

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री रमेश सी. शर्मा, लेखा सदस्य एवं श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 1417/JP/2018
निर्धारण वर्ष/Assessment Year : 2014-15.

M/s. Rajasthan State Mines & Minerals Limited, C-89-90, Lal Kothi, Janpath, Jaipur.	बनाम Vs.	The ACIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAACR 7857 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri Ashok Khanna (JCIT)

सुनवाई की तारीख / Date of Hearing : 13.05.2019.
घोषणा की तारीख / Date of Pronouncement : 14/05/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 17.20.2018 of Id. CIT (A), Ajmer arising from penalty order passed under section 271B of the IT Act for the assessment year 2014-15. The assessee has raised the following grounds :-

1. The Id. CIT (A) has erred on facts and in law in confirming the levy of penalty of Rs. 1,38,337/- u/s 271B of the IT Act, 1961.
2. The assessee craves to amend, alter and modify any of the grounds of appeal.
3. The appropriate cost be awarded to the assessee.

2. The assessee is a State Government Undertaking engaged in the business of mining. Since there was a delay in filing the audit report as per section 44AB of the

IT Act on or before the due date of filing the return of income under section 139(1) of the IT Act, the AO levied a penalty under section 271B of the Act. The assessee challenged the action of the AO before the Id. CIT (A) but could not succeed.

3. Before us, the Id. A/R of the assessee has submitted that there is a reasonable cause for delay in getting the accounts audited u/s 44AB. The main reason for delay is that there were frequent change of the Managing Director of the company and for a considerable period there was no regular Managing Director. Therefore, the meeting of Board of Director for the adoption of audited financial statements could not be convened and consequently the statutory audit was delayed. The names of Managing Director and the period of their appointment are as under :-

Sr. No.	Name of Officer	Period from which appointed as MD	Period to which appointed as MD	Remarks.
1.	Shri Ashok Bhandari	01.04.2014	30.06.2014	Regular
2.	Shri O.P. Yadav	01.07.2014	13.08.2014	Additional charge – not joined.
3.	Shri Vaibhav Galariya	14.08.2014	30.10.2014	Additional charge.
4.	Shri Kunj Bihari Gupta	31.10.2014	14.11.2014	Regular.
5.	Shri Bhanu Prakash Yeturu	15.11.2014	31.03.2015	Regular.

The company proposed to convene the Board meeting on different occasions in between. However, each time the same was postponed due to the transfers of incumbent Managing Director. Finally the Board Meeting was held on 12.12.2014 wherein the accounts of the company were adopted and submitted to statutory auditors for audit. It may also be noted that for the aforesaid reasons, the assessee vide Board Resolution No. 1/2014 dated 01.09.2014 resolved that an application for extension of time for holding the AGM by 3 months be made to the Registrar of

Companies u/s 96(1) of the Companies Act, 2013. Accordingly, the statutory audit was conducted on 24.03.2015 and also the tax audit u/s 44AB and both the reports were filed online on the same date. These reports have been considered in framing the assessment u/s 143(3). It is settled law that levy of penalty u/s 271B is subject to the provision of section 273B which provides that no penalty shall be imposable on the assessee if it proves that there is a reasonable cause for the failure. Penalty cannot be levied mechanically for mere contravention of the provision of section 44AB without examining whether there was reasonable cause as advanced by the assessee for the said failure or default. In support of his contention, he has relied upon the following decisions :-

Johns Biwheelers vs. ACIT
70 ITR (Trib) 325 (Cochin)

Rajasthan Rajya Vidhyut Utpadan Nigam Ltd. vs. ACIT
ITA No. 100/JP/2018 (Jaipur Tribunal)

Rajasthan Rajya Vidhut Prasaran Nigam vs. ITAT & Anr.
262 ITR 262 (Raj.)

4. On the other hand, the Id. D/R has submitted that there is no dispute that the assessee has not filed the audit report under section 44AB along with the return of income. Even the audit was not completed before that date. Therefore, there is a clear violation of provisions of section 44AB of the Act. He has relied upon the order of the AO.

5. We have considered the rival submissions as well as the relevant material on record. The assessee has explained the reason for delay in filing the audit report as due to the delay of statutory audit of the financial statements of the assessee

undertaking the audit under section 44AB was not completed within the stipulated period. The assessee has further explained that there is a frequent change of Managing Director of the company and we find from the details as reproduced in the foregoing para that there are as many as 5 changes during the period from 01.04.2014 to 15.11.2014 which has caused the delay in convening the Board Meeting for adopting the financial statements of the assessee and consequent statutory audit to be completed by the auditors appointed by the CAG. Therefore, the delay in getting the accounts audited as per the provisions of section 44AB was due to the reasons as explained by the assessee which were beyond the control of the assessee being a State Government Undertaking. The assessee has also filed a copy of resolution for seeking extension of time from ROC for convening the AGM and adoption of books of account. Thus the assessee has explained all the relevant facts and reasons for not getting the accounts audited under section 44AB within the stipulated period. The Coordinate Bench of this Tribunal in case of Rajasthan Rajya Vidhyut Utpadan Nigam Ltd. vs. ACIT (supra) while considering an identical issue has held in para 7 as under :-

" 7. We have heard the rival contentions and perused 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.”

Thus it is clear that the Coordinate Bench has followed the decision of Hon'ble Punjab & Haryana High Court in case of CIT vs. Punjab State Leather Development Corporation Ltd. reported in 119 Taxman 258 (P&H). Further, in case of Johns Biwheelers vs. ACIT (supra), the Cochin Bench of the Tribunal has also considered an identical issue in para 7 and 7.1 as under :-

“ 7. We have heard the rival submissions and perused the record. In this case, the assessee was required to get his books of account audited and filed along with the return of income u/s. 44AB within the due date of 30/09/2013 for the assessment year 2013-14. However, the audit report was furnished only on 28/03/2014. The contention of the Ld. AR was that the delay in filing the return of income was due to damage to computer system due to virus infection which is a reasonable cause as

prescribed u/s. 273B of the I.T. Act. The Ld. AR relied on the following judgments in support of his contentions:

- i) CIT vs. Malayalam Plantations Ltd. (1976) (103 ITR 835) (Ker.)*
- ii) ACIT vs. Amar Chand Raj Kumar (2004) (89 ITD 96)(ITAT, Chandigarh)*
- iii) Prem Prakash Senapati vs. ITO (ITA No.459&185/CTK/2017 dated 17/04/2018) (ITAT, Cuttack).*

7.1. From the material available on record, we are of the view that the assessee got his books of accounts audited on 28/03/2014 which was made available to the Assessing Officer and no prejudice has been caused to the Revenue. 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 technical venial breach which does not create any loss to the exchequer as the audit report was available to the Assessing Officer before the completion of the assessment proceedings. The Madras High Court in the case of CIT vs. A.N. Arunachalam (208 ITR 481) in the context of filing of audit report for claiming deduction u/s. 80J of the Act, observed that once audit report has been made available before the Ld. Assessing Officer before the completion of assessment proceedings, the assessee should be granted deduction u/s. 80J of the Act. We observe that this judgment was rendered in the context of adjudication of quantum of deduction claimed by the assessee. Hence, the said analogy can very well be drawn and used in the penalty proceedings like that of the assessee. To sum up, we hold that the assessee had committed only technical venial breach for which he cannot be penalized. In view of the above, we are inclined to delete the penalty made by the assessee u/s. 271B of the Act.”

In view of the above facts and circumstances of the case, we are of the considered opinion that the assessee has explained a reasonable cause for delay in getting the accounts audited under section 44AB of the IT Act and consequently in view of the

provision of section 273B, the penalty levied under section 271B of the IT Act is deleted.

6. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 14/05/2019.

Sd/-
(रमेश सी. शर्मा)
(RAMESH C. SHARMA)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 14/05/2019.

Das/

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

1. The Appellant- M/s. Rajasthan State Mines & Minerals Ltd., Jaipur.
2. The Respondent – The ACIT, Circle-6, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1417/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar