

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 4917/Mum/2018

(निर्धारण वर्ष / Assessment Year 2014-15)

BUL Infradevelopers Pvt. Ltd. 901-902, Sagar Darshan Apartment, Sector 18, Tower No.6, Nerul Navi Mumbai-400 706	बनाम/ Vs.	The Income Tax Officer Ward 15(1)(3), Room No. 15B, Gr. Floor, Aayakar Bhavan, Maharshri Karve Road, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AADCB4921H		

अपीलार्थी की ओर से / Appellant by	:	Shri M. M. Hussain, AR
प्रत्यर्थी की ओर से / Respondent by	:	Ms. Kavita P Kaushik, DR

सुनवाई की तारीख / Date of hearing:	28.11.19
घोषणा की तारीख / Date of pronouncement:	28.11.19

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal of assessee is arising out of the order of Commissioner of Income Tax (Appeals)-24, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-24/ITO 15(1)(3)/IT-82/2017-18 vide order dated 22.06.2018. The Assessment was framed by the Income Tax Officer, Ward-15(1)(3), Mumbai (in short ITO/



AO) for the A.Y. 2014-15 vide order dated 28.12.2016 under section 144 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) levying the penalty under section 271B of the Act for non filing of audit report under section 44AB of the Act before the due date i.e. on or before 30.09.2014. For this, assessee has raised the following two grounds: -

"1. On the facts and in circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the Assessing Officer of levying penalty of ₹1,50,000/- under section 271B.

2. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal. All the above grounds of appeal are without prejudice to each other."

3. Brief facts are that the assessee company filed its return of income on 21.03.2016 for the relevant AY 201-15 declaring total loss of ₹2,03,44,020/-. The assessment was completed under section 144 of the Act on 28.12.2016. During the course of assessment proceedings, the AO noticed that the assessee's total turnover during the year under consideration was at ₹8,48,96,343/-. According to him, the assessee has not furnished the audit report as per section 44AB of the Act on or before the due date i.e. 30.09.2014. Thereafter, the AO levied the penalty under section 271B of the Act amounting to ₹1.50



lacs. The assessee preferred the appeal before CIT(A). The CIT(A) also confirmed the action of the AO by observing in Para 2.4.1 as under: -

"2.4.1 The only effective ground raised in this appeal is in respect of penalty of Rs. 1,50,000/- levied u/s 271 B of the Act. As per the provisions of section 44AB read with section 271B of the Act, every person covered by the conditions stated therein should get its accounts audited and furnished report by the specified date. In this case, the AO noted that the appellant has not complied with the said provisions. As it is envisaged in the statute i.e, section 271B, the AO has levied penalty of Rs-150,000/-. The Ld AR has during the appeal proceedings submitted that the appellant's case is covered by section 92E as per which the audit report to be completed and furnished on or before 30.11.2014 but due to unavoidable circumstances the report was submitted on 31.03.2016. That means it was accepted that it did not comply with the provisions mentioned above. Considering the facts and legal position of the issue, I am of the considered opinion that the AO in view of the appellant's failure to furnish audit report on or before the due date specified therein has rightly invoked the



provisions of section 2716 and accordingly levied penalty. Therefore, I do not find any infirmity in the AO's order and hence confirm the penalty. This ground is dismissed."

Aggrieved, assessee preferred second appeal before Tribunal.

4. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee before CIT(A) and AO claimed that the assessee was required to complete its audit under section 92E of the Act and submit its report in form No. 3CEB on or before 30.11.2014. It claimed that the audit was completed but due to unavoidable circumstances, the report and return was filed only on 31.03.2016. We noted that the CIT(A) confirmed the action of the AO only on the basis that the assessee failed to furnish audit report on or before the due date as specified therein and has rightly invoked the penalty proceedings under section 271B of the Act. We noted from the orders of the AO and the CIT(A) that reasonable cause has not been considered by the authorities below. Even, the assessee has to establish its reasonable cause in term of section 273B of the Act. As the case requires reconsideration, we restore this matter back to the file of the AO, who will reconsider the assessee's case in term of the provisions of section 273B of the Act, where there is a reasonable cause available with the assessee as canvassed by assessee before us. In term of the above, we restore this penalty back to the file of the Assessing Officer. The orders of



the lower authorities are set aside and the matter remanded back to the file of the Assessing Officer.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28.11.2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 28.11.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai