

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में
IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI [M. BALAGANESH](#), AM

आयकर अपील सं./ ITA No. 2403/Mum/2019

(निर्धारण वर्ष / Assessment Year 2013-14)

M/s Samosaran Yarns Pvt. Ltd. 41/42, Liverty Building, 2 nd Floor, Sir Vithaldas Thakersy Marg, New Marine Lines, Mumbai-400 020	बनाम/ Vs.	The Asst. Commissioner of Income Tax- 1(3)(1), Aayakar Bhavan, Maharshi Karve Road, Marine Lines, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAJCS6707Q		

अपीलार्थी की ओर से/ Appellant by	:	Shri T.S. Khalsa, DR
प्रत्यर्थी की ओर से/ Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	17.06.2021
घोषणा की तारीख / Date of pronouncement:	22.06.2021

आदेश / ORDER

एम. बालगणेश, लेखा सदस्य के द्वारा /
PER M. BALAGANESH, AM:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-3, Mumbai [in short CIT(A)], dated 25.03.2019. The assessment was framed by the Asst. Commissioner of Income Tax, Circle 1(3)(1) Mumbai (in short ACIT/AO) for the A.Y. 2013-14 vide order dated Nil under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue to be decided in this appeal is as to whether the learned CIT(A) was justified in sustaining the penalty levied under

section 271B of the Act in the facts and circumstances of the instant case.

3. None appeared on behalf of the assessee. We have heard the learned DR and perused the material available on record. We find that assessee is engaged in the business of manufacturing and trading in synthetic and cotton yarns and had filed its return of income electronically on 30.07.2014 declaring total income at Rs.5,11,95,233/-. During the course of assessment proceedings, the assessee also filed revised computation of total income at Rs. 5,23,02,541/-, as revised return could not be filed by the assessee in view of the fact that the original return was filed belatedly by the assessee. During the assessment proceedings, all the details called for by the learned AO were indeed submitted by the assessee with supporting evidence. In fact, reference was made to learned Transfer Pricing Officer (in short TPO) u/s 92CA(1) of the Act and the learned TPO vide his order u/s 92CA(3) of the Act dated 30.06.2016 had accepted the value of Specified Domestic Transactions of the assessee with its associated enterprises to be at arm's length price. The assessment was completed u/s 143(3) of the Act on 09.12.2016 determining the total income at Rs.5,23,02,540/- under normal provisions of the Act, which is effectively accepting the revised computation of income of the assessee.

4. We find that the learned AO observed that the assessee had not furnished the audit report under section 44AB of the Act on or before the due date of filing of return of income under section



139(1) of the Act. For this, the learned AO initiated the penalty proceedings under section 271B of the Act and issued show cause notice and ultimately, levied the penalty under section 271B of the Act in the sum of Rs.1,50,000/-. We find that assessee had submitted before the lower authorities that the final statement of the company were not statutorily audited under Companies Act on or before the due date of filing of return under section 139(1) of the Act and accordingly, the tax audit report under section 44AB of the Act could not be furnished within the prescribed time. It was pleaded that senior accountant of the assessee company, who was with the assessee company since inception of the business operations Ms. Anusha Shetty left the assessee company in December 2011. Thereafter, in April 2012, the assessee could appoint another person, Ms. Dharmishta Parmar in place of Ms. Anusha Shetty and had assigned responsibility of supervising and finalizing all books of account of the assessee, attending to auditors, attending to company's matters and tax matters. It was further pleaded that during the ongoing financial year, the assessee was informed by the auditors that domestic transfer pricing provisions are applicable to the assessee company on account of recent amendment made in the Finance Act, 2012. On seeing the intrinsic and complexities of domestic transfer pricing audit and incompetency of Ms. Dharmista Parma that she could not handle the same effectively, in October 2012, the assessee appointed another senior accountant Mr. Kishore Mehta, aged 53 years, having experience of more than 25 years in the field of accountancy in auditing and taxation and also brings along with him huge corporate working experience in large entities. Accordingly, he was appointed and assigned the task of finalizing the books of account, looking after statutory audit under the Companies

Act, tax audit under Income Tax Act and domestic transfer pricing audit under Income Tax Act. Eventually, Ms. Dharmista Parmar left the job in March 2013. Unfortunately, Mr. Kishore Mehta could not complete the statutory audit under the Companies Act before the prescribed date, the tax audit was also not completed under Income Tax Act. The assessee company had initiated the proceedings against Mr. Kishore Mehta, asking him to explain the reason for inordinate delay in finalizing the accounts and statutory compliances both under the Companies Act and Income Tax Act. As there was no response from his side, the company expelled him and relieved him on 30.11.2013. Thereafter, the Director's of the assessee company personally took over the charge with the help of two junior accountants Ms Varsha Patel and Ms Alka Parikh and completed the statutory audit and tax audit on 30.12.2013. The assessee furnished all the appointment letters, bio data and the details of salary payments made to Ms. Anusha Shetty, Ms. Dharmishta Parmar and Mr. Kishore Mehta before the lower authorities. Accordingly, the assessee pleaded that it was prevented by the reasonable cause and the delay in getting the accounts audited both under companies Act as well as under the income tax Act were due to the reasons beyond the control of the assessee and accordingly, the assessee's reasonable cause falls within the meaning of section 273B of the Act and hence, no penalty u/s 271B of the Act could be levied. The aforesaid explanation did not find favour with the learned CIT(A), aggrieved by which, the assessee is in appeal before us.

5. We find that assessee had sought to explain the genuine difficulty it has faced in finalizing the accounts without which the

statutory audit under Companies Act and Tax audit under Income Tax Act could not be completed. The levy of penalty contemplated under section 271B of the Act is not automatic and the same shall not be levied if the assessee was able to provide reasonable cause for the delay. In the instant case, from the above narration of facts, that led to delay in finalization of statutory audit and tax audit as detailed hereinabove, we find that assessee had indeed sufficient and reasonable cause within the meaning of section 273B of the Act and hence, could not be invited with the levy of penalty under section 271B of the Act. In the peculiar facts and circumstances of the instant case, moreover, we also find that the income declared by the assessee in the revised computation of income in the sum of Rs.5,23,02,540/- has been indeed accepted by the learned AO in the scrutiny assessment, which proves that all the necessary details were indeed made available by the assessee before the completion of assessment proceedings to the satisfaction of the learned Assessing Officer, together with the tax audit report and its annexures. We find that the *Hon'ble Madras High Court in the case of CIT vs A N Arunachalam reported in 208 ITR 481 (Mad)* had held that the tax audit report was ultimately made available to the Id AO before the completion of assessment proceedings and hence no penalty u /s 271B of the Act could be levied on an assessee.

6. In view of our aforesaid observations in the peculiar facts and circumstances of the case and also by respectfully following the judicial precedent hereinabove, we hold that a mere procedural delay on the part of the assessee should not result in levy of penalty



u/s 271B of the Act. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 22.06.2021.

Sd/-
(महावीर सिंह / MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

Sd/-
(एम बालगणेश / M BALAGANESH)
(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 22.06.2021

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**