

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

श्री इंटूरी रामा राव, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. Nos.2215 & 2216/CHNY/2019.  
निर्धारण वर्ष /Assessment years : 2014-2015 & 2015-2016.

Smt. Harichandran Kaleeswari, **Vs.** The Income Tax Officer,  
No.806/665B, T.H. Road, Non Corporate Range 5(1)  
Soundarapandi Nagar, Chennai.  
Thiruvotriyur,  
Chennai 600 019.

**[PAN ANTPK 6594K]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. I. Dinesh, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Smt. R. Anitha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 12-02-2020  
घोषणा की तारीख /Date of Pronouncement : 13-02-2020

**आदेश / O R D E R**

**PER INTURI RAMA RAO, ACCOUNTANT MEMBER**

These are appeals filed by the assessee directed against the common order of the learned Commissioner of Income Tax (Appeals)-19, Chennai (hereinafter called as 'CIT(A)') dated 27.06.2019 for the assessment years 2014-15 and 2015-2016.

2. Since, the identical facts and issues are involved in these appeals, we proceed to dispose of the same vide this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal in ITA No.2215/Chny/2019 for assessment year 2014-15 are stated herein.

4. The Assessee raised the following grounds of appeal:

*"1. The Order of the Commissioner of Income Tax (Appeals) confirming the levy of penalty u/s 271 B of the Act is arbitrary and contrary to the law, facts and circumstances of the case.*

*2. The Commissioner of Income Tax (Appeals) ought to have appreciated that there is a reasonable and justifiable cause for non submission of Audit Report u/s. 44AB of the Income Tax Act.*

*3. The Commissioner of Income Tax (Appeals) failed to consider the submissions made before him for noncompliance of section 44AB by the Appellant was beyond their control and impossible to comply within the time stipulated by the statute.*

*4. The Commissioner of Income Tax (Appeals) went wrong in not considering the authorities placed before him and went wrong in distinguishing them.*

*5. The Commissioner of income Tax (appeals) ought to have noted that the Appellant filed Audit Report along with the ROI before the Assessment completed.*

*6. Any other ground that may be raised at the time of hearing".*

5. The brief facts of the case are as under:

The appellant is an individual and dealer in edible oil, dhall and cool drink. The return of income for the AY 2014-15 was filed belatedly on 16.03.2017. Based on this information, the Assessing Officer formed an opinion that income escaped assessment and accordingly issued notice u/s.148 of the Income Tax Act, 1961 (in short "the Act") on 30.03.2017. In response to the said notice, assessee filed return of income on 29.06.2017 admitting income of ₹3,18,570/-. Against the said return of income, the assessment came to be completed at total income of ₹14,37,030/- after making addition on account of unaccounted cash deposit of ₹90,440/- and disallowance of expenses of ₹3,22,651/-. Additions made are not subject matter of present appeal. Subsequently, the Assessing Officer on noticing that assessee had disclosed turnover of ₹9,97,79,324/- and tax audit report as prescribed u/s.44AB of the Act was not filed within the due date issued show cause notice dated 29.12.2017. In response, it was submitted that tax audit report was uploaded alongwith return of income on 29.06.2017 and therefore penalty should not be levied. The Assessing Officer was of the view that assessee had failed to demonstrate reasonable cause and therefore proceeded with levy penalty of ₹1,50,000/- vide order dated 28.06.2018.

**6.** Being aggrieved, an appeal was preferred before the Ld.CIT(A) who vide impugned order confirmed levy of penalty.

**7.** Being aggrieved by the order of the Id. CIT(A), the appellant is in appeal before us in the present appeal. The Id. Authorised Representative submitted that tax audit report was filed before the completion of assessment proceedings alongwith return of income filed in response to notice issued u/s.148 of the Act. Therefore, the Assessing Officer had the benefit of tax audit report before completion of assessment proceedings and therefore the question of levy of penalty does not arise. He also placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of *P. Senthil Kumar vs. PCIT (2019) 416 ITR 0336*.

**8.** On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

**9.** We heard the rival submissions and perused the material on record. The issue in the present appeal relates to whether or not levy of penalty u/s.271B of the Act is justified. Admittedly, tax audit report was filed alongwith return filed in response to show cause notice issued u/s.148 of the Act which means that the Assessing Officer had the benefit of tax audit report and no prejudice can said to have been caused for the Department on account of belated submission of tax

audit report. The ratio decision of the Hon'ble Jurisdictional High Court in the case of P. Senthil Kumar (supra) is squarely applicable to the facts of the present case, wherein it was held at paras 10 to 12 as follows.

*'10. Admittedly, the reasons assigned by the assessee have not been found to be false nor with any mala fide intention, the reasons were assigned. Therefore, this Court is of the view that the explanation offered by the assessee can be taken as a reasonable cause for his failure to file the audit report within time. We are also aware that the assessment was completed under Section 143(3) of the Act only on 29.3.2015 and on that date, the audit report was very much available with the Assessing Officer.*

*11. The Hon'ble Apex Court, in the case of Hindustan Steel Limited Vs. State of Orissa [reported in (1972) 83 ITR 26], considered the validity of levy of penalty under the provisions of the Orissa Sales Tax Act, 1947. One of the questions, which was framed for consideration was as to whether imposition of penalty for failure to register as a dealer was justified. The Hon'ble Apex Court pointed out that the liability to pay penalty does not arise merely upon proof of default in registering as a dealer, that an order imposing penalty for failure to carry out a statutory obligation is the result of quasi criminal proceeding and that penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. It was further held that whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances and that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.*

*12. Though the above decision arises under the Orissa Sales Tax Act, 1947, the ratio decidendi of the said decision could very well be applied to the assessee's case. We find that the non filing of the tax audit report before 30.9.2012 is a technical breach and admittedly, the assessee filed the audit report along with the return of income on 31.3.2013 and that the assessment was framed by the Assessing Officer only on 29.3.2015, on which date, the audit report was very much on the file of the Assessing Officer. Thus, we are of the view that the explanation offered by the assessee can be accepted as a reasonable cause for his failure to file the audit report within time and the case on hand is not a fit case for imposing penalty on the appellant".*

In view of the above facts and legal position, we are of the considered opinion that levy of penalty u/s.271B of the Act is not warranted. Accordingly, we set aside the orders of the lower authorities and direct the Assessing Officer to delete levy of penalty made u/s.271B of the Act. Thus, the appeal filed by the assessee in ITA No.2215/CHNY/2019 for assessment year 2014-2015 stands allowed.

**ITA No.2216/CHNY/2019 for assessment year 2015-16**

**10.** Since, the facts in the present appeal are identical to the facts in ITA No.2215/Chny/2019, for assessment year 2014-15, for the reasons mentioned therein, we allow the appeal in the same lines indicated in appeal ITA No.2215/Chny/2019 supra. Hence, the above captioned appeal filed by the assessee stands allowed.

**11.** In the result, the appeals filed by the assessee in ITA Nos. 2215 & 2216/CHNY/2019 for assessment years 2014-15 and 2015-16 are allowed.

Order pronounced on 13th day of February, 2020, at Chennai.

**Sd/-**

(धुव्वुरु आर.एल रेड्डी)

**(DUVVURU RL REDDY)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**

(इंटूरी रामा राव)

**(INTURI RAMA RAO)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:13th February, 2020.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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