

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

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

आयकर अपील सं./ITA No. 193/JP/2018
निर्धारण वर्ष/Assessment Year : 2012-13.

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| M/s. Eden Automotives Pvt. Ltd., E-6, Malviya Nagar Industrial Area, Jaipur. | बनाम Vs. | The Income Tax Officer, Ward 1(3), Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN No. AABCE 9108 M | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri Ashok Kumar Gupta (Advocate) &
Shri S.L. Jain (Advocate)

राजस्व की ओर से / Revenue by: Shri Jai Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 01.04.2019.
घोषणा की तारीख / Date of Pronouncement : 30/05/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 5th July, 2017 of Id. CIT (A)-1, Jaipur arising from penalty order passed under section 271B of the IT Act for the assessment year 2012-13. The assessee has raised the following grounds :-

1. That on the facts and in the circumstances of the case, Id. CIT (A)-I Jaipur has grossly erred in law and facts in confirming order of penalty which is bad in law and facts. Hence liable to be quashed.

2. That on the facts and in the circumstances of the case Id. CIT (A)-I, Jaipur has grossly erred in law and facts in confirming penalty of Rs. 1,50,000/-, which is totally against the law and against the spirit of CBDT Circular No. 3 of 2009.
3. That on the facts and in the circumstances of the case the assessee was under bonafide belief that he is required to obtain audit report before due date of filing of return and submit as and when it is demanded by the assessing authority. Hence no penalty can be imposed.
4. That the appellant reserves his right to add, amend or alter any ground or grounds of appeal on or before the date of appeal hearing."

2. The assessee company filed its return of income for the year under consideration on 29th March, 2014. Since the return was filed belatedly beyond the prescribed time limit under section 139(1), therefore, the AO observed that in view of the provisions of section 44AB of the IT Act, the assessee had to file its tax audit report before the due date of filing the return of income. The AO further noted that since the assessee has not filed the audit report within the due date of filing the return on or before 30th September, 2012, he initiated the penalty proceedings under section 271B of the IT Act. The AO levied the penalty of Rs. 1,50,000/- vide order dated 28th September, 2015. The assessee challenged the action of the AO before the Id. CIT (A) and contended that since the return of income was filed belatedly on 29th March, 2014, therefore, there was no occasion for the assessee to file the audit report prior to the return of income. It was also contended that as per CBDT Circular No. 3 of 2009 as well as Notification No. 24/2014 dated 01.04.2014 the audit report under section 44AB is required to be submitted on-line only from the assessment year 2013-14 onwards. Thus the assessee contended that the amended

provisions of Rule 12(2) of the IT Rules are not applicable for the year under consideration. Lastly, the assessee submitted that due to unavoidable circumstances the assessee could not file the return of income before the due date as per provisions of section 139(1) of the Act but the return was filed under section 139(4) of the Act and, therefore, the assessee has bonafide reasons and explanation for not filing the audit report as per provisions of section 44AB of the Act. The Id. CIT (A) could not accept the explanation of the assessee and confirmed the levy of penalty.

3. Before us, the Id. A/R of the assessee has reiterated his contention and submitted that the assessee has given the date of Audit Report in the return of income and, therefore, it is not a case of non-audit report but since the return of income itself was filed belatedly, therefore, there was a delay in filing the audit report. He has referred to the return of income and submitted that the date of audit report is clearly given in the return of income as on 2nd September, 2012 which is before the due date of filing of return under section 139(1) of the IT Act. The AO has completed the assessment on the return of income filed by the assessee. Therefore, assessee cannot be penalized under section 271B of the IT Act when the audit report was filed along with the return of income. He has relied upon the decision of Hon'ble Punjab & Haryana High Court in case of CIT vs. K.K. Spun Pipe, 284 ITR 301 (P&H). Thus the Id. A/R has submitted that even otherwise when the assessee has explained the reasons for filing the belated return of income along with the audit report, then in view of provisions of section 273B no penalty is leviable in the case of the assessee. He has also reiterated his contention that the amended provisions of Rule 12(2) are applicable from the assessment year 2013-14 and not

from the year under consideration. Hence the Id. A/R has pleaded that the penalty levied under section 271B may be deleted.

4. On the other hand, the Id. D/R has submitted that Rule 12(2) is a procedural provision and will be applicable as on the date of filing of the return instead of assessment year. Since the assessee has filed the return on 29th March, 2014 before that the Rule 12(2) of the IT Rules was amended by Finance Act, 2012 with effect from 01.04.2013, therefore, the assessee was required to comply with the existing rules at the relevant point of time. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. The AO has levied the penalty on account of failure of the assessee to file the audit report before the due date of filing the return under section 139(1) of the IT Act i.e. 30th September, 2012. Since the assessee has filed the return of income on 29th March, 2014, therefore, the AO considered this late filing of the return along with the audit report as violation of provisions of section 44AB and consequently the AO levied the penalty under section 271B of the Act. The Id. CIT (A) has confirmed the said action of the AO as under :-

" (iv) It is an undisputed fact that the appellant has filed its return of income on 29.03.2014 electronically and the procedural law as applicable on the said date is to be considered. It would be relevant to reproduce provisions of Rule 12(2) of the I.T. Rule as existing at the relevant point of time i.e. on 29.03.2014 as under :-

"(2) The return of income required to be furnished in Form SAHAJ (ITR-1) or Form No. ITR-2 or Form No. ITR-3 or Form SUGAM (ITR-4S) or Form No. ITR-4 or Form No. ITR-5 or Form No. ITR-6 (or Form No. ITR-7) shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self assessment, if any, claimed to have been paid or any document or copy of any account of form or report of audit required to be attached with the return of income under any of the provisions of the Act.

Provided that where an assessee is required to furnish a report of audit specified under sub-clause (iv), (v), (vi) or (vii) of clause (23C) of section 10, section 10A, clause (b) of sub section (1) of section 12A, section 44AB, section 80IA, section 80IB, section 80IC, section 80ID, section 80JJAA, section 80LA section 92E or section 115JB of the Act, he shall furnish the same electronically."

(v) Thus, on the date of filing of its return of income, the appellant was required to file its audit report electronically which was not done by the appellant. Had the appellant filed its return of income before the above amendment made in Rule 12(2) of the IT Rules w.e.f. 01.04.2013, it would not be required to file its audit report electronically but that is not the case. Therefore, in view of the totality of facts and circumstances of the case, it is held that the appellant has not complied with the provisions of section 44AB of the Act to be read with Rule 12 of the IT Rules and thus the AO was justified in imposing

penalty of Rs. 1.50 lac u/s 271B of the Act and hence the same is hereby upheld.”

Thus the Id. CIT (A) has applied the amended provisions of Rule 12(2) of the IT Rules as on the date of filing of the return by the assessee on 29th March, 2014. It is pertinent to note that the AO has not levied the penalty for not filing of the audit report along with the return of income filed by the assessee on 29th March, 2014 but the AO has levied the penalty due to the delay in filing the audit report as it was filed along with the return of income on 29th March, 2014. Further, the rule 12(2) even if it is considered to be applied as on the date of filing the return, the relevant date is the due date of filing the return under section 139(1). Hence when the assessee has already filed the audit report on 29.03.2014 and as per the return of income the audit report was already obtained and read on 2nd September, 2012, then in the facts and circumstances of the case prior to the return of income filed by the assessee there was no occasion for the assessee to file the audit report separately. Further, the amended provisions of rule 12(2) came into effect from 01.04.2013 whereas the due date of filing the return under section 139(1) is 30th September, 2012 and hence when the amended rule was not applicable as on 30th September, 2012, the assessee has made out the clear case of reasonable cause for not complying with the provisions of section 44AB and consequently the case of the assessee clearly falls under the provisions of section 273B of the Act. Accordingly, in the facts and circumstances of the case and in view of decision of Hon'ble Punjab &

Haryana High Court in case of CIT vs. K.K. Spun Pipe (supra), the penalty levied under section 271B is not sustainable and the same is deleted.

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

Order is pronounced in the open court on 30/05/2019.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

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

Jaipur

Dated:- 30/05/2019.

Das/

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

1. The Appellant- M/s.Eden Automotives Pvt. Ltd., Jaipur.
2. The Respondent – The ITO Ward 1(3), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 193/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

