.1 The ld. AR further contended that the first year of default was assessment year 2008-09 since, the accounts for Financial Year 2007-08 (relevant to the assessment year 2008-09) could not be prepared and audited in time, there was cascading effect of delay in finalization of accounts for the subsequent assessment years. The ld. AR pointed that the opening balance for the subsequent financial year could not be ascertained as they were dependent on the closing balances of the earlier financial years. The ld. AR in support his submissions placed reliance on

the decision of Hon'ble Bombay High Court in the case of Shree Swastik Stills Pvt. Ltd. Vs. ACIT reported as 264 ITR 447.

6. On the other hand ld. DR vehemently supported the order of Commissioner of Income Tax (Appeals) in confirming levy of penalty u/s. 271B of the Act. The ld. DR submitted that the reasoning given by the AR seeking immunity from levy of penalty does not fall within the meaning of reasonable cause u/s. 271B of the Act. The ld. DR prayed for confirming the order of Commissioner of Income Tax (Appeals) and dismissing the appeal of assessee.

7. Both sides heard. Orders of the authorities below perused. We have also considered the decision on which the ld. AR has placed reliance. The non-filing of Tax Audit Report for the impugned assessment year in time has been attributed to delay in finalization of accounts and Tax Audit of accounts of earlier financial years. We observe that on similar set of facts the Commissioner of Income Tax (Appeals)-5, Pune had deleted the levy of penalty u/s. 271B of the Act in the immediately preceding assessment year 2009-10.

8. The Hon'ble Bombay High Court in the case of Shree Swastik Stills Pvt. Ltd. Vs. ACIT (supra) has upheld the observations of Tribunal in holding that inter se disputes between the stake holders of a company cannot be termed as a reasonable cause for waiving or dispensing with the penalty u/s. 271B of the Act. However, we find that the Hon'ble High Court deleted the levy of penalty as the assessee could not have obtained Tax Audit Report for subsequent assessment years owing to delay in finalization of accounts for the preceding financial year. In the instant case as we have observed that the Commissioner of Income Tax (Appeals)

had deleted penalty levied u/s. 271B for assessment year 2009-10 as the books of account for earlier year were not complete. There is no change in the facts and circumstances in the assessment year under appeal. Accordingly, the levy of penalty u/s. 271B for delay in filing of tax audit report is deleted in the impugned assessment year, as well. Accordingly, the impugned order is set aside and the appeal of assessee in ITA No. 2140/PUN/2016 is allowed.

9. In the result, the appeal of assessee in ITA No. 2139/PUN/2016 is dismissed and the appeal of assessee in ITA No. 2140/PUN/2016 is allowed.

Order pronounced on Thursday, the 29th day of November, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th November, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-6, Pune
4. The Pr. C.I.T. – 5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune