

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1388/JP/2018
निर्धारण वर्ष/Assessment Year :2014-15

M/s Giral Lignite Power Ltd., Room No. 412, Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur	बनाम Vs.	ACIT, Circle-06, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCG7891A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri P. C. Parwal (CA)
राजस्व की ओर से/ Revenue by : Shri A. K. Mahala (JCIT)

सुनवाई की तारीख/ Date of Hearing : 05/03/2019
उदघोषणा की तारीख/ Date of Pronouncement: 18/03/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 16.10.2018 for AY 2014-15 wherein the sole ground of appeal is as under:-

"The Id. CIT(A) has erred on facts and in law in confirming the levy of penalty of Rs. 1,50,000/- u/s 271B of the IT Act, 1961."

2. Briefly stated, the facts of case are that the assessee is a government undertaking engaged in the business of generation of electricity and a subsidiary company of Rajasthan Rajya Vidyut Utpadan Nigam Limited. It filed its return on 25.09.2014 declaring loss of Rs.34.85 crores which was revised on 30.09.2015 declaring Nil income. The Assessing officer observed that tax audit of the assessee company was conducted on 28.09.2015. Hence, assessee failed to get its accounts audited by an accountant and furnish the audit report

before the specified date, i.e. 30.09.2014 as required u/s 44AB. He therefore, imposed penalty of Rs.1.50 lacs u/s 271B of the IT Act by not accepting the reasons for delay in obtaining the tax audit report so submitted by the assessee. On appeal, the Id. CIT(A) confirmed the penalty by holding that there was no reasonable cause for not getting the books of accounts audited on or before the specified date.

3. During the course of hearing, the Id. AR submitted, the assessee being a government company, statutory auditor is appointed by C&AG and after statutory audit only, the tax audit can be conducted. It was submitted that the reason for delay in getting the accounts audited u/s 44AB for the year under consideration is due to delay in conducting the statutory audit for FY 2008-09 to FY 2012-13. In fact, the statutory audit for FY 2012-13 was completed on 19.05.2014 and thereafter the tax audit was completed on 11.02.2015 and for FY 2012-13 (AY 2013-14), penalty proceedings u/s 271B was initiated but considering the submission given by the assessee for delay in conducting the tax audit, the penalty proceedings was dropped by the AO vide order dt. 16.09.2016.

4. It was further submitted that after the statutory audit for FY 2012-13 was completed on 19.05.2014, the assessee vide letter dt. 22.07.2014 requested C&AG to appoint statutory auditor for FY 2013-14. The C&AG vide letter dt. 02.09.2014 appointed M/s G.N. Gupta & Co. as the statutory auditor of the company. This was considered by the Board of Directors in its meeting held on 18.09.2014 in which remuneration was also fixed. The appointment was communicated to M/s G.N. Gupta & Co. vide letter dt. 22.09.2014 who vide letter of even date accepted the appointment. The statutory auditor issued the audit report on 15.01.2015 and thereafter the tax auditor completed the tax audit on 28.09.2015. From the above facts, it can be noted that delay in getting the tax audit in the year under consideration is because of delay in

conducting the statutory audit of earlier years which has resulted into delay in conducting of the statutory audit and tax audit for the year under consideration as without conducting the statutory audit and tax audit for FY 2012-13, tax audit for FY 2013-14 could not have been conducted. Thus, there is a reasonable cause in not obtaining the tax audit report u/s 44AB within the due date.

5. It was further submitted that Section 273B of the Act provides that no penalty u/s 271B shall be imposable on the assessee if it proves that there was reasonable cause for the failure to get accounts audited within the due date. In the present case there was a reasonable cause for delay in conducting the audit u/s 44AB as explained above. However, the Ld. CIT(A) without considering the same has incorrectly held that there is no reasonable cause for delay in getting the tax audit conducted. On similar facts, penalty imposed u/s 271B was deleted by Jaipur Bench in case of M/s RRVUNL Vs. ACIT (*ITA No.100/JP/18 order dt. 28.03.2018*) wherein it was held as under:-

"7. We have heard the rival contentions and purused the material available on record. In the instant case, the limited issue for consideration is whether there is a reasonable cause for the delay in completing the tax audit and submitting the report of the tax auditor within the specified due date. Under section 273B, no penalty shall be imposable on the assessee for any failure which interalia include the defaults mentioned in section 271B, if the assessee proves that there was reasonable cause for the said failure. In the present case, the reason for the delay has been stated to be the delay in completing the statutory audit for the earlier years which has resulted in delay in completion of statutory audit for the year under consideration and the resultant delay in completing the tax audit and submitting the report thereof It was submitted that without completing the statutory audit, the

tax audit could not have been completed. We find that the statutory auditors are appointed by the Comptroller & Auditor General of India under section 619(2) of the Companies Act, 1956 and they have completed the statutory audit and submitted their audit report dated 27.03.2014. Thereafter, the tax audit has been completed on 15.07.2014 and the revised return was filed on 16.9.2014. The Hon'ble Punjab & Haryana High Court in the case of CIT v. Punjab State Leather Development Corpn. Ltd. [2001] 119 Taxman 258 has held that delay in completion of statutory audit was a reasonable cause for non-compliance with section 44AB and it was held that the Tribunal was right in cancelling penalty levied under section 271B. Respectfully following the same, we are of the view that in the instant case, where there has been a delay in completion of statutory audit, there exist a reasonable cause for the delay in completion and submission of the tax audit report under section 44AB of the Act. The penalty levied under section 271B is therefore deleted"

6. The Id DR is heard who has relied on the order of the lower authorities.

7. We have heard the rival contentions and perused the material available on record. In the instant case, the C&AG has appointed the statutory auditor of the assessee company on 02.09.2014 and after confirmation of remuneration and other terms of appointment by the Board of Directors, the statutory auditors have given their acceptance on 22.09.2014. The statutory audit was thereafter undertaken and the statutory auditors have given their audit report on 15.01.2015 and thereafter the tax auditor completed the tax audit on 28.09.2015. We therefore find that the facts of the present case are pari-materia to the facts in case of the M/s RRVUNL Vs. ACIT (supra) wherein the Co-ordinate Bench has held that where there is a delay in completion of

statutory audit, there exist a reasonable cause for the delay in completion of tax audit and issuance of tax audit report. The ratio of the said decision equally applies in the instant case as the accounts of the assessee company are subject to statutory audit and once the statutory audit is completed, the tax audit can be initiated. Further, we find that under similar fact pattern, there was delay in completion of tax audit for the previous AY 2013-14 and the penalty proceedings so initiated u/s 271B were dropped by the Assessing officer himself. In light of the same, the penalty so levied under section 271B is hereby directed to be deleted.

In the result, appeal of the assessee is allowed.

Pronounced in the Open Court on 18/03/2019.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/03/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Giral Lignite Power Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-06, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1388/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

