

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'SMC', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 991/JP/2018
निर्धारण वर्ष/Assessment Year : 2013-14.

Shri Gyarsi Lal Choudhary, Surani Bazar Srimadhapur, V&P Mangra Ki Dhani, Sikar.	बनाम Vs.	The Income Tax Officer, Ward Neemkathana.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAZPC 4656 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta (Advocate)

राजस्व की ओर से / Revenue by: Shri A.K. Mahela (JCIT)

सुनवाई की तारीख / Date of Hearing : 25.09.2019.

घोषणा की तारीख / Date of Pronouncement : 30/09/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 29.06.2018 of Id. CIT (Appeals)-3, Jaipur arising from penalty order passed under section 271B of the IT Act for the assessment year 2013-14. The assessee has raised the following grounds of appeal :-

- " 1.1 the impugned penalty order u/s 271B dated 29.08.2016 is bad in law and on facts of the case for want of jurisdiction and various other reasons and hence the same may kindly be quashed.
- 2.1 Rs. 1,50,000/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in sustaining the penalty of Rs. 1,50,000/- imposed u/s 271B for non furnishing report within time by the Id. AO. Hence the penalty so imposed by the Id. AO and sustained by the Id. CIT (A) is being totally contrary to the provisions of law and facts on the record and hence the penalty may kindly be deleted in full.

- 2.2 The Id. CIT (A) has grossly erred in law as well as on the facts of the case in passing the exparty order without providing the adequate and reasonable opportunity of being heard. Hence the penalty so sustained by the Id. CIT (A) is being totally contrary to the provisions of law and facts on the record in gross breach of law and hence the penalty may kindly deleted in full.
3. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.”

2. The assessee is an Individual and proprietor of M/s. Banwari Lal Choudhary. The assessee is engaged in the business of wholesale trading and commission agent of food grains, oil seeds etc. The assessee filed his return of income on 28.03.2014 declaring total income of Rs. 4,95,780/-. The assessment was completed under section 143(3) on 19th February, 2016 at a total income of Rs. 5,28,700/-. The AO initiated the penalty proceedings under section 271B for the default in furnishing audit report along with the return of income. The AO levied the penalty under section 271B of Rs. 1,50,000/- which is minimum penalty leviable under this section. The assessee challenged the action of the AO before the Id. CIT (Appeals) but could not succeed.

3. Before the Tribunal, the Id. A/R of the assessee has submitted that the assessee is more than 78 years of age and has been regularly assessed to income-tax for the last so many years. Except for the year under consideration, the assessee has never defaulted in getting his accounts audited and filing the audit report. He has further contended that in the year under consideration the assessee was not maintaining a good health as he was suffering from diseases as well as old age and could not submit the audit report due to delay in getting the accounts

audited and consequently delay in filing the audit report at the time of filing the belated return. Therefore, it was a bonafide and inadvertent mistake of not filing the audit report. The Id. A/R has referred to the return of income filed by the assessee and submitted that the accounts were duly audited and a reference of audit report dated 28th March, 2014 is made in the return of income. Therefore, only due to a bonafide mistake the same could not be filed along with the return of income. In support of his contention, he has relied upon the decision of Hon'ble Supreme Court in case of Hindustan Steels vs. State of Orissa, 83 ITR 26 (SC) as well as in case of CIT vs. CIT vs. Mathana Model Co-operative Credit & Service Society Ltd., 299 ITR 70. Thus the Id. A/R has contended that once the assessee has explained the cause of default and the same is bonafide and reasonable, then in view of the provisions of section 273B, no penalty is required to be levied.

4. On the other hand, the Id. D/R has relied upon the orders of the authorities below and submitted that the provisions of section 44AB are statutory and compliance of such provision is mandatory. The reasons explained by the assessee for failure of submitting the audit report is not supported by any documentary evidence.

5. I have considered the rival submissions as well as the relevant material on record. The assessee explained before the AO in the penalty proceedings that he is an old person and was suffering from illness, therefore, he could not prepare the account in time and got it audited which are reproduced in para 3 of the penalty order as under :-

"3. *In response to the show cause notice, the assessee submitted his reply on 24.06.2016 through his A/R Shri Mukesh Gupta,*

Advocate that the assessee is a senior citizen of the 78 years of age. In the year under consideration, the assessee was ill and suffering from some disease being in old age. Hence, he could not prepare the accounts in time and provide to the Chartered Accountant in time and not provide to the Chartered accountant in time when he got recover he get his accounts audited in the March of 2014 and filed the same to the department. Only due to this reason he could not submit the same and it was beyond control to the assessee."

The fact of old age of the assessee being more 78 years of age at that point of time is not in dispute and further when the assessee has been regularly filing the return of income for so many years without any default, then the reasons explained by the assessee for delay in getting the accounts audited are reasonable and bonafide and, therefore, in view of the provisions of section 273B, the penalty levied by the AO and confirmed by the Id. CIT (A) is deleted.

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

Order is pronounced in the open court on 30/09/2019.

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

Jaipur

Dated:- 30/09/2019.

Das/

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

1. The Appellant- Shri Gyarsi Lal Choudhary, Srimadhapur.
2. The Respondent – The ITO Ward Neem Ka Thana.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 991/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

