

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, 'SMC', CHANDIGARH**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No.1331/Chd/2018
Assessment Year: 2015-16

Chitvan Aggarwal
Prop. M/s Bhushan Impex,
17, Beri Mark,
Vishwakarma Chowk,
Gill Road, Ludhiana, Punjab

Vs. The ITO
W-5(1), Ludhiana
Punjab

PAN No. AENPA4246B

(Appellant)

(Respondent)

Assessee By : Sh. Parikshit Aggarwal,CA
Revenue By : Smt. Chandrakanta, Sr. DR

Date of hearing : 21/02/2019
Date of Pronouncement : 21/02/2019

ORDER

This is an appeal by the Assessee against the order dt. 20/09/2018 of Ld. CIT(A)-2, Ludhiana.

2. In the present appeal Assessee has raised the following grounds:

1. *That the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana has erred in confirming the penalty order passed u/s 271B of the Income tax Act, 1961, by the Learned Assessing Officer. Therefore, Order passed by the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana is Illegal and Bad in the eyes of Law.*
2. *That the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana has erred in confirming the penalty of Rs. 1,50,000/- imposed u/s 271B of the Income Tax Act, 1961 by the Learned Assessing Officer, without going into the facts of the case. Therefore, penalty imposed by the Learned Assessing Officer and sustained by the Learned Commissioner of Income Tax (Appeals)-2, Ludhiana is Illegal, unwarranted and uncalled for and needs to be quashed.*
3. *That the appellant craves to leave or to amend the Ground of appeals before or at the time of hearing.*

From the aforesaid grounds it would be clear that only grievance of the assessee relates to the confirmation of the penalty of Rs. 1,50,000/- levied by the Assessing Officer under section 271B of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

3. Facts of the case in brief are that the assessee e-filed his return of income declaring loss of Rs. 30,79,880/- on 05/11/2015.

4. The Assessing Officer noticed that the turnover of the assessee exceeded Rs. 1,00,00,000/-, so he was required to get his account audited under section 44AB of the Act which he failed to do. The Assessing Officer issued show cause notice under section 274 read with section 271B of the Act to the assessee and since there was no response against such notice the Assessing Officer levied the penalty of Rs. 1,50,000/- under section 271B of the Act.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under :

That the penalty order passed by the Learned Assessing Officer is illegal and Bad in Law and was passed without giving any opportunity to the appellant. That the Learned Assessing Officer has mentioned in his order passed u/s 271B of the Income Tax Act, 1961 a show cause notice u/s 274 r.w.s. 271B of the Income Tax Act, 1961 dated 05/06/2018 was served upon the assessee, whereas no such notice was ever served upon the assessee. That the Learned Assessing Officer has not provide any opportunity to the appellant and imposed the penalty of Rs. 1,50,000/- u/s 271B of the Income Tax Act, 1961 for the Assessment Year 2015-16.

Further submitted that the Learned Assessing Officer has imposed the penalty on the grounds that the assessee was not got the accounts audited as per the Provisions of the Law, whereas the books of accounts of the assessee were duly audited and the same were submitted with the department during the course of Assessment Proceedings.

So in view of above stated facts it is requested before your honor to kindly allow the appeal of assessee and delete the penalty imposed by the Learned Assessing Officer u/s 271B of the Income Tax Act, 1961.

Kindly acknowledge the request and oblige.

6. The Ld. CIT(A) after considering the submissions of the assessee observed that the assessee got his account audited only on 04/11/2015 i.e beyond the prescribed time limit provided under section 44AB of the Act, and that no reasonable cause was advance for not getting the account audited and submitted the audit report within the prescribed time limit. Ld. CIT(A) accordingly confirmed the penalty levied by the Assessing Officer under section 271B of the Act.

7. Now the assessee is in appeal.

8. Ld. Counsel for the assessee submitted that there was a delay of only four days not getting the audit report from the auditor which occurred for the reasons that the details pertaining to Agartala (Tripura) Branch could not be obtained in time. Therefore the tax audit was completed on 04/11/2015. So there was a reasonable cause in furnishing the audit report belated but the delay was only of four days therefore the penalty levied by the Assessing Officer under section 271B of the Act and sustained by the Ld. CIT(A) was not justified. The reliance was placed on the various case laws:

- P. Senthil Kumar Vs. Pr. CIT-5 Chennai dt. 18/12/2018 in Tax Case Appeal No. 604 of 2018 (Madras HC)
- Shri. T.T. Kuruvilla Vs. The Asst. CIT, C-1, Alappuzha dt. 22/01/2019 in ITA No. 504/Coch/2018(ITAT, Cochin Bench)
- Shri Bharat Mirpuri vs. The ITO, C-9(1), Chennai in ITA No. 833/Chny/2018 (ITAT, Chennai Bench)
- M/s B.W.M International Vs. I.T.O, W-44(4), Kolkata in ITA No. 1006/Kol/2015 (ITAT, Kolkata Bench)
- Vedabai alia Vaijayanatabai Baburao Patil Vs. Shantaram Baburao Patil (2002) 253 ITR 798(SC)

9. In her rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below and further submitted that it is not the case of late filing of Tax Audit Report rather the audit itself was not got done within the prescribed time limit therefore the penalty levied by the Assessing Officer and sustained by the Ld. CIT(A) was justified.

10. I have considered the submissions of both the parties and perused the material available on record. In the present case it is an admitted fact that there was four days delay in getting the Tax Audit Report. The assessee furnished the certificate from the Auditor M/s Vats and Associates, Ludhiana wherein it has been stated as under:

This is to certify that Mr. Chitvan Aggarwal (PAN: AENPA4246B) Prop. M/s Bhushan Impex approached us with all documents for tax audit of his financial statements pertaining to F.Y.2014-15 i.e. A.Y. 2015-16 on 30.10.2015. Further details were sought for completion of audit which were provided by assessee to us in 4-5 days owing to certain details pertaining to Agartala (Tripura) branch. After receiving all the details and processing all the data, tax audit was duly completed and signed on 04.11.2015 and accordingly tax audit report was uploaded online.

From the aforesaid explanation it is clear that the audit could not be completed within the specified time for want of the details which could not be obtained from Agartala (Tripura) Branch, and after receiving all the details the Tax Audit Report was completed and signed on 04/11/2015 . So there was a delay of only four days.

11. On the issue relating to delay of few days, the Hon'ble Supreme Court in the case of Vedabai alias Vaijayanatabai Baburao Patil Vs. Shantaram Baburao Patil [2002] 253 ITR 798 (SC) held as under:

The judgment under appeal was delivered on 30-4-1997. During the period from 1-5-1997 to 1-6-1997, the Apex Court was in vacation. The fact escaped the attention of the appellate judge. To avert further delay in filing the appeal as soon as assessee felt a little better she filed the appeal. That depicted her anxiety to minimise the delay rather than falsify of her case or mala fides.

In exercising discretion under section 5 of the Limitation Act, the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal

approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance. In the instant case, the approach of the civil judge was wholly erroneous and his order was unsustainable. It was evident that the discretion under section 5 was exercised by the civil judge in contravention of the law laid down by the Apex Court, that the expression 'sufficient cause' should receive liberal construction.

The High Court in exercising its jurisdiction under section 115 of the Civil Procedure Code, failed to correct the jurisdictional error of the Appellate Court. Therefore, the impugned order of the High Court as well as that of civil judge was to be set aside. The delay was to be condoned and the matter was required to be restored to the file of the civil judge to decide the appeal on its merits.

12. Therefore, keeping in view the ratio laid down by the Hon'ble Apex Court in the aforesaid referred to case, I am of the view that the Assessing Officer ought to have adopted the pragmatic / liberal approach since the delay was only of four days and there was a plausible explanation. In view of that, the penalty levied by the Assessing Officer and sustained by the Ld. CIT(A) under section 271B of the Act for late filing of the audit report belated by four days only, is deleted.

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

(Order pronounced in the open Court on 21/02/2019.)

**Sd/-
(N.K. SAINI)
VICE PRESIDENT**

Place: Chandigarh

Dated : 21/02/2019

AG

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR