

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri George Mathan, JM & Shri M.Balaganesh, AM

ITA No. 576/Coch/2019
(Assessment Year: 2008-09)

M/s.Greens Fuel & Services, Door No.2/4586, Narayana Nagaram, Vatakara	Vs	Income Tax Officer, Ward-2(2), Kozhikode
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PAN : AAGFG6453R (Appellant)	(Respondent)
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Appellant by : NONE
Respondent by : Smt.J.M.Jamunna Devi, Sr.DR

Date of Hearing	:	15.03.2022
Date of Pronouncement	:	15.03.2022

ORDER

PER BENCH:

This appeal filed by the assessee against the order of the CIT(A), Kozhikode, dated 20-08-2019, in appeal No.ITA-34/R2/CIT(A)/CLT/2012-13 for the AY.2008-09 against the confirmation of penalty levied u/s.271B of the Income Tax Act, 1961 (Act).

2. The assessee has filed written submissions, which is extracted as follows:

WRITTEN SUBMISSION

In connection with the above appeal, the following submissions are made, which may be considered and the appeal may be decided:

1. The defect in the filing of appeal for the non-filing of assessment order in duplicate was informed and cured by the appellant's letter dt.03.01.2020.
2. The appeal is in respect of penalty u/s.271B of the Act - Rs.1,00,000/- imposed by the Income Tax Officer, Ward-2(2), Kozhikode, as per order dt.29.03.2012.
3. The audit report is filed on 02-02-2009 and the assessment is completed by order dt.29-11-2010 and at the time of completing the assessment, the audit report is available with the Assessing Officer. The penalty is imposed for the delay in filing the audit report, since the due date for filing of audit report was 30-09-2008.
4. Penalty u/s.271B was not initiated in the assessment order dt.29-11-2010, but notice for imposing the penalty u/s.271 B was issued on 11-08-2011 and the penalty is imposed by order dt.29-03-2012.
5. As per the provisions of Section 275(1)(c) of the Act, the penalty is to be imposed, if liable, before the end of the financial year, in the course of which action for the imposition of penalty has been initiated are completed, or within six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.
6. Grounds of appeal - 1: The assessment is completed by order dt 29.11.2010 and no penalty u/s.271 B is initiated as per the assessment order. But the penalty u/s.271 B is initiated by issue of a notice dt.11-08-2011 subsequently.

As per the provisions of section 275(1)(c) of the Act,

- (a) the penalty should have been initiated and, if leviable, imposed before the end of the financial year during the course of which action for imposition of penalty are completed, ie, on or before 31-03-2011;
- or
- (b) within six months from the end of the month in which action for imposition of penalty is initiated, ie., six months from 30.11.2010, ie, on or before 31.05.2011;
- or
- (c) within six months from the end of the month in which notice for imposition of penalty was issued, ie, six months from 31.08.2011, ie, on or before 28.02.2012.

But the penalty is imposed by order dt.29-03-2012, ie, beyond the required period and hence barred by limitation and it is liable to be cancelled.

7. Grounds of appeal - 2: The audit report is delayed by 4 months and 2 days and the delay has happened with the hospitalisation and

medical treatment of the partner concerned and the delay is due to reasonable cause and the penalty should not have been imposed, considering the provisions of reasonable cause as provided in Section 273B of the Act.

8. Grounds of appeal - 3: *The audit report u/s.44AB is available before the Assessing Officer during the assessment proceedings and hence penalty u/s.271 B is not leviable as per the following decisions, which may be considered by the Hon. Bench:*

1. [2019] 70 ITR (Trib) (S.N.)10 (Cochin) dt 22.01.2019
T.T.KURUVILLA vs. ASSISTANT COMMISSIONER OF INCOME TAX
2. [2019] 416 ITR 336 (Mad) dt.18.12.12018
P.SENTHIL KUMAR vs. PRINCIPAL COMMISSIONER OF
INCOME TAX
[Copy of the above decisions are enclosed]

9. *I may request the Hon. Bench be kind enough to consider the above submissions along with the decisions of the Hon. Bench and the Hon. High Court of Madras on the same issue and the penalty levied u/s.271B may be cancelled.*

2.1. In the written submissions, the assessee has raised two issues, one regarding limitation and the second with regard to reasonable cause. The issue of reasonable cause was considered. On perusal of order of the Ld.CIT(A) para 8 shows that reasonable cause mentioned is that the assessee had to undergo medical treatment which involved surgery. The factum that the main partner has undergone medical procedure is not disputed by the AO. But the AO has taken the stand that the medical procedure undergone by the partner responsible was cosmetic in nature.

3. The Ld.DR drew our attention to para 7 of the order of the Ld.CIT(A), wherein the issue of limitation has been discussed in detail. It was further submitted by the Ld.DR that as mentioned by the AO, the medical procedure being only cosmetic in nature, there was no reasonable cause for the delay in getting the accounts of the assessee audited within the due date as provided under the Act.

4. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that it is an admitted fact that the partner responsible has undergone medical procedure. Medical procedure as cosmetic for one, might be necessity for another. The fact remains that the person has undergone medical procedure. This is not a case of repeating default. This being so, we are of the view that the assessee has shown reasonable cause. Further, it is an admitted fact that the audit report was available at the time of assessment. Even on this ground respectfully following the decision of the Hon'ble Madras High Court in the case of CIT Vs. A.N.Arunachalam reported as 208 ITR 481 (MAD), the penalty u/s.271B of the Act as levied by the AO and confirmed by the Ld.CIT(A) stand deleted.

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

Dictated and pronounced in the open court on 15th March, 2022

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(George Mathan)
Judicial Member

Cochin, Dated: 15th March, 2022

TNMM

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)-Kozhikode
4. The Pr.CIT-Kozhikode
5. The DR, ITAT, Cochin
6. Guard File

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin