

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VP, &
Ms. KAVITHA RAJAGOPAL, JM**

(Virtual Court Hearing)

आयकरअपीलसं./ I.T.A. No. 2856/Mum/2019

(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s Air India Air Transport Services Ltd. 1 st floor, Transport Workshop Building GSD Complex Sahar Village, Mumbai-400 099	बनाम/ Vs.	DCIT Circle-9(1)(1), R. No. 5, 3 rd floor, Mettal Court, Nariman Point, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAECA6186G		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Aditya Tamboli & Ms. Bhavani Shukla, Ld. ARs
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Mehul Jain, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	31.01.2022
घोषणाकीतारीख / Date of Pronouncement	:	28.02.2022

आदेश / ORDER

Per Kavitha Rajagopal, Judicial Member:

The present Appeal has been filed by the assessee challenging the impugned order dated 27th February 2019, passed by the Ld. Commissioner of Income Tax (Appeals) - 16 in short

referred as 'Ld. CIT(A)', Mumbai, dated 04.04.19 for Assessment Year (in short AY) 2013-13. The assessee has raised the following grounds of appeal, which are as under:-

- 1. On the facts and circumstances of the case and in law the learned commissioner of Income Tax (Appeals) erred in confirming penalty levied by the Assessing officer of Rs.1,50,000/- u/s.271B of the Income Tax 1961.*
- 2. The learned CIT (A) erred in confirming penalty levied by A.O. U/s.271B of the I.T. Act 1961 without considering provisions of Sec. 273B of the Income Tax Act 1961.*
- 3. The learned CIT (A) considering the facts and circumstances of the case ought to have held that the Appellant had a reasonable cause for delay in obtaining Tax Audit Report u/s of the Income Tax Act 1961 and further held that penalty u/s.271B of Rs.1,50,000/- was not leviable.*
- 4. It is submitted that the learned CIT (A) ought to have directed the D.C.I.T. to cancel the order levying penalty U/s.271B.*

5. The appellant craves leave to add, amend or alter any of the grounds of appeal or to add any further grounds of appeal if considered necessary.

2. The chronology of the events is that the assessee is a public sector company wholly owned by the Govt. of India and subsidiary to Air India Ltd. had e-filed its return of income on 24.09.13 declaring current year loss of Rs. 93,14,039/-. The accounts of the assessee were not audited as on date of filing of the original return. Subsequent to this, the assessee company revised its return of income on 12.12.2014, declaring total income at Rs. Nil after claiming carry-forward of current year's loss at Rs. 93,14,039/-. The revision of returns was reasoned to be for claiming additional TDS. The assessee company again revised its return of income on 07.01.2015, declaring total income at Rs. 1,36,45,690/-. Subsequent to the tax audit report dated 23.01.14, the return was revised to offer the correct income as per the audited accounts. After processing the return u/s 143(1) of I.T. Act, 1961, the case was selected for scrutiny and assessment order u/s. 143(3) of the IT Act was passed on 04.03.2016.

3. During the assessment proceedings, the P & L Account revealed that assessee had received gross business receipts to the tune of Rs. 74,79,10,876/-. The contention of the AO was that as per section 44AB of the IT Act, the assessee ought to have got its account audited for the AY 2013-14 by an auditor before the specified date and subsequently should have furnished such report in the prescribed form duly signed and verified with such particulars on or before 30.09.2013 for AY 2013-14. But the tax audit report in Form 3CD was filed with much delay only on 17.09.2014 and the assessee has thus failed to comply with the provision of section 44AB of the Act. Accordingly, penalty proceedings u/s. 271B of the Act was initiated by the AO at the time of passing the assessment order on 04.03.16 by issuing show cause notice u/s 274 r.w.s. 271B of the Act on 04.03.16 for its failure to comply with the provisions of section 44AB of the Act. In pursuant to this, the order u/s 271B of the Act was passed by the AO on 28.09.16 levying penalty of Rs. 1,50,000/- which was subsequently confirmed by Ld. CIT(A) on 27.02.19. Consequent upon such order passed by Ld. CIT(A), assessee is in further appeal before the Tribunal.

4. Ld. AR submitted that penalty should not be levied on the grounds stated supra and relied upon Hon'ble Madras High Court decision in the case of P. Senthil Kumar Vs. PCIT [2019] 416 ITR 336 (Mad) which stated that if there is reasonable cause for delay and if the explanation offered by the assessee for delay neither were found to be false or malafide, then penalty should not be warranted in such cases which the Ld. AR stated that will also hold good for this appeal.

5. On the other hand, Ld. DR contended that there was no emergent or extraordinary situation particular to this year for the reason which caused delay and also stated that audit under Company's Act was completed on 23.01.14 and the report of CAG was obtained only in March 2014 and thereafter tax audit report in Form 3CD was filed only on 17.09.2014 i.e. much beyond the specified date.

6. We have carefully considered the submission of the rival parties and perused the material placed on record. We find that the facts are not in dispute. It is evident that assessee being a company incorporated under the Companies Act and also PSU

had to undergo the process of obtaining statutory audit report followed by the report of Comptroller & Auditor General of India (CAG) which was completed on 23.01.14 and March 2014 respectively. Thereafter compiling of the said in Form 3CD was carried on after completion of both the audits and the report dated 17.09.14 u/s 44AB was obtained from Tax Auditors. These facts were elucidated during the proceedings before the AO and Ld. CIT(A). The provision of section 273B may be highlighted hereunder which states that

“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.”

7. The fate of the appeal depends upon the answer to the question whether there was reasonable cause for the delay in filing the audit report by the assessee company. Therefore, it is necessary to peruse the facts stated by the assessee being a public sector company wholly owned by Air India Ltd which was wholly owned by Govt. of India will come under the purview of section 44B which requires every person carrying on business

whose total turnover gross receipts of Rs. 1 crore in any previous year has to get its accounts of such previous year audited by an accountant before the specified date and furnished by that date. We would like to place reliance on the decision of Spl. Bench of ITAT, Hyderabad in the case of ACIT Vs. Gayatri Traders [1996] 58 ITD 121 (Hyd), wherein a Spl. Bench was constituted noticing the conflict in the interpretation placed in section 271B by various Benches of the Tribunal. The Hon'ble President of ITAT has been pleased to constitute Spl. Bench for resolving the following issues and disposing of the appeal : “(Whether the provision of section 271B of the I.T. Act provides for penalty only for the absolute failure of the assessee to get the accounts audited or obtaining report thereon or they provide also for penalty for delay in getting the accounts audited and obtaining the report thereon beyond the specified date u/s 44AB).” The facts that led to the filing of the said appeal are identical to the present case before us, which are as under:-

The subsequent act of the assessee in obtaining the report of audit after the expiry of the specified date may not automatically erase or obliterate the default committed earlier. However, the subsequent conduct of

the assessee in obtaining the report of audit with least practicable delay certainly lends support to his plea that his failure to obtain the audit report before the specified date was for a reasonable cause and was not due to any intentional or deliberate act on his part. Thus, the subsequent act of the assessee in obtaining the audit report becomes relevant for judging the reasonableness or otherwise of the cause shown by the assessee for not complying with the requirements of section 44AB before the specified date.

8. Similar view has been taken by Hon'ble Calcutta High Court in the case of CIT vrs. Capital Electricals (Garaihat) reported in 261 ITR-4. It has also been held in this decision that mere failure to file audit report on time will not justify the levy of penalty as power u/s 271B is discretionary. The same view has also been taken by the Hon'ble Madras High Court in the case of Thanjavur Silk Handloom Weavers Co-operative Production and Sales Society Ltd. Vs. Union of India reported in 263 ITR 334.

9. We find some force in the submission of assessee that assessee being a Public sector company Act had to submit its audit report in Form 3CA in which report u/s 44AB is required to be submitted for the said purpose. The Tax Audit report u/s

section 44AB of I.T. Act has to be provided with copy of statutory audit report alongwith audited P & L Account and balance sheet. The Tax Auditor in the case of assessee whose accounts are required to be audited on any other law will have to commence his work only on the basis of such audited accounts together with information required to be submitted in Form 3CD. Being a public sector unit, the assessee company after completion of statutory audit under Companies Act is required to obtain report by CAG. The assessee accounts for the year ended 31.03.13 were not finalized and audited before the specified dated i.e. 30th September 2013. The statutory audit was completed only on 23rd January 2014 and the reports from the CAG was obtained in March 2014, thereafter the tax audit report was undertaken only after April 2014 and the report u/s 44AB was obtained on 17th September 2014. These facts were stated by the assessee before the AO as well as before Ld. CIT(A).

10. Considering the totality of the facts of the case, we are of the opinion that there was reasonable cause for the assessee for not getting the accounts audited before the statutory due date. In spite of best effort of the assessee to get it accounts audited and

obtained audit report before the specified date, it could not be so due to circumstances beyond its control. Therefore, we are inclined to hold that assessee has shown reasonable cause for its failure to comply with the requirement of section 44AB before the specified date. This being the case, we are of the opinion that this is not a fit case for levy of penalty u/s 271B of the Act. We, therefore, set aside the order of Ld. CIT(A) and quash the impugned penalty order.

11. In the result, the appeal filed by the assessee is **allowed**.

Orders pronounced in the open court on 28.02.2022.

Sd/-
(Pramod Kumar)
Vice President

Sd/-
(Kavitha Rajagopal)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28/02/2022.

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai