

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI RAVISH SOOD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6254/MUM/2017
Assessment Year: 2011-12**

M/s C.S. Infocomm P. Ltd. 202/A, Khemraj Krishnadas, Opp. Khetwadi 12 th Lane, Mumbai-400004.	Vs.	The Dy. CIT-5(1), Aayakar Bhavan, Maharshi Karve Road, Mumbai-400023.
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PAN No. AACCC7711M

Appellant

Respondent

Assessee by	: Mr. S.S. Phadkar, AR
Revenue by	: Mr. Abi Rama Kartikiyen, DR

Date of Hearing	: 03/04/2019
Date of pronouncement:	: 09/04/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax-10, Mumbai [in short 'CIT(A)'] and arises out of the penalty levied u/s 271B of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:
 - i. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in rejecting the appellant's submission that the appellant had a reasonable cause within the meaning of section 273B of the Income

Tax Act, 1961 for not furnishing the Tax Audit Report u/s 44AB within the time prescribed under the said section.

- ii. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have held that the Auditor's M/s B.S. Sharma & Co. had completed the Tax Audit by 30.09.2011, and, therefore, ought to have furnished and filed the Tax Audit Report in the course of assessment proceedings along with the revised Tax Audit Report dated 11.11.2013.
- iii. On the facts and in the circumstances of the case, the appellant submits that the failure of the part of the Chartered Accountant to furnish the Audit Report dated 30.09.2011 in the course of assessment proceedings was a reasonable cause u/s 273B and, therefore, no penalty u/s 271B is leviable.

3. Briefly stated, the facts are that the appellant is a company engaged in the business of dealing in software and hardware services to IT Industries and aftersale services. It filed its return of income for the assessment year (AY) 2011-12 on 30.09.2011, disclosing current year loss at Rs.99,60,309/-. In the e-return, the appellant had stated that the tax audit was concluded on 30.09.2011.

During the year, the assessee had shown operating income at Rs.8,49,53,416/- (services rendered of Rs.6,09,46,927/- and sales local and other at Rs.2,40,06,489/-). Therefore, in terms of provisions of section 44AB of the Act, the appellant was required to get its account audited for the impugned assessment year by an auditor before the specified date and also ought to have furnished the report by the specified date, which was 30.09.2011 for the AY 2011-12. In the e-return the appellant had stated that the tax audit was concluded on 30.09.2011, however, the tax audit report as furnished by the assessee

during the course of assessment proceedings was dated 11.11.2013. As the appellant-company failed to comply with the provisions of section 44AB of the Act, the AO initiated penalty proceedings u/s 271B at the time of passing the assessment order on 04.03.2014 and issued a notice u/s 274 r.w.s. 271B of the Act to the assessee. In response to the show cause notice issued by the AO, the assessee *vide* letter dated 08.07.2014 has submitted that the provisions of section 271B are not applicable as the auditors in the e-return filed have mentioned the date of tax audit u/s 44AB as 30.09.2011 and the return of income is also on the same date. Further, it was submitted before the AO that there were certain mistakes in the return of income furnished on 30.09.2011, therefore, the audit u/s 44AB was carried out again; tax audit report was submitted on 11.11.2013 and the return of income reducing the original loss of (-) Rs.99,60,309/- to (-) Rs.69,01,406/- was submitted on account of re-auditing. Thus it was submitted that the assessee had a reasonable cause for filing the audit report late.

However, the AO was not convinced with the above explanation of the assessee for the reason that as per the provisions of section 44AB, a specific date has been prescribed for furnishing the tax audit report, by which the assessee failed to furnish the same. Therefore, the AO levied a penalty of Rs.1,00,000/- u/s 271B of the Act.

4. Aggrieved by the order of the AO the assessee filed an appeal before the Ld. CIT(A). In the order dated 20.07.2017, the Ld. CIT(A) observed that :

“6.6 The assessee has claimed that the audit report was revised by the CA after certain mistakes were noticed, however it is also not supported by any evidence. The details of mistakes noticed in Audit Report leading to revision were not brought on record, either before the AO or at the appellate stage before the undersigned, inspite of the fact that the assessee has stated vide variation in computation of income of Rs.30,58,903/- (reducing loss from Rs.99,60,309/- to Rs.69,01,406/-) on account of stated revision of audit report. Thus, the assessee has failed to demonstrate any failure on part of CA. In spite of the fact that the auditor stated to have concluded the audit on 30.09.2011 and the auditor stated to have concluded audit on 23.11.2013 are same i.e. M/s B.S. Sharma & Co., the assessee failed to furnish the report for audit stated to be concluded on 30.09.2011, nor has it explained why the report could not be obtained from the auditor. Further, nowhere in the Form No. 3CA or 3CD forming part of Audit Report concluded on 23.11.2013, has the auditor given any finding in the regard.”

With the above reasons, the Ld. CIT(A) held that the assessee failed to get its accounts audited u/s 44AB within the specified time as prescribed u/s 44AB. Also it is held by him the assessee failed to show reasonable cause for failure to comply with the said provisions. Therefore, the Ld. CIT(A) confirmed the penalty of Rs.1,00,000/- levied by the AO u/s 271B of the Act.

5. Before us, the Ld. counsel of the assessee submits that the return of income was filed by the C.A. M/s B.S. Sharma & Co. In the e-return filed by the said C.A., a specific reference regarding the tax audit date 30.09.2011 was made. It is stated that during the relevant assessment year 2011-12, there was no provision in the e-return for filing the tax audit report along with the return of income, as later on provided in

Income Tax Rule 12 w.e.f. 01.04.2013. The provision for filing e-audit report u/s 44AB was introduced w.e.f. 01.04.2013 i.e. for and from the AY 2013-14.

The Ld. counsel further submits that the tax audit was concluded on 30.09.2011 as per the noting in the e-return and further since there were certain mistakes noticed by the CA M/s B.S. Sharma & Co., the said CA revised the profit and loss account and balance sheet as per the revised audit report dated 11.11.2013 and therefore, filed a revised computation of income on 26.12.2013 reducing the loss from Rs.99,60,309/- to Rs.69,01,406/-. It is further argued that the said C.A. was with the assessee-company for the last many years and, therefore, the assessee was dependent entirely upon the CA, M/s B.S. Sharma & Co. for filing of the Income Tax Return as well as other requirements of the Income Tax Act. The aforesaid facts clearly show that despite the said CA, having carried out the tax audit as on 30.09.2011, had to revise the tax audit report and account for the year under reference. It is submitted by the Ld. counsel that the CA failed in his duty to audit the accounts properly and submit the returns accordingly. Therefore, it is pleaded that the CA having failed to do so, the assessee cannot be held liable for penalty u/s 271B. It is stated that since the audit report has been completed on 30.09.2011, it cannot be said that the assessee failed to get its accounts audited before the due date of return.

The Ld. counsel further submits that despite the tax audit being done by 30.09.2011, no copy of tax audit report was furnished to the assessee and to the AO. Only the revised tax audit report and account

statements were furnished to the assessee by the CA. Thus it is argued that the assessee had a reasonable cause due to lapse on the part of the CA to file the tax audit report after completing the audit by 30.09.2011.

The Ld. counsel further submits that it was not mandatory to file the tax audit report along with the return of income and there was sufficient compliance for filing the tax audit report, if it is submitted in the course of assessment proceedings and it was sufficient compliance with provisions of section 44AB of the Act. The provisions of filing tax audit report along with e-return came on statute book on 11.06.2013 *vide* Notification No. 42/2013 of CBDT i.e. subsequent to the AY 2011-12, which is under appeal. Thus the Ld. counsel submits that in view of the aforesaid reasons, the penalty u/s 271B levied by the AO be deleted.

6. On the other hand, the Ld. DR submits that as recorded by the Ld. CIT(A) the details of mistakes noticed in the audit report leading to revision were not brought on record either before the AO or at the appellate stage before the First Appellate Authority. Also it is argued by him that in spite of the fact that the auditor stated to have concluded the audit on 30.09.2011 and the audit firm stated to have concluded the audit on 23.11.2013 are same i.e. M/s B.S. Sharma & Co., the assessee failed to furnish the report for audit stated to have been concluded on 30.09.2011, nor has it explained why the report could not be obtained from the auditor. Thus the Ld. DR supports the order passed by the Ld. CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decision are given below.

The appellant filed its e-return on 30.09.2011 for the AY 2011-12. Therein the date of audit report is mentioned as 30.09.2011. The Form No. 3CA has been signed by the CA B.S. Sharma dated 30.09.2011. The balance sheet as at 31.03.2011 and the profit and loss account for the year ended 31.03.2011 are signed by the CA B.S. Sharma on behalf of the CA firm B.S. Sharma & Co. as well as the director Anil M. Joglekar and Anuja A. Joglekar on behalf of the assessee-company. Subsequently, a revised tax audit report dated 11.11.2013 was concluded by the CA B.S. Sharma. The balance sheet as on 31.03.2011 (revised) and the profit and loss account for the year ended 31.03.2011 (revised) was signed dated 11.11.2013 by the CA B.S. Sharma along with Anil M. Joglekar and Anuja A. Joglekar on behalf of the assessee-company.

A perusal of the above facts indicates that the tax audit report was made on 30.09.2011 as mentioned in the Form ITR-6 filed by the assessee. Subsequently, the CA revised the profit and loss account and balance sheet as per the revised audit report dated 11.11.2013. Accordingly, the assessee filed a revised computation of income on 26.12.2013, reducing the loss from Rs.99,60,309/- to Rs.69,01,406/-.

We are concerned here with the AY 2011-12. The provision of filing tax audit report along with e-return came on statute book on 11.06.2013 *vide* Notification No. 42/2013 of the CBDT, which states as under:

“From assessment year 2013-14 onwards, in case an assessee is required to furnish a report of audit under sections 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(via), 10A, 12A(1)(b), 44AB, 80-IA, 80-IB, 80-IC, 80-ID, 80JJAA, 80LA, 92E or 115JB, he shall file the report electronically on or before the date of

filing the return of income. Further, the assessee who is liable to file the above reports electronically shall file the return of income electronically,”

In view of the above facts, we are of the considered view that in the instant case there was a reasonable cause on the part of the assessee u/s 273B of the Act.

Considering the same, we delete the penalty of Rs.1,00,000/- levied by the AO u/s 271B of the Act.

8. In the result, the appeal is allowed.

Order pronounced in the open Court on 09/04/2019.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 09/04/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai