

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL 'D' BENCH: CHENNAI
श्री इंदूरी 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.2863 and 2864/Chny/2017
निर्धारण वर्ष /Assessment Year: 2010-11

M/s. Tamil Nadu Fisheries Development Corporation Limited, 167, Poonamallee High Road, Kilpauk, Chennai 600 010.

Vs. The Deputy Commissioner of Income Tax Corporate Circle 3(1), Chennai 600 034.

[PAN: AA ACT2395J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Ms. R. Anita, JCIT
सुनवाई की तारीख/Date of Hearing	:	06.02.2020
घोषणा की तारीख /Date of pronouncement	:	19.02.2020

आदेश / O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against different orders of the Id. Commissioner of Income Tax (Appeals)-11, Chennai both dated 29.08.2017 for the assessment year 2010-11 passed under section 271B as well as 271F of the Income Tax Act, 1961 ["Act" in short]. First we shall take up the appeal filed against levy of penalty under section 271B of the Act for adjudication.

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2010-11 on 19.05.2011 declaring an income of ₹.2,28,78,320/-. The assessment under section 143(3) of the Act was completed

on 24.01.2013 assessing the total income of 2,28,78,321/-. However, the Assessing Officer levied penalty under section 271B of the Act of ₹.1,00,000/- as the assessee has not got its accounts audited by an Accountant and furnished the tax audit report as per section 44AB of the Act before the specified date i.e., 15.10.2010 as the turnover of the assessee during the relevant previous year was ₹.260,70,26,450/-. On appeal against levy of penalty under section 271B of the Act, the Id. CIT(A) confirmed the penalty levied by the Assessing Officer.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the reasonable cause for the delay in obtaining the tax audit report was explained before the authorities below, whereas, the Assessing Officer has mechanically levied penalty under section 271B of the Act and prayed for deleting the same. The Id. DR relied on the orders of authorities below.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Since the total turnover of the assessee for the relevant previous year was ₹.260,70,26,450/- and the assessee failed to get its accounts audited by an Accountant and file the tax audit report as required under section 44AB of the Act, the Assessing Officer levied penalty of ₹.1,00,000/- under section 271B of the Act. It was the submission of the Id. Counsel that the assessee is a corporation established by the Government of Tamil Nadu and for the assessment year under consideration, the assessee had

paid all the taxes due on the returned income including the demand raised in the assessment order before 30.09.2010 which could be apparent by the accepting the returned income of the assessee in toto in the assessment. However, the Assessing Officer mechanically levied penalty under section 271B of the Act for the reason that the assessee has not filed the tax audit report under section 44AB of the Act by ignoring the reasonable cause for the late filing of the tax audit report. It was emphasized that being a corporation functioning under the Govt. of Tamil Nadu, because of shifting of the office to the present location as well as belated conduct of the AGM, where high officials of the Government has to participate coupled with misplacement of some of the crucial records, the assessee was unable to obtain and file the tax audit report in time. By overlooking the provision of section 273B of the Act, where there is valid reasonable cause for delay in obtaining the tax audit report, it was submitted that the Assessing Officer was not justified in levying the penalty and prayed for deleting the penalty levied under section 271B of the Act. We find force in the argument of the Id. Counsel and of the considered opinion that the assessee was prevented by reasonable cause for the delay in obtaining and filing the tax audit report. The provision of section 273B of the Act provides that in case the assessee proves that there was some reasonable cause for the failure to deduct tax, then the penalty under section 271B of the Act is waived off. *Section 273B - Penalty not to be imposed in certain cases*, can be read as follows:

273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FB, section 271G, section 271H, clause (c) or clause (d) of sub section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or subsection (1) or subsection (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of subsection (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.

4.1 There is no definition for the term “reasonable cause” and it has to be decided upon the facts of each case. In this case, the assessee, being a corporation, has given valid reasons for the delay in obtaining and filing of the tax audit report. Moreover, the authorities below have not pointed out any continuous and repeated defaults justifying the penalty. Thus, in view of the provisions of section 273B of the Act and considering the facts and circumstances, we set aside the order of the authorities below and delete the penalty levied under section 271B of the Act. Thus, the appeal filed by the assessee stands allowed.

5. The assessee also preferred an appeal against levy of penalty of ₹.5,000/- under section 271F of the Act. The Assessing Officer noticed that the assessee was required to file the return of income by 30.09.2010, which was extended upto 15.10.2010, whereas, the assessee has filed the return of income only on

19.05.2011 i.e., even after the end of the assessment year. As per provisions of section 271F of the Act, if a person who was required to furnish a return of his income as required under section 139(1) of the Act or by the provisos to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay by way of penalty a sum of ₹.5,000/-, which was confirmed by the Id. CIT(A).

5.1 It was the submission of the Id. Counsel that the assessee paid all the taxes due on the returned income including the demand raised in the assessment order before 30.09.2010 and repeated the same reasons as was submitted during 271B penalty proceedings. Per contra, the Id. DR has submitted that once the assessee paid all the taxes due on the returned income including the demand raised in the assessment order before 30.09.2010, the assessee should have filed its return of income on or before the extended time of filing of the return, which is mandatory and thus pleaded for sustaining the penalty levied under section 271F of the Act.

6. We have heard the rival contentions. Once the assessee has paid all the taxes due on the returned income including the demand raised in the assessment order before 30.09.2010, the assessee is mandated to file the return of income within the prescribed time limit. Since the assessee failed files the return of income within the prescribed time limit, we are of the considered opinion that the penalty levied under section 271F of the Act was rightly confirmed by the Id.

CIT(A). We find no infirmity in the order passed by the Id. CIT(A) and thus, the ground raised by the assessee stands dismissed.

7. In the result, the appeal filed by the assessee in I.T.A. No. 2863/Chny/2017 is allowed and the appeal in I.T.A. No. 2864/Chny/2017 is dismissed.

Order pronounced on the 19th February, 2020 in Chennai.

Sd/-
(इंटूरी रामा राव)
(INTURI RAMA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Chennai, Dated, 19.02.2020

Vm/-

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.