

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

1. आयकर अपील सं./ITA No.2221/Ahd/2018 - A.Y. 2013-14

2. आयकर अपील सं./ITA No.2222/Ahd/2018 – A.Y. 2013-14

1.Shreenathji Realty Bansi Bungalows Atladara, Vadodara 390 012 PAN: ABSES 8363 H	बनाम/ Vs.	1-2. The Dy.CIT Circle-1(2) Baroda – 390 007
2.Nilkanth Developers Vachnamrut Residency Atladara, Vadodara 390 012 PAN: AAIFN 0619 C		
(अपीलार्थी/ Appellants)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Mukund Bakshi, AR
प्रत्यर्थी की ओर से/ Respondent by:	Shri Vidhyut Trivedi, Sr.DR

सुनवाई की तारीख/ Date of Hearing	29/01/2020
घोषणा की तारीख / Date of Pronouncement	30/01/2020

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeals have been filed at the instance of the different Assessees against the separate orders of the Commissioner of Income Tax (Appeals)-5, Vadodara [CIT(A) in short] vide appeal nos.CIT(A), Vadodara-5/10130 and 10068/16-17 both dated 31/07/2018 arising in the penalty order(s) passed under s. 271B of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 24/05/2016 relevant to Assessment Year (AY) 2013-14 respectively.



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Since both the appeals relate to the same issue involving identical facts & circumstances but to different assessees, hence the same are heard analogously and are being disposed of by way of this common order.

2. First, we take up assessee's appeal in ITA No. 2221/Ahd/2018 for AY 2013-14 in the case of M/s Shreenathji Realty. The assessee has raised the following grounds of appeal:-

1. *The Ld. Commissioner of Income Tax (Appeals)-5, Vadodara has erred in law and in facts in confirming the action of the Ld.A.O. in Levying penalty to the extent of Rs.1,37,500/- u/s.271B of the Act ignoring the facts and circumstances of the case. The levy of penalty of Rs.1,37,500/- is bad in law and in facts is prayed to be cancelled.*
2. *Your appellant craves liberty to add, alter, delete or substitute any of the grounds of appeal hereinabove contained.*

3. The effective issue raised by the assessee is that the Ld. CIT(A) erred in confirming the penalty for a sum of Rs. 1,37,500.00 levied by the AO u/s 271B of the Act.

4. The brief facts of the case are that the assessee is a partnership firm and engaged in the business of land dealings and real estate development. There was a survey operation conducted under section 133A of the Act dated 29-10-2012. The assessee during the survey proceedings admitted undisclosed/unaccounted income of Rs. 2.03 crores which was also offered to tax in the income tax return filed dated 30th March 2014 after due date (31st October 2013) specified under section 139(1) of the Act. As such, the assessee got its account audited under section 44 AB of the Act from the qualified chartered accountant dated 29th March 2014. The assessee defaulted in getting the accounts audited within the time as specified under



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section 44 AB of the Act and furnishing the same to the Income Tax Office within the time.

4.1. Accordingly, the Assessing Officer initiated the penalty proceedings for not getting the accounts audited and furnishing the audit report within the specified time under the provisions of section 271B of the Act vide notice dated 5th November 2015 and 5th May 2016 but there was no response from the side of the assessee. Hence the AO levied the penalty of Rs. 1,50,000/- under the provisions of section 271B of the Act.

Aggrieved assessee preferred an appeal to the learned CIT(A).

4.2. The assessee before the learned CIT(A) submitted that there were various incriminating documents relating to the receipts were found and impounded during the survey proceedings conducted under section 133A of the Act. As a result of discovery of incriminating documents during survey, the assessee got them accounted in the books of accounts which have taken considerable time. Therefore the assessee could not complete the books of accounts within the time which resulted delay in the audit of the accounts in the manner as specified under section 44AB of the Act. Accordingly the assessee claimed that there was reasonable cause which prevented to get its accounts audited and furnished the same within the time limit as specified under section 44AB of the Act. Accordingly the assessee prayed before the learned CIT (A) to provide immunity from the penalty imposed by the AO under section 44 AB of the Act in pursuance to the provisions of section 273B of the Act.



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4.3. However, the learned CIT (A) disregarded the contention of the assessee by observing that there was no allegation of the assessee that there was delay in getting the impounded documents from the income tax office. Furthermore, there was enough time available to the assessee between the date of survey i.e. 29th October 2012 and last date of filing the tax audit report under section 44AB of the Act. Accordingly, the learned CIT (A) confirmed the penalty in part for Rs. 1,37,500.00 only.

Being aggrieved by the order of the Ld. CIT-A, the assessee is in appeal before us.

5. The Ld. AR before us submitted that the purpose of the tax audit under section 44AB of the Act was to ensure that the informations furnished by the assessee in the income tax return are correct so as to save the time of the income tax officers in carrying out routine verifications of the purchases and sales shown in the financial statements. In the present case, the income disclosed by the assessee in its return of income was accepted without any variation in the assessment framed under section 143(3) of the Act. Thus, the object of the tax audit report as specified in the CBDT circular bearing No. 387 dated 6 July 1984 was achieved.

5.1. The learned AR also claimed that the assessee's turnover from the disclosed sources for the year under consideration was Rs. 72 lakhs only whereas it was liable to get accounts audited under section 44AB of the Act, in the event where the turnover was in excess of Rs. 1 crore. Accordingly the assessee was under the bona fides believe that it is not liable to get the accounts audited under section 44AB of the Act. Moreover, the assessee was also under the bona fides believe that the income admitted during the survey



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proceedings shall not be part of the turnover for the purpose of tax audit under section 44AB of the Act.

5.2. The learned AR also claimed that the books of accounts were audited and the tax audit report was furnished much before the commencement of scrutiny assessment under section 143(3) of the Act. As such the notice under section 143(2) of the Act was issued upon the assessee on 3rd September 2014, much after complying the provisions of section 44AB of the Act. As such there was no loss to the Revenue for not getting the accounts audited and correspondingly furnishing the tax audit report within the time specified under the provisions of law in the given facts and circumstances.

5.3. In view of the above, the learned AR for the assessee prayed to provide the immunity from the penalty for the default committed under section 44AB of the Act, in pursuance to the provisions of section 273B of the Act.

6. On the other hand, the Ld. DR before us vehemently supported the order of the authorities below.

7. We have heard the rival contentions and perused the materials available on record. The issue in the instant case is that the assessee did not get the books of account audited within the time as prescribed under the provision of section 44AB of the Act.

7.1. The AO levied the penalty under section 271B of the Act for not furnishing the audit report in form 3CD within the specified time. Undisputedly, the assessee could not get the accounts audited under section 44 AB of the Act within the specified time. However, the assessee has been



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provided immunity from such penalty under the provisions of section 273B of the Act if it proves that there was the reasonable cause for non-compliance of getting the books of accounts audited. Thus, the onus lies on the assessee to prove that there was the reasonable cause which prevented it to get the accounts audited.

7.2. The expression 'reasonable cause' has not been defined in the Act and it has, therefore, to be understood in its natural sense. Whether a particular fact or circumstance is a reasonable cause or not will depend on the facts of each case. It is primarily a question of fact which has to be decided, keeping in view the facts and circumstances of each case. Where a particular fact or circumstance is capable of two interpretations, the interpretation favourable to the assessee should be adopted. It is the duty of the authority concerned to take a reasonable view and not to reach a conclusion arbitrarily or capriciously. In *Addl. CIT v. Mohammed & Sons* [1985] 154 ITR 220, the Rajasthan High Court said: 'Before a cause can be said to be reasonable or not, it must be found on a fact that a particular cause operated upon the mind of the assessee which prevented him from filing the return in time. The onus is on the assessee to show that he was prevented by sufficient cause from complying with the statutory requirement of filing return in time and it is for the authority concerned to be satisfied that the cause shown is a reasonable cause'. In this decision, the Court also held that 'sufficient cause' or 'reasonable cause' cannot virtually be the same shade of meaning and that there is no substantial difference between the two expressions.

7.3. Now we apply the aforesaid principles in the present facts of the case whether there was sufficient cause for the non-compliance of the statutory provision as provided under section 44AB read with section 271B of the Act.



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In this regard we note that the assessee has given two causes which prevented it from the compliance of the provisions of section 44 AB of the Act.

7.4. Firstly, there was not sufficient time available to it as lot of documents which are incriminating in nature were found during the survey proceedings. Accordingly, the assessee claimed to have taken a lot of time for getting the accounts audited. Regarding this, we find that the learned AR at time of hearing has not substantiated the arguments based on any tangible materials. Therefore, we are not impressed with the argument of the learned AR for the assessee. It is because of the fact that the assessee was having sufficient time in hand after date of the survey i.e. 29th October 2012 till the date of filing the return of income i.e. 31st October 2013. Hence, we reject the 1st contention of the learned AR in the present facts and circumstances.

7.5. The 2nd fold of contention of the learned AR is that the assessee was not aware about fact that it was under the obligation to treat the income disclosed during the survey proceedings as part of the turnover. Again the learned AR for the assessee, failed to substantiate his contention based on the documentary evidence. Just ignorance of the provisions of law, the assessee cannot take the benefit of non-compliance of the provisions as specified under the Act. In this regard we draw support and guidance from the judgment of Madras High Court in the case of Vishwanathan Silk Centre Vs. CIT reported in 203 ITR 131 wherein it was held that ignorance of law cannot be of sufficient reason. Hence, we reject the 2nd fold of contention raised by the assessee.



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7.6. However, nevertheless it is important to note that there was no infirmity in such tax audit report as observed by the AO. As such the income declared by the assessee in its income tax return has been accepted without pointing any variation. Moreover the purpose of tax audit was to ensure that the information furnished by the assessee in the income tax return are correct so as to save the time of the income tax officer is in carrying out routine verifications of the purchases and sales and other details shown in the financial statements. Thus it is transpired that there was the substantial compliance on the part of the assessee in getting the accounts audited and subsequently furnishing the tax audit report which was accepted by the revenue without pointing out any defect.

7.7. In holding so, we draw support and guidance from the order of Amritsar tribunal in the case of ITO versus Bindra Ban Bansi Lal reported in 78 ITD 228 wherein it was held as under:

"There was no difference between the returned income and the finally assessed income. Admittedly, there was no loss of revenue to the Government. Under section 271B the Assessing Officer is vested with discretion either to impose or not to impose penalty depending upon the facts and the circumstances of the case. No doubt, discretion should be exercised judicially and not arbitrarily. It is well settled law that when there is a technical or venial breach of the provisions of law, the ends of justice require that discretion should not be exercised in favour of punishing a minor default. Taking into consideration the relevant facts of the case, the Assessing Officer should not have imposed penalty under section 271B."

7.8. We also note that the delay in getting the books of accounts audited cannot be considered as failure on the part of the assessee as envisaged under the provisions of section 271B of the Act. Thus the delay in getting the accounts audited cannot attract the penalty provisions as specified under section 271B of the Act. In this regard we find support and guidance from the



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order of this tribunal in the case of ITO versus Sapphire Traders Pvt. Ltd. reported in 66 TJJ 180 wherein it was held as under:

"Wherever the Legislature has sought to penalise a default relating to 'delay' in complying with a statutory provision, the quantum of penalty is invariably linked to the period of delay such as the days or months involved in the delay. On the other hand, when the default relates to 'failure' to comply with a statutory provision, the quantum of penalty is at a specified amount in absolute terms or as a percentage of the tax involved or total income assessed to turnover or an amount relating to a transaction which gives rise to such default.

By the same analogy, as in the case of section 271(1)(a), 271(1)(b) and 271(1)(c), it was reasonable to conclude that under section 271B, the Legislature purported to punish a 'failure' rather than a 'delay' in complying with the statutory provisions. If a delay is to be visited with penalty under section 271B, it would mean that the penalty amount would be the same irrespective of the period of delay. In other words, delay of even one day will invite the same consequence as delay of one month or one year. Obviously such an interpretation was not warranted while applying the penal provisions. In this view of the matter also, what is sought to be penalised under section 271B was not 'delay' but the absolute 'failure' in getting the accounts audited or to obtain the report of such audit or to furnish such report. In the present case, the assessee did file the audit report along with the return, though the return was late by a short period of 15 days. Hence, in view of the legal position, penalty was not exigible under section 271B."

7.9. Therefore, we are of the view that the assessee cannot be visited to the penalty on account of delay in getting the accounts audited and furnishing the tax audit report in form 3CD under the provisions of section 44 AB of the Act. With the above observations, the orders of lower authorities are set aside and the penalty levied u/s 271B is deleted.

8. In the result, the appeal of the taxpayer stands **allowed**.

Coming to Assessee's appeal in ITA No.2222/Ahd/2018 for AY 2013-14 in the case of Nilkanth Developers.



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9. Both the sides consented that identical issue is involved in this appeal as well. Thus, for parity of reasons noted above, our view in ITA No. 2221/Ahd/2018 in the case of Shreenathji Realty for AY 2013-14 (*supra*) shall apply *mutatis mutandis* to this assessee's appeal. As a result, the appeal of the Assessee in ITA No.2222/Ahd/2018 in the case of Nilkanth Developers for AY 2013-14 is allowed.

10. In the combined result, both the appeals of the Assesseees are allowed.

This Order pronounced in Open Court on	30/01/2020
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Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 30/01/2020

टी.सी.नायर, व.नि.स./ T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-5, Vadodara
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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