

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
Before Shri Pawan Singh (J.M.) & Shri S. Rifaur Rahman (AM) &

ITA No. 6590/Mum/2018(Assessment year : 2012-13)

M/s Yash Realtors C/o G.P. Mehta & Co 807, Tulsiani Chambers Nariman Point, Mumbai-400 021 PAN : AAAFY0472G	vs	The Dy.CIT-30(3), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Shri G.P. Mehta, CA
Respondent by	Shri V Vinod Kumar, Sr AR
Date of hearing	15-01-2020
Date of pronouncement	31-01-2020

ORDER

PER PAWAN SINGH, JM :

1. This appeal by revenue is directed against order of CIT(A)-41, Mumbai dated 08-08-2018 confirming penalty levied u/s 271B for assessment year 2011-12. The assessee has raised the following grounds of appeal:-

“ 01 . The orders passed by the learned lower authorities are bad in law and bad in facts,

02. The ex-parte order upholding/confirming the levy of penalty at Rs. 1,§Q,6QG/- by the learned GIT (A) void ab-initio, inasmuch as, the appellant was prevented by a reasonable and sufficient cause r seeking an adjournment. No reason was assigned for refusing to grant adjournment.

03. The ex-parte order upholding penalty order passed u/s 271B of the I. T. Act, 1961, is void ab-initio:, inasmuch as, no specific

charge was communicated vide the show cause notice, prior to levy impugned penalty of Rs. 1,50,000/-

04. The appellant was prevented by a reasonable and sufficient cause for delayed obtaining of tax audit report Learned lower authorities have failed in not appreciating the reasons assigned for delayed obtaining .-• audit report and have further erred in levying / imposing impugned penalty.

05. The penalty levied u/s. 271 B of the I. T. Act, 1961, at Rs. 1,50,000/- is wholly unjustifiable, inasmuch while e-filing of return of income was mandatory, no facility was provided for e-filing of tax audit report. Thus the appellant was prevented by a reasonable and sufficient cause in not furnishing the audit report alongwith return of income.”

2. Brief facts of the case are that assessee filed return of income declaring income of Rs.3 crores (approximately) on 30-11-2012. The return of income was filed beyond the due date of filing return of income. Assessment was completed accepting the return income. During the assessment, the AO noted that the books of account of assessee were audited only on 27-11-2012. Accordingly penalty u/s 271B was initiated. Show cause notice dated 25-03-2015 under section 271B read with section 274 was issued and served on the assessee. The assessee, vide reply dated 14-09-2015 stated that no specific charge was raised against the assessee. In absence of any specific charge, it is not possible for the assessee to file explanation. The assessee further stated that the assessee firm has obtained audit report on 27-11-2012.

The assessee further stated that senior partner of firm, viz. Sampatraj R Gandhi, who was looking after the affairs of the firm was suffering from severe attack of Parkinson's and was on bed rest. The submission of assessee was not accepted by AO. The AO took his view that the assessee was required to get its books of account audited on or before 30-09-2012. The assessee was regularly getting its books of account audited since long and this fact was very well aware to the partners of the firm. The books of account of assessee was maintained and monitored by firm of Chartered Accountants. The assessee failed to adduce any evidence which prevented them to get its books of account audited within the stipulated / prescribed period. Therefore, the AO took his view that he was satisfied that assessee failed to get its books of account audited before specified date without any reasonable cause and levied minimum penalty of Rs.1.5 lakhs vide his order dated 24-09-2015. On appeal before CIT(A), the action of AO was confirmed. Thus, further aggrieved, the assessee filed present appeal before us.

3. We have heard the submissions of the learned authorised representative (ld AR) for the assessee and the learned departmental representative (ld DR) for the revenue and gone through the record. The Ld.AR of the assessee submits that the assessee obtained Audit

Report before filing the return of income. The return of income, though filed belatedly, but for filing return of income beyond due date, the assessee paid the penalty on such delay of late filing of return of income. The Ld.AR submits that there was reasonable cause as the senior partner was suffering from Parkinson's disease and ultimately expired on 05-04-2018. The Ld.AR furnished the copy of death certificate of Shri Sampatraj S Gandhi. The Ld.AR submits that there was no intentional or deliberate attempt on the part of the assessee for not getting the accounts audited before due date. The Ld.AR submits that a lenient view may be taken.

4. On the other hand, the Ld. DR submits that assessee has not shown any reasonable cause. No explanation was furnished by assessee in response to the show cause notice issued by AO before passing the penalty order. The assessee firm was regularly getting its accounts audited from many years. Since no plausible explanation was furnished, the penalty levied u/s 271B is justified. In support of his submission, the Ld.DR of the assessee relied upon the decision of Hyderabad Tribunal in ACIT vs Gayatri Travels 56 TTJ 303 (Hyd)(SB).

5. We have considered the submission of both the parties and perused the material placed before us including the assessment order, penalty order u/s 271B and the order of Ld. CIT(A). There is no dispute that due date for filing return of income for AY 2012-13 was 30-09-2012. As per the provisions of the Act, the assessee was required to get its books of account on or before 30-09-2012 for the assessment year under consideration i.e prior to due date of filing the return of income. The assessee filed its return of income for the year under consideration on 30-11-2012. The books of account were audited only on 27-11-2012. The AO issued show cause notice u/s 271B. The show cause notice was duly replied vide reply dated 06-04-2015. We have perused the copy of reply. In the reply the assessee stated that notice was *void ab initio*, no specific charge was mentioned in the said notice. It is not possible for assessee firm to submit the explanation on the subject. The notice was served after the period of limitation. It was also stated that senior partner, Shri Sampatraj S Gandhi was looking after the finalisation of accounts and he was under severe attack of Parkinsons and was under complete bed rest.
6. We have noted that no medical certificate of senior partner was either placed before us or before AO or before Ld. CIT (A). The assessee

objected for validity of notice on the ground of specific charge. We have noted that in the show cause notice, the AO has fairly mentioned to show cause and to appear within 7 days as to why a penalty u/s 271B should not be levied. The AO also mentioned about the opportunity of hearing in person or through authorised representative. The assessee failed to substantiate and furnish plausible explanation, the explanation furnished by the assessee was not found to be plausible. Therefore, no reasonable cause for not levying penalty was disclosed to the AO. Therefore, the AO levied minimum penalty prescribed u/s 271B. Before Ld. CIT(A), the assessee repeated the same contention as submitted before the AO. The Ld. CIT(A) concurred with the order of AO by taking view that no justifiable cause is brought on record. Even before us, except making a submission of Ld.AR of assessee that senior partner was no well, no plausible explanation was furnished. The submissions made by ld AR for the assessee is not convincing to us that the Senior partner of the assessee was not well or was suffering by Parkinson's. No medical certificate or relevant period was furnished either before AO, CIT(A) or before us. The ld. AR for the assessee filed the copy of death certificate of the Sr Partner of the assessee. The date of death of the partner is 05.04.2018

that is almost six years of the relevant period. Moreover, the assessee was getting the audited report from last several years and cannot plead the ignorance of the provisions. Even no plausible explanation was pleaded before us except of repeating the same as pleaded before the lower authorities. Therefore, we do not find any merit in the grounds of appeal raised by assessee.

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

Order pronounced in the open court on 31-01-2020.

Sd/-

Sd/-

(S. Rifaur Rahman)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 31st January, 2019

Pk/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai