

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं

श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 3198/CHNY/2018

निर्धारण वर्ष /Assessment year : 2013-2014.

Smt. V. Kastri,
Prop: Om Muruga Enterprises,
13/3, 1st, Chinnametupalayam,
Kaladipet,
Chennai 600 079.

Vs. The Income Tax Officer,
Non-Corporate Ward 5(1),
Chennai.

[PAN AHEPK 5079L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. K. Ravi, Advocate
प्रत्यर्थी की ओर से /Respondent by : Ms. R. Anitha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 02-03-2020
घोषणा की तारीख /Date of Pronouncement : 10-03-2020

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

This is an appeal filed by the Assessee directed against the order of the Commissioner of Income Tax (Appeals)-5, Chennai ('CIT(A)' for short) dated 27.09.2018 for the Assessment Year (AY) 2013-2014.

2. The Assessee raised the following grounds of appeal:

'1. The Order of the Learned Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case.

2. Notice u/s.274 r.w.s. 271B is vague and therefore the penalty proceedings should be held as void ab-initio.

3. The Commissioner of Income Tax (Appeals) erred in sustaining the penalty of Rs.1,50,000/- for technical defect and without considering the fact that there was compliance in spirit of section 44AB.

4. The Commissioner of Income Tax (Appeals) erred in upholding the penalty of Rs. 1,50,000/- without addressing various contentions raised by the appellant and without giving any consideration to Section 273B of the Income Tax Act, 1961.

5. The assessing officer had with him the signed and dated copy of the tax audit report filed on 17/10/2013 and the c-filed tax audit report on 17/10/2014. Therefore, the assessing officer's observation that, he is not able to ascertain whether tax audit was actually carried out before the due date, is perverse.

6. For these and such other grounds that may be permitted to be raised during the hearing of the appeal".

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

The appellant is an individual and proprietor of M/s.Om Muruga Enterprises. The return of income for the AY 2013-14 was filed on 31.03.2013 disclosing total income of Rs. 4,31,510/-. During the course of assessment proceedings, the Assessing Officer noticed that assessee admitted turnover of ₹6,19,15,038/-, however, failed to file tax audit report as prescribed u/s.44AB of the Income Tax Act, 1961 (in short "the Act"). Therefore, the Assessing Officer initiated penalty proceedings u/s.271B of the Act. In response to show cause notice

dated 28.08.2014, he contended that prescribed audit report could not be uploaded due to technical difficulties, however, the same was filed manually on 17.10.2013. However, the Assessing Officer was of the view that Tax Audit report was not furnished in the prescribed manner, therefore proceeded with levy of penalty of ₹1,50,000/-.

4. Being aggrieved, an appeal was preferred before Id. CIT(A), who vide impugned order had confirmed the levy of penalty.'

5. Being aggrieved by the order of the Id. CIT(A), the appellant is in appeal before us in the present appeal. It is contested that tax audit report could not be uploaded in electronic mode on account of technical difficulties. However, the same was filed manually on 17.10.2013. Thus, it was submitted that tax audit report in the prescribed manner could not be uploaded on account of reasons beyond the control of the assessee.

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

7. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to levy of penalty u/s.271B of the Act. Admittedly, tax audit report was filed manually on 17.10.2013. Thus, tax audit report was very much available before the

Assessing Officer at the time of making of the assessment and no prejudice can be said to have been caused to the Revenue on account of belated submission of tax audit report. The ratio of decision of Hon'ble Jurisdictional High Court in the case of P. Senthil Kumar vs. PCIT (2019) 416 ITR 0336 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.3198/CHNY/2018 for assessment year 2013-2014 stands allowed.

8. In the result, the appeal filed by the assessee in ITA No.3198/CHNY/2018 for assessment year 2013-2014 stands allowed.

Order pronounced on 10th day of March, 2020, at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated:10th March, 2020

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF