

आयकर आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3492/Chny/2018

निर्धारण वर्ष /Assessment Year: 2015-16

M/s. The Gold King Exports,
No.1, Vaikkal Thottam,
Palladam Road,
Tirupur – 641 604.

Vs. The Income Tax Officer,
Ward – 2(1),
Tirupur.

PAN: AABFT6732B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri Arjunraj, CA

प्रत्यर्थी की ओर से /Respondent by

: Shri G.D. Jayanthi Angayarkanni, JCIT

सुनवाई की तारीख/Date of Hearing

: 22.08.2019

घोषणा की तारीख /Date of Pronouncement

: 08.11.2019

आदेश / ORDER

PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:

The Assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-3, Coimbatore in Appeal No.295/17-18 dated 28.11.2018 for the assessment year 2015-16 in which the Id.CIT(A) sustained the penalty levied U/s.271B of the Act.

2. M/s. The Gold King Exports, the assessee filed its return for the assessment year 2015-16 on 14.10.2016 admitting a loss of Rs.67,97,660/-. On verification, the Assessing Officer found that the turnover reported by the assessee was at Rs.2,54,66,791/-. However, the assessee failed to submit audit report as required U/s.44AB within the statutory time allowed i.e., 30.09.2015 but filed it on 14.10.2016 only. Since, there was a failure on the part of the assessee, the Assessing Officer initiated penalty proceedings U/s.271B and levied the penalty. Aggrieved against that order, the assessee filed an appeal before the CIT(A). The Id.CIT(A) sustained the levy of penalty. Against that order, the assessee filed this appeal.

3. The Id.AR pleaded that the audit report was signed on 31.10.2015. The assessee filed voluntarily the return of income admitting a loss of Rs.67,97,660/- on 14.10.2016 along with audit report U/s.44AB. The delay in filing was because of the mistake of the accountant who was entrusted with the work of taking care of the tax matters who has left service without due information. The partner Mrs. Srilatha was also suffering from chicken kuniya fever due to which she was immobilized even after recover from fever. The company has incurred huge loss of Rs.17,04,144/- in the assessment year 2014-15

and during the year the loss of Rs.67,97,660/-. Because of continuous losses year after year there was also misunderstanding among the partners. No notice U/s.142(1) or 143(2) or 148 was issued. The Assessing Officer issued the show cause notice for levy of penalty, for the reason that the assessee failed to get its accounts audited within the specified date, i.e., however he levied the penalty for not submitting the audit report within time. The Id.CIT(A) without appreciating the facts and circumstances sustained the levy of penalty and hence pleaded to allow the appeal.

4. Per contra, the Id.DR submitted that the assessee without reasonable cause failed to comply with the provisions of the Act and hence, the levy made by the Assessing Officer and sustained by the lower authorities may be upheld.

5. We heard the rival submissions and gone through the relevant material. Due to unavoidable circumstances, the assessee filed its return belatedly on 14.10.2016 along with audit report dated 31.10.2015. It is not the case of the Assessing Officer that the audit was not concluded as on 31.10.2015 nor the accounts of the assessee was not reliable etc. In the facts and circumstances, we are of the

view that the levy of penalty for a venial breach is unwarranted and hence we delete the impugned penalty and allow the assessee's appeal.

6. In the result, the assessee's appeal is allowed.

Order pronounced in the Court on 8th November, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 8th November, 2019

Sd/-

(एस जयरामन)
(S. Jayaraman)

लेखा सदस्य /Accountant Member

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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