

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.2215/Kol/2018
Assessment Year :2012-13

M/s Veerprabhu Overseas Ltd. (earlier known as LMJ Overseas Ltd) 30, Jawaharlal Nehru Road, 2 nd , Floor, Kolkata-16 [PAN No.AAACL 4426 A]	V/s.	Income Tax Officer, Ward-8(3), Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri Shankar Halder, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	08-05-2019
घोषणा की तारीख/Date of Pronouncement	17-05-2019

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-3, Kolkata's order dated 06.08.2018 passed in case No.2080/CIT(A)-3/15-16/Kol, upholding Assessing Officer's action imposing penalty of ₹1.50 lac in proceedings u/s 271B of the Income Tax Act, 1961; in short 'the Act.

Case called twice. None appears at the assessee's behest. It is accordingly proceeded *ex parte*.

2. The assessee's sole substantive grievance challenges correctness of both the lower authorities action imposing sec. 271B penalty on account of its failure to file its tax auditor's report during the course of assessment. This

made the Assessing Officer to levy the impugned penalty amounting to ₹1,50 lac as affirmed in lower appellate proceedings as under:-

“3.OBOSERVATIONS AND DECISION:-

The only issue in this case is the penalty levied of Rs.1,50,000/- by the Assessing Officer u/s. 271B of the Act for non-furnishing of the tax audit report. The appellant was required to get the books of account audited u/s. 44AB of the Act, as the turnover during the previous year exceeded Rs.6,00,000/-. During the course of scrutiny proceedings the appellant did not furnish the tax audit report before the Assessing Officer and the explanation given was that it had been misplaced. It was also submitted before the Assessing Officer that Shri Gaurav Agarwal had done the tax audit and the report can be called from him. Accordingly the Assessing Officer issued notice u/s.133(6) to Shri Gaurav Agarwal and asked for a copy of the tax audit report. However, Shri Gaurav Agarwal also expressed his inability to furnish the copy of the tax audit report. In spite of repeated opportunities given by the Assessing Officer the tax audit report was not furnished before the Assessing Officer and hence he levied the penalty of Rs. 1,50,000/- u/s. 271B for the said default.

During the course of Appellate proceedings it has been submitted before me that during the relevant previous year restructuring of the business group took place, on account of family disputes, and LMJ Group separated from M/s Surresh Kumar Jail Group. On account of the ongoing dispute an arbitration proceeding was initiated and Shri Kamaleshs Sogani was appointed the custodian of all the documents, books of account etc. pertaining to the group concerns. The documents were sealed and placed in security at the premises at 15B, Hemant Basu Sarani, Kolkata. Further on 06/11/2015 it was discovered by the custodian that all the books of account and documents were missing from the said premises. A police report to that effect was filed. The Authorised Representative of the Appellant therefore argued before me that as the documents had been stolen the tax audit report cannot be produced. It is observed that the explanation given before the Assessing Officer was different from what has been submitted before me. The appellant has been taking contradictory stands before different authorities.

However the Authorised Representative of the App on 06/08/2018 has filed a copy of the tax audit report stating that it has been obtained from a staff. Accordingly it was submitted that the penalty u/s.271B should be deleted.

I have gone through the submissions of the appellant and the findings of the Assessing Officer. Earlier the contention of the appellant was that since the tax audit report had gone missing from the custody of the person appointed by the arbitrator therefore they were unable to furnish the same. the stand taken was that it has been stolen from custody. Moreover, even the auditor Shri Gaurav Agarwal expressed his inability to provide a copy of the said report. However now a copy of the same has been furnished. It is therefore observed that the argument given that the tax audit report had been stolen is incorrect. There is no proof that the stolen documents have been recovered till date. However a copy of the tax audit report has been furnished by the appellant. That means that the appellant all along was in possession of the tax audit report and the same was not produced before the Assessing Officer during the course of scrutiny proceedings without proper and valid reasons. The arguments and explanation given for not producing the audit report before the Assessing Officer is now found to be incorrect and false. As the appellant was having the tax audit report with them the same should have been duly produced before the Assessing Officer for verification. The appellant therefore consciously abstained from furnishing the report before the Assessing Officer as the explanations given are found to be incorrect. Accordingly I am of the considered opinion that the appellant has failed to furnish the tax audit report before the Assessing Officer without any

reasonable cause. Penalty levied by the Assessing Officer of Rs.1,50,-000/- for not furnishing the tax audit report u/s. 271B is, therefore, hereby confirmed."

3. We have given our thoughtful consideration to assessee's pleadings and Revenue's arguments against and in support of the impugned penalty. Learned Departmental Representative fails to dispute the fact that the assessee's plea before the CIT(A) explaining the reason of non-filing of its tax audit report as gone unrebutted on facts. We make it clear that assessee had claimed that its documents required to be compiled in tax audit report had been stolen forming the reasonable cause. We therefore hold that the impugned penalty is not liable to be sustained because of the said reasonable cause. The same is directed to be deleted.

4. This assessee's appeal is allowed.

Order pronounced in the open court 17/05/2019

Sd/-

(लेखा सदस्य)

(Dr.A.L. Saini)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 17/05/2019 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Veerprabhu Overseas Ltd., 30, Jawaharlal Nehru Road, 2nd Floor, Kolkata-700016
2. प्रत्यर्थी/Respondent-Income Tax Officer, Ward-8(3), Kolkata
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।