

IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER & AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.2268/Mum/2019 (Assessment Year 2013-14)

M/s Rao & Ashok, Unit No. 111, 1 st Floor, Hiren Light Industrial Premises, 408, Moghul lane, Mahim, Mumbai-400016. PAN: AAEFR0210R	Vs.	ITO, Ward-16(3)(3), 4 th Floor, Room No. 448, Aayakar Bhavan, M.K. Road, Mumbai-400020.
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Appellant

Respondent

Appellant by

: None

Respondent by

: Shri Sunil Deshpande (DR)

Date of Hearing

:08.04.2021

Date of Pronouncement

:20.04.2021

ORDER

PER PAVAN KUMAR GADALE, JUDICIAL MEMBER;

1. The assessee firm has filed the appeal against the order of Id. Commissioner of Income-tax Appeals (the Id. CIT(A)-7), Mumbai passed under section 271B and 250 of the Income Tax ACT (hereinafter referred as ‘the Act’). The assessee has raised the sole ground of appeal:

On the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the penalty of Rs. 46,462/- under section 271B levied by the learned Assessing Officer by rejecting all the facts of the appellants for late filing of appeal report.

2. Brief facts of the case are that the assessee is a partnership firm and is engaged in the profession of Chartered Accountants and filed the Return of income on 29.11.2013 with the total income of Rs. 18,13,363/-. The Return of income was processed under section 143(1) of the Act. Subsequently, the

case was selected for scrutiny and notice under section 143(2) & 142(1) of the act along with questionnaire was issued. In compliance, the Id. Authorised Representative (AR) of the assessee appeared from time to time and submitted the details. The Assessing Officer (AO) observed that the assessee firm has not filed the return of income within the time limit provided under section 139(1) of the Act. Further the assessee firm has to file the Tax Audit Report U/sec44AB of the Act on or before the due date under section 139(1) of the Act. But the assessee has filed the audited accounts, Audit Report and Return of income on 29.11.2013 where as specified due date was extended by CBDT notification up to 31st October 2013. Therefore, penalty under section 271B of the Act was initiated by the assessing authority. Further the A.O. has verified the information filed and accepted the income as per the return of income and passed the order under section 143(3) of the Act dated 29.03.2016. Subsequently, the AO has initiated the penalty proceeding under section 271B of the Act, as the assessee firm has not filed the Tax audited report u/sec44AB of the Act before the due date under section 139(1) of the Act. The assessee firm has filed detailed explanations by letter dated 22.09.2016 mentioning the valid reasons and the technical difficulties in filling the Tax Audit Report and accounts. Whereas, the AO found the explanations are not satisfactory and levied the penalty under section 271B of the Act of Rs.46,462/- and passed the order under section 271B of the Act dated 29.03.2016.

3. Aggrieved by the order, the assessee has filed appeal with the Id. CIT(A), whereas the Id. CIT(A) has confirmed the action of the AO in levying the penalty and dismissed the assessee's appeal. Aggrieved by the order of Id. CIT(A), the assessee has filed the appeal before the Honble Tribunal
4. At the time of hearing, none appeared on behalf of the assessee and heard the submissions of the Id. DR for the revenue. The Id. DR relied on the order of Id. CIT(A).
5. We have heard the Id. DR's submission and perused the material on record. The sole disputed issue being a levy of penalty under section 271B of the Act for non-filing of Tax audit report u/sec44AB of the Act within the due date under section 139(1) of the Act. We find that the A.O. has levied the penalty considering the fact, that there is a delay of 29 days in filing the return of income and Tax Audit Report. But as per the provisions, the return of income along with tax audit report has to be filed on or before 30.09.2013 for the said Assessment Year. Whereas The CBDT has issued notification by extending the due date, as per the order under section 119 of the Act from 30.09.2013 to 31.10.2013. The assessee firm has made submissions before the Id. CIT(A) that there is a marginal delay of 29 days in submitting the Tax Audit Report and filing the income tax return and there is no Wanton Act for the delay. We find the explanations that the assessee is a Chartered Accountants firm and dealing in auditing of books of Accounts of the Trust. In this particular Assessment Year, the return of

income of the Trust have to filed electronically with the Income Tax Department's website. And due to technical issues and pressure of work, the assessee firm could not file their return of income within the due date specified under section 139(1) of the Act. We have considered the overall facts, submissions before the lower authorities and material on record are of the view that the delay in filing is not a wanton act and the explanations has a reasonable cause. Accordingly, we set-aside the order of Id. CIT(A) and direct the Assessing officer to delete the penalty and allow the ground of appeal of the assessee.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20/04/2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Date: 20.04.2021

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| 1. Assessee | 2. Respondent |
| 3. The CIT(A)-7 | 4. The CIT |
| 5. DR "D" Bench, ITAT, Mumbai | |
| 6. Guard File | |

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai