IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA No.18/Bang/2020
Assessment Year : 2014-15

M/s. SLV Housing Development Corporation No.1, Shri Krishna Mansion Chunchaghatta Main Road New Bank Colony Konanakunte Bangalore 560 062 **PAN NO : ABAFS5822P**	**Vs.**	ACIT Central Circle 2(2) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Arvind V Chavan, A.R.
Respondent by	:	Shri Sankar Ganesh K., D.R.

Date of Hearing	:	22.11.2021
Date of Pronouncement	:	22.11.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 29-11-2019 passed by Ld CIT(A)-3, Bengaluru confirming penalty of Rs.1,50,000/- levied u/s 271B of the Act for assessment year 2014-15.

2. The assessee filed its return of income for the assessment year 2014-15 on 30.11.2014. However, it filed copy of audit report in Form 3CB & Form 3CD only on 09-12-2016 during the course of assessment proceedings. Since the tax audit report was not obtained

and furnished before the due date for filing return of income, the AO initiated penalty proceedings u/s 271B of the Act.

3. It was submitted by the assessee that it had initially engaged M/s K.P Rao & Company, Chartered Accountants for conducting tax audit and Shri Vinay Simha, CA, the partner of the above firm was looking after its case. However, the accounts finalised by them consisted of many mistakes and was not accurate. Hence a new chartered Accountant was engaged and tax audit report obtained from him was filed before the AO. It was also submitted that the assessee has filed complaint on misconduct of Shri Vinay Simha before the ICAI.

4. The AO noticed that the department had identified certain bogus challans in the month of January, 2014 and in that regard, statements were recorded from Shri Vinay Simha, CA on 29-01-2014. The partner of the assessee firm Shri H Nagaraj also appeared on that date and pleaded ignorance of bogus challans. Further the assessee has filed complaint against the above said CA in July, 2014. The AO also observed that the assessee has not stated as to when the new CA named Shri Sangamesh was appointed. However, the tax audit report has been filed on 09-12-2016, i.e., just 23 days prior to the completion of limitation period for conclusion of assessment. The AO also noticed that the assessee has been filing return of income as well as audit report belated in other years also. The AO also observed that the tax audit report should have been filed electronically as per Rule 12(2) of Income tax Rules, 1962, where as the assessee has furnished tax audit report manually. Accordingly, the AO rejected the explanations of the assessee and levied penalty u/s 271B of the Act.

5. The Ld CIT(A) also stressed the point that the assessee, having not satisfied with the earlier CA way back in January, 2014, did not explain as to why it did not assign the audit work to new CA, but continued to avail the services of earlier CA. He also found fault with the assessee in not furnishing the tax audit report electronically. Accordingly, he confirmed the penalty levied by the AO.

6. The Ld A.R reiterated the submissions made before tax authorities and submitted that there was reasonable cause for the delay in furnishing audit report and hence the penalty u/s 271B should not have been levied. He submitted that the tax audit report has been filed before the AO prior to the completion of the assessment. He submitted that non-filing of report electronically will not alter the explanations given for the delay in filing tax audit report. He submitted that there was reasonable cause for the delay.

7. The Ld D.R, on the contrary, submitted that the provisions of sec.44AB mandate furnishing of tax audit report before the due date for filing return of income. He submitted that the returns of income are selected for scrutiny on the basis of information available in tax audit reports also and hence, filing of tax audit report within the due date is mandatory. He also submitted that it is not the only year in which tax audit report was filed belated. The AO has mentioned the details of other years also, wherein the assessee has filed the reports belatedly. Accordingly, the Ld D.R submitted that the assessee is in the habit of not complying with the provisions of sec.44AB. He also submitted that the assessee was aware of misdeeds of its earlier CA way back in 2014 itself, but it has obtained tax audit report from its new CA only in December, 2016, i.e., after two years. Accordingly, the Ld D.R submitted that the explanations given by the assessee were rightly rejected by Ld CIT(A) and AO.

8. In the rejoinder, the Ld A.R submitted that in other years, the tax audit reports were filed along with the returns of income. It is the only year in which the tax audit report was filed separately.

9. We heard the parties and perused the record. Under sec. 273B of the Act, the penalty u/s 271B shall not be imposable, if the assessee proves that there was reasonable cause for the failure to comply with the provisions of sec.44AB of the Act. The approach to be adopted on levy of penalty u/s 271B has been explained by Hyderabad Special Bench of ITAT in the case of ACIT vs. Gayatri Traders (58 ITD 121)(HYd)(SB):-

> *"31. Levy of penalty under Section 271B is neither mandatory nor a must. The plain language of Section 271B provides that if any person fails to get his accounts audited or obtain a report as required under Section 44AB, "the Assessing Officer may direct that such person shall pay by way of penalty". The use of the words "may direct" clearly indicates that the Assessing Officer is vested with the discretion either to impose or not to impose penalty depending upon the facts and circumstances of the case. No doubt, it is true, the said discretion should be exercised judicially and not either arbitrarily or capriciously. When there is a technical or minor breach of the law, the ends of justice require that the discretion should not be exercised in favour of punishing a venial default. Further, it is not as though the moment a default under Section 44AB is committed, the levy of penalty under Section 271B is automatic. The words "without reasonable cause" that existed in Section 271B as applicable to the assessment years under consideration are important. If the assessee is able to show a reasonable cause for his failure to comply with the requirements of Section 44AB before the due date, no penalty is leviable under Section 271B. What is "a reasonable cause", in a given set of facts depends upon the peculiar facts of that case.* ***A cause which a reasonable man accepts as a reasonable one can be taken as a reasonable cause. The expression "reasonable cause" requires to be***

interpreted liberally in a fair and reasonable manner so as to advance the cause of justice, since a harsh legalistic approach should be mitigated by a soft practical approach in applying penal provisions."

10. In the instant case, it is an admitted fact that the assessee did not have good relationship with its auditors before the end of the financial year. It has filed complaint against its earlier auditor in July, 2014. Subsequently, it has engaged another CA and furnished audit report before the completion of the assessment. Thus the delay in filing tax audit report has occurred due to strained relationship with its earlier auditor. We notice that the tax authorities have taken the view that the assessee should have appointed new CA immediately after knowing misdeeds of earlier CA. However, provisions of sec.273B exempts from levying of penalty, if the assessee proves that there was reasonable cause.

11. Now the point to be examined is about the meaning of "reasonable cause". The Hon'ble Andhra Pradesh High Court has explained the meaning of "reasonable cause" in the case of Addl CIT vs Dargapandarinath Tujayya & Co. (107 ITR 850)(AP) as under:-

> "...If a cause, which is reasonable, in other words, a cause which appeals or satisfies any reasonable mind does not exist, then alone penalty can be imposed."

Thus, if the cause shown by the assessee appeals or satisfies any reasonable mind, then the same shall constitute reasonable cause. In our view, strained relationship with the earlier CA would constitute reasonable cause. The tax authorities have pointed out time gap in getting a tax audit report from a new CA. However, it is a known fact that it might have taken some time to severe

relationship with the earlier CA. However, the fact remains that the tax audit report has been filed with the AO before completion of assessment. The tax authorities have mentioned about non-filing of tax audit report electronically. We notice that the provisions of sec.44AB do not mention about the same. Hence non-filing of audit report electronically cannot be the reason for imposing penalty u/s 271B of the Act.

12. In view of the foregoing discussions, we are of the view that there was reasonable cause for the assessee in not filing the tax audit report in time. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the penalty levied u/s 271B of the Act for the year under consideration.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 22nd Nov, 2021.

Sd/-	**Sd/-**
(N.V. Vasudevan)	**(B.R. Baskaran)**
Vice President	**Accountant Member**

Bangalore,
Dated 22nd Nov, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore