

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.3126/CHNY/2018
निर्धारण वर्ष /Assessment year : 2015-2016.

Jude Angelo Menezes,
No.9, 2nd Kamaraj Street,
Srinivasa Nagar, Padi,
Chennai 600 050.

Vs. Income Tax Officer,
Non Corporate Ward 7(4)
Chennai 600 034.

[PAN ALFPM 3068G]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. B. Ramakrishnan, FCA
प्रत्यर्थी की ओर से /Respondent by : Ms. R. Anitha, IRS, JCIT

सुनवाई की तारीख/Date of Hearing : 28-082019
घोषणा की तारीख /Date of Pronouncement : 30-08-2019

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of the Commissioner of Income Tax (Appeals)-7, Chennai ('CIT(A)' for short) dated 28.09.2018 for the Assessment Year (AY) 2015-2016.

2. The Assessee raised the following grounds of appeal:

'1. For that the order of the Learned Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.

2. The Learned Commissioner of Income Tax (Appeals) has erred in confirming Gross Receipt of the Appellant to be Rs. 5,33,526/- without appreciating the fact that the appellant is the business of Future and Options and the total gross receipts shall be only the margin amount which is less than the threshold limit u/s 44AB of the Act.

3. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the penalty levied u/s 271B amounting to Rs.1,50,000/- for non-filing of tax audit report.

For these grounds and such other grounds that may be adduced before or during the hearing of the appeal, it is prayed that the Hon'ble Tribunal may be pleased to delete the penalty levied or pass such other orders as the Hon'ble Tribunal may deem fit".

3. The brief facts of the case are as under:

The appellant is an individual. The return of income for the assessment year 2015-2016 was filed on 22.09.2016 disclosing total income of ₹50,089/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Non Corporate Ward 7(4), Chennai vide order dated 30.11.2017 passed u/s. 143(3) of the Income Tax Act, 1961 (for short 'the Act'). Subsequently, assessee was issued show cause notice as to why order imposing penalty u/s.271B of the Act should not be passed as assessee had

failed to get his books of accounts audited as stipulated under the provisions of Section 44AB of the Act. In response to show cause notice, it was submitted that assessee is in the business of derivatives, futures and options, where the transactions are completed without delivery of shares. Securities were squared off by payment of difference. Though the contract notes were issued for full value, based on the guidance note issued by The Institute of Chartered Accountants of India (in short 'ICAI'), the turnover in such type of business is determined by taking only margin differences, since the margin differences in assessee's case is below the prescribed limit, books and accounts were not audited. The Assessing Officer rejected the contention of the assessee and levied penalty of ₹1,50,000/- u/s.271B of the Act vide order dated 24.05.2018.

4. Being aggrieved, an appeal was preferred before Id. CIT(A), who vide impugned order had confirmed levy of penalty.

5. Being aggrieved by the order of the CIT(A), the appellant is in appeal before us in the present appeal. The Id. Authorised Representative submitted that in terms of guidance note issued by ICAI only value of the margin differences to be reckoned for the purpose of turnover. Since the value of margin is less than the prescribed limit, the books of accounts were not liable to be audited.

He submitted that in any event the assessee is under bonafide belief that the books of accounts are not liable for audit in the light of the guidance note issued by ICAI, moreover reliance was placed on the decision of Mumbai Bench of the Tribunal in the case of *Growmore Exports Ltd vs. ACIT, (2001) 78 ITD 95*, it was submitted that levy of penalty is not warranted.

6. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

7. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to levy of penalty u/s.271B of the Act. Assessee is undoubtedly is in the business of derivatives, futures and options. In such business ICAI prescribes that only the difference of margin should alone be reckoned for the purpose of computing turnover. In the present case, admittedly, the value of margin is below the prescribed limit specified u/s.44AB of the Act. Therefore the books of accounts of the assessee was not audited. However, according to the Assessing Officer, gross value of the purchases and sales transaction should alone be reckoned and accordingly levied penalty u/s.271B of the Act for failure to get the books of accounts audited. The provisions of Section 273B of the Act provides that in case there is reasonable cause for failure to get the

books of accounts audited, no penalty shall be levied u/s.271B of the Act. In the present case, assessee is under bonafide belief that his books of accounts are not liable to be audited in the light of the guidance note issued by the ICAI. In our opinion, this constitute reasonable cause, as the appellant is under the bonafide belief that the books of accounts are not subject to tax audit, the Assessing Officer ought not have levied penalty. We are fortified in our view by the decisions of Mumbai Bench of the Tribunal in the cases of *Growmore Exports Ltd (supr)*, *Aatur Holdings (P) Ltd (ITA No.5896/Mumbai/1995)* and *Harsh Estates (P) Ltd (ITA No.5897(Bom)/1995)*.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 30th day of August, 2019, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:30th August, 2019

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |