

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

(Before Sri S.S. Godara, Judicial Member & Sri M. Balaganesh, Accountant Member)

ITA No. 2436/Kol/2017
Assessment Year: 2013-14

Md. Salim Qurasi.....Appellant
127 (83/A), Kazi Para
Baidyabati
Dist-Hooghly
Pin - 712 222
[PAN : AACPQ 2828 G]

Vs.

Income Tax Officer, Ward-23(3), Hooghly.....Respondent

Appearances by:

Smt. Saswati Mitra Dutta, Advocate, appeared on behalf of the assessee.
Shri Sankar Halder, Addl. CIT D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : December 27th, 2018

Date of pronouncing the order : January 1st, 2019

ORDER

Per Bench :-

This is an appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeals) -6, Kolkata, (in short "Id. CIT(A)"), , in appeal no. 375/CIT(A)-6/Kol/2014-15, dated 24/08/2017, confirming the order levying penalty u/s 271B of the Income Tax Act, 1961 (hereinafter 'the Act'), levied by the Id. Income Tax Officer, Wd-23(3), Hooghly (in short 'Id. Assessing Officer '), for the Assessment Year 2013-14.

2. The brief facts of this issue is that the assessee filed his return of income for the Assessment Year 2013-14, on 31/10/2013. The assessee is engaged in the business of manufacturing leather goods. The gross turnover of the assessee was Rs.1,55,11,925/-. Hence the assessee is liable for getting his accounts audited u/s 44AB of the Act. It is an admitted fact that the assessee did not attach tax audit report u/s 44AB of the Act, along with the return of income. The Id. Assessing Officer, accordingly proceeded to levy penalty u/s 271B of the Act for violation of provisions of Section 44AB of the Act, for Rs.77,559/-, being 0.5% of the gross turnover. The assessee had pleaded before the lower authorities that the tax audit was completed on 27/09/2013, by the tax auditor and thereafter, the said tax auditor suddenly fell ill and accordingly the tax audit report could not be filed along with the return of income. Without the tax audit report, the income tax return was electronically uploaded as it was lying with the tax auditor. The

assessee also placed on record the medical certificate dt. 03/11/2013, stating that the assessee was sick from 28/09/2013 to 02/11/2013. Accordingly, the tax audit report could not be obtained from the tax auditor for uploading the same along with the return of income. This reason was not found satisfactory by the authorities below. The Id. CIT(A) found that before the Id. Assessing Officer, the assessee had blamed the auditor for not auditing the accounts and before the Id. CIT(A), the blame was taken by the assessee himself on the ground that his medical condition was not fit enough to get the accounts tax audited. The Id. CIT(A) found this divergent stand taken by the assessee before him and before the Id. Assessing Officer and observed that no reasonable cause has been adduced by the assessee in terms of Section 273B of the Act and accordingly upheld the action of the Id. Assessing Officer in levying penalty u/s 271B of the Act.

3. Aggrieved the assessee is in appeal before us.

4. We have heard rival submissions. From the papers available on the record including the paper book of the assessee, we find that the assessee had got his accounts tax audited for the Assessment Year 2013-14, on 27/09/2013. We find that the same has been filed before the Id. Assessing Officer before the completion of the assessment proceedings. This is evident from the certificate of paper book filed by the assessee before us, wherein it is stated that the tax audit report for the Assessment Year 2013-14, have been duly filed before the Id. Assessing Officer as well as the Id. CIT(A). Hence this is a case of tax audit report obtained before the due date of filing of the return of income but filed before the Id. Assessing Officer before the completion of the assessment proceedings.

4.1. Now, the short question that arises is whether in this scenario penalty u/s 271B of the Act, can be levied or not. In our considered opinion, the assessee had only committed a technical venial breach without creating any loss to the exchequer. In the instant case, the tax audit report was very much made available before the Id. Assessing Officer before the completion of the assessment proceedings. The Hon'ble Madras High Court in the case of *Commissioner of Income-tax v. A.N. Arunachalam* [1994] 208 ITR 481 (Madras); in the context of filing of audit report for claiming deduction u/s 80J of the Act, had observed that once the audit report has been made available before the Id.

Assessing Officer, before completion of the assessment proceedings, then the assessee should be granted deduction u/s 80J of the Act.

4.1.1. We observe that this decision was rendered in the context of adjudication of quantum of deduction of the assessee. Hence the said analogy could very well be drawn and used in a penalty proceedings like that of the assessee. To conclude, we hold that the assessee had committed only technical venial breach for which he could not be penalised. In view of the aforesaid observation and respectively following the decision of the Hon'ble Madras High Court in the case of *Commissioner of Income-tax v. A.N. Arunachalam (supra)*, we direct the Id. Assessing Officer to delete the penalty levied u/s 271B of the Act.

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

Kolkata, the 1st day of January, 2019.

Sd/-
[S.S. Godara]
 Judicial Member
 Dated : 01.01.2019
 {SC SPS}

Sd/-
[M. Balaganesh]
 Accountant Member

Copy of the order forwarded to:

1. ***Md. Salim Qurasi***

***127 (83/A), Kazi Para
 Baidyabati
 Dist-Hooghly
 Pin - 712 222***

2. ***Income Tax Officer, Ward-23(3), Hooghly***

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True Copy
 By Order

Assistant Registrar
 ITAT, Kolkata Benches