

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI S.S.GODARA, JUDICIAL MEMBER**

I.T.A. No.979/HYD/2019

Assessment Year: 2014-15

Mohd Zaheeruddin Zeeshan Ayub, HYDERABAD [PAN: APOPA9804K]	Vs	Income Tax Officer, Ward-14(2), HYDERABAD
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(Appellant)

(Respondent)

For Assessee : Shri Nalin Shah,
For Revenue : Shri Swapnil Patil, DR

Date of Hearing : 08-02-2022

Date of Pronouncement : 21-03-2022

ORDER

PER S.S.GODARA, J.M. :

This assessee's appeal for AY.2014-15 arises from the CIT(A)-6, Hyderabad's order dated 25-04-2019 passed in case No.10301/2018-19/C/CIT(A)-6, involving proceedings u/s.271B of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case files perused.

2. Coming to the assessee's sole substantive grievance that both the lower authorities have erred in law and on facts in imposing Section 271B penalty of Rs.1,50,000/- we note that the CIT(A)'s lower appellate discussion to this effect reads as under:

7.1 Coming to the merits of the case, as mentioned elsewhere in this order, the assessee has not raised any specific grounds except stating that, being a salaried employee, he was unaware of the provisions of section 44AB of the Act. However, I have considered the issue on merits, and find that the contention of the assessee untenable.

7.2 To be precise, it is an undisputed fact that the assessee has indulged in trading in *shares & derivatives/F&O* and achieved a total turnover of Rs.5,25,25,696/- which is more than the threshold limit of Rs.1,00,00,000/- stipulated u/s.44AB of the Act for compulsory audit of books of account. Further, the assessee is well educated person and employed with **Cognizant Technologies Limited**. He maintained the regular books of account and computed income/loss from the *business*. As such, the assessee cannot take the ground of ignorance of law in so far as getting the books of account audited in terms of section 44AB of the Act on or before the specified date i.e due date for furnishing the return of income under sub-section (1) of section 139 of the Act.

7.3 Be that as it may, it is well settled legal position that ignorance of law is not an excuse, more so, in respect of tax laws. **Accordingly, I am of the considered opinion that the assessee cannot plead ignorance of law as an excuse for not getting his accounts audited and not furnishing the same before the AO within the specified date in terms of the provisions of section 44AB of the Act.**

7.4 At this juncture, it may be noted that, as per the provisions of section 273B of the Act, in respect of imposition of penalty for violation of the provisions of the Act, including provisions of section 44AB of the Act, on account of *reasonable cause* for failure to abide by the law, such imposition of penalty can be withdrawn or cancelled, as the case may be. However, in the instant case, the reason given by the assessee i.e. **being a salaried employee, was not aware of the provisions of section 44AB of the Act**, cannot be construed as *reasonable cause* within the meaning of section 273B of the Act.

7.5 It has been held by various judicial authorities that *reasonable cause* means the cause which a reasonable man accepts it as a reasonable one, and which prevents a man of ordinary prudence and average intelligence, acting under normal circumstances, without negligence or inaction or want of *bona fides*. **In the instant case, in the given set of the facts and circumstances, the assessee has failed to adduce any plausible and cogent reasons, along with supporting evidence, demonstrating *reasonable cause* for his failure to get the accounts audited and not furnishing the same before the AO within the specified date in terms of the provisions of section 44AB of the Act.** In this regard, reliance is placed on the following judicial precedents:

1. *Paragon Industries Vs. ITO (2012) 19 taxmann.com 273 (Chennai)*

In this case, while adjudicating the issue of *reasonable cause* for failure to get the accounts audited u/s.44AB of the Act, for which the AO imposed penalty

u/s.271B of the Act, the **Hon'ble ITAT, Chennai** has held that, in order to avoid penalty, the assessee should establish the existence of plausible and convincing reasons for delay in filing the audit report u/s.44AB of the Act. the relevant portion of the decision is reproduced below for ready reference:

" 8. We considered the issue in detail. The most important argument of the learned chartered accountant that the audit report and the other enclosures were available before the assessing authority even before completing the assessment, by itself is not a reason to substantiate the delay caused in filing such a report and the enclosures. Section 44AB of the Income-tax Act, 1961 became operative since the assessment year 1985-86 and anyhow we are concerned with the assessment year 2006-07. Even after twenty years of introducing such a section in the Income-tax Act alongwith section 271B, the assessee is still pleading the case as if this is a new provision and he had his own difficulties in complying with the provision. The explanations that the managing partner was away, etc. are explanations for the sake of explanation, which of course, the assessee may take for its own defence. But, such commonplace explanations do not carry any more conviction.

9. It is true that in a majority of cases different Benches of the Tribunal have taken a lenient view in the matter of penalty levied under section 271B especially when the report and the enclosures were available before the Assessing Officer even before completing the assessment. But such a leniency should not be over-exploited to the extent that even section 271B itself might become otiose. In many cases we find that assessee caused delay in filing audit reports and other enclosures and the assessing authority imposed penalties and finally the assessee come before the Tribunal and the penalties got deleted. If this benevolency is going to be delivered for all the time to come, what is the sanctity of section 271B remaining in the statute book? The law enacted by the Parliament must be respected and must be followed. **If the Act says that penalty is leviable in certain circumstances, penalty must be levied unless the victim shows that sufficient reasons were prevalent to justify the omission caused. Even though evidences cannot be produced in all cases, the explanations offered by an assessee must be plausible and convincing and answerable to the reasoning of a man of ordinary prudence. We are not expecting scientific reasons with mathematical precisions. We are expecting worldly but convincing reasons.**

10. In the present case, we do not find the reasons and circumstances explained by the assessee as convincing or plausible. We find that this is a fit case to levy penalty under section 271B. Accordingly, we uphold the orders of the lower authorities. (emphasis supplied)

2. CIT Vs. Thomas Muthoot (2016) 387 ITR 471(Del.)
3. Institute of Self Management Vs CIT (2011) 16 taxmann.com 331 (Chennai)
4. Anahaita Nalin Shah Vs DCIT (2014) 43 taxmann.com 206 (Mum-Trib)

7.6 In view of the above, I am of the considered opinion that the assessee has failed to prove existence of *reasonable cause* for his failure to get the accounts audited within the specified date stipulated u/s.44AB rws 273B of the Act. Accordingly, the AO has rightly imposed the penalty u/s.271B of the Act. Thus, the grounds of appeal raised by the assessee on this issue are dismissed.

3. Learned Counsel vehemently contended during the course of hearing that this assessee is drawing salary income on regular basis and it was only in the impugned assessment year that he had carried out corresponding transactions requiring audit report u/s.44AB of the Act. He therefore pleaded assessee's ignorance only as a reasonable cause u/s.273 for deleting the impugned penalty.

4. We have given our thoughtful consideration to assessee's vehement contentions and find no merit therein. It is an admitted fact that the assessee's case is very well covered u/s.44AB of the Act as his turnover has indeed exceeded the basic threshold limit of Rs.40 lakhs in the relevant previous year. There is further no dispute that neither the assessee had got prepared his audit report nor the same had been furnished well within time to the assessing authority; as the case may be. We therefore hold that mere ignorance of law pleaded

herein at the assessee's behest hardly deserves to be treated as a reasonable cause for disturbing the impugned penalty as upheld in the CIT(A)'s lower appellate discussion. The same stands confirmed therefore.

5. This assessee's appeal is dismissed in above terms.

Order pronounced in the open court on 21st March, 2022

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Hyderabad,
Dated: 21-03-2022

TNMM

Copy to :

1.Mohd. Zaheeruddin Zeeshan Ayub, C/o.Gokhale & Co., Chartered Accountants, 3-6-322, Off. No.403, Mahavir House, Basheerbagh, Hyderabad.

2.The Income Tax Officer, Ward-14(2), Hyderabad.

3.CIT(Appeals)-6, Hyderabad.

4.Pr.CIT-6, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.