

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' DELHI**

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT

**ITA NO. 3046/DEL/2019
AY : 2013-14**

M/s I Strat Software Pvt. Ltd., Plot No. 315, Ist Floor, Udyog Vihar, Phase-IV, Gurgaon, Haryana-122002 (PAN: AABCI1932L)	vs	ACIT, Ward 12(1), New Delhi.
(Appellant)		(Respondent)

Appellant by: Shri Sameer Kapoor, CA

Respondent by: Ms Ekta Vishnoi, Sr. DR

Date of hearing : 25.09.2019

Date of pronouncement: 31.10.2019

ORDER

This appeal is preferred by the assessee against the order of the learned Commissioner of Income Tax(A), New Delhi dated 29.09.2017 for assessment year 2013-14,

2. In this appeal, the grievance of the assessee is that the learned Commissioner of Income Tax(A) unjustly upheld the penalty levied u/s 271B of the Income Tax Act, 1961 (hereinafter called 'the Act') amounting to Rs. 1,50,000/-.

3. In brief, the relevant facts are that the assessee is a company incorporated under the provisions of the Companies Act, 1956 which was, inter alia, required

to get its accounts audited in terms of Section 44AB of the Act. It was noted that such audit was done on 21.4.2014, which was beyond the stipulated date. As a consequence, the Assessing Officer required the assessee to show cause as to why penalty u/s 271B of the Act may not be levied for the aforesaid default. A perusal of the order of the Assessing Officer reveals that the assessee canvassed that there was reasonable cause for not getting the accounts audited u/s 44AB of the Act within the prescribed period. According to the assessee, there was a change in the ownership of the shareholding of the assessee company, and consequent to which there was to be a change in the statutory auditors who were to audit the Annual Financial Statements in terms of Companies Act, 1956. Due to the change of auditors, the audit of the Annual Financial Statements for the year under consideration was delayed and consequently the audit prescribed u/s 44AB was also delayed. Eventually, the assessee obtained the tax audit report u/s 44AB of the Act on 21.4.2014 and, thereafter, it filed its return of income for the instant year on 28.4.2014. The Assessing Officer was not satisfied with the explanation rendered and, therefore, he imposed a penalty of Rs. 1,50,000 u/s 271B of the Act. The said penalty has been affirmed by the Commissioner of Income Tax(A).

4. Before me, the learned representative for the assessee pointed out that not only the statutory audit in terms of provisions of the Companies Act, 1956 was delayed due to change in auditors but even the Annual General Meeting for the

year ending 31.3.2013 could not be convened as per the dates prescribed under the provisions of the Companies Act, 1956. The learned representative made a statement at Bar that, on an application made by the assessee, the Registrar of Companies has since condoned the delay in holding the Annual General Meeting wherein the Financial Statements for the financial year under consideration were adopted. Be that as it may, it is sought to be made out that tax audit u/s 44AB of the Act could not be completed in time in the absence of completion of the statutory audit as per the provisions of Companies Act, 1956. This, according to the learned representative, constituted a reasonable cause for the purpose of mitigating the rigours of penalty imposed u/s 271B of the Act.

5. On the other hand, the learned DR reiterated the stand of the Assessing Officer to the effect that there was enough time for the assessee to have completed the statutory audit in terms of the provisions of the Companies Act, 1956 and that there was no reasonable cause for the delay in obtaining of the tax audit report u/s 44AB of the Act.

6. I have carefully considered the rival submissions. Ostensibly, the appellant has defaulted in not getting its accounts audited in terms of Section 44AB of the Act within the prescribed time. Section 273B of the Act prescribes that in case there is a reasonable case for such default, the same would save the assessee from the rigors of Section 271B of the Act, which prescribes a penalty for not adhering to the requirement of section 44AB of the Act. In the present

case, it is an undisputed position that the assessee being a corporate entity was required to get its accounts audited in terms of the provisions of the Companies Act, 1956 before the same could be subject to the audit prescribed u/s 44AB of the Act. Ostensibly, there was a delay in the conduct of the statutory audit under the provisions of the Companies Act, 1956, for which the reasons have been explained. In my considered opinion, such delay constitutes a reasonable cause in the present circumstances so as to mitigate the rigors of section 44AB of the Act on the assessee, especially considering the fact that bonafides of the reason for the delay are not in doubt. As a consequence, I direct that the penalty levied by the Assessing Officer be set aside.

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

Order pronounced in the open court on 31.10.2019.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

DATED: 31st OCTOBER, 2019
‘GS’

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

By Order

Asstt. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	