

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

श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री
श्री एस. जयरामन, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2351, 2352, 2353 & 2354/Chny/2019
निर्धारण वर्ष /Assessment Years: 2012-13, 2013-14, 2014-15 & 2015-16

Shri M. Abdul Gani,
No.93, South Avani Moola Street,
Madurai – 625 001.

[PAN: AALPA 6445L]

(अपीलार्थी/Appellant)

Income Tax Officer
Non-Corporate Ward-1(1),
Vs. 2, V.P. Rathinasamy Nadar
Road, CR Building,
Bibikulam,
Madurai – 625 002
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr. S. Sriniranjani, Advocate
प्रत्यर्थी की ओर से /Respondent by : Ms. R. Anita, JCIT

सुनवाई की तारीख/Date of Hearing : 09.12.2019
घोषणा की तारीख /Date of Pronouncement : 09.12.2019

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

These are appeals filed by the Assessee against the common order of the learned Commissioner of Income Tax (Appeals)-2, Madurai confirming the levy of penalty u/s.271B of the Income Tax Act, 1961 in ITA Nos.10 to 13/2018-19 dated 03.07.2019 for the Assessment Years 2012-13, 2013-14, 2014-15 & 2015-16.

2. Mr. S. Sriniranjani, Advocate represented on behalf of the Assessee, and Ms. R. Anita, JCIT represented on behalf of the Revenue.

3. It was submitted by the learned Authorized Representative that the assessee is an individual, who is doing a business of manufacturing and selling umbrellas under the name and style of New Bell Brand Umbrella. It was a submission that there was a survey on the premises of the assessee on 14.09.2016. In the course of survey, VAT returns were found which showed substantial turnover. The assessee was served with a notice u/s.148 for the four relevant Assessment Years. The assessee filed his return of income in response to the notice issued along with the audited report u/s.44AB of the Act. It was a submission that as the audited report was not filed within the time prescribed under the provision of Section 44AB of the Act, the Assessing Officer levied penalty u/s.271B of the Income Tax Act, 1961 for the relevant Assessment Years. It was a submission that the assessee had filed a reply to the show-cause notice which has been extracted by the learned CIT(A) in para-2 of his order. It was further a submission that the Hon'ble Jurisdictional High Court in the case of P. Senthil Kumar vs. Principal Commissioner of Income Tax reported in [2019] 416 ITR 0336 (Mad.) has held that non-filing of the tax audited report before the due date was a technical breach and admittedly, the assessee had filed the audited report along with the return of income and the assessment order was framed by the Assessing Officer on which date the audited report was very much available on the file of the Assessing Officer. Consequently the explanation offered by the assessee can

be accepted at a reasonable cause for his failure to file the audited report within time. The learned Authorized Representative also placed reliance on the decision of the Co-ordinate Bench of this Tribunal in the case of Shri Dinesh Patel vs. The Deputy Commissioner of Income Tax in I.T.A. Nos.1484 & 2833/Mds/2016, wherein under similar circumstances it was held that:

“in any case the audited report was also available with the Assessing Officer when the assessment was completed. This being so, we are of the view that the assessee did have a reasonable cause of the delay in obtaining and furnishing the audited report belatedly along with the return of income. In the circumstances, we are of the view that as the assessee has reasonable cause in view of the provision of Section 273B of the Income Tax Act, 1961, no penalty u/s.271B is leviable on the assessee and consequently we cancel the penalty levied by the Assessing Officer and as confirmed by the learned CIT(A).”

It was a prayer that the penalty levied by the Assessing Officer and confirmed by the learned CIT(A), may be deleted in view of the reasonable cause explained and extracted in the order of the learned CIT(A).

4. In reply, the learned Departmental Representative vehemently supported the order of the learned Assessing Officer and the learned CIT(A).

5. We have considered the rival submission and perused the materials available on record.

6. It is noticed from the facts of the present case that it is clear that the assessee has responded to the notice issued u/s.148 and has filed the return of income along with the audit report within the time provided. Admittedly, the

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assessment had also been completed after considering the audit report. Audit reports were also available before the Assessing Officer at the time of completion of the assessment. In the circumstances, respectfully following the principles laid down by the Hon'ble Jurisdictional High Court of Madras in the case of P. Senthil Kumar vs. Principal Commissioner of Income Tax referred to supra, penalty as levied by the Assessing Officer and as confirmed by the learned CIT(A) stands deleted.

7. In the result, the appeals of the assessee are allowed.

Order pronounced in the open Court on 9th December, 2019 in Chennai.

Sd/-

(श्री एस. जयरामन)
(S. JAYARAMAN)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)
(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 9th December, 2019.

IA, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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