

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 287 to 292/JP/2021
निर्धारण वर्ष / Assessment Years : 2003-04, 2005-06 to 2009-10

Urban Improvement Trust UIT Building Near CAD Circle, CAD Circle Kota, Kota.	बनाम Vs.	National Faceless Appeal Centre, Delhi.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAALU 0110 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Soni (C.A.)
राजस्व की ओर से / Revenue by : Shri A.S. Nehara (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 23/03/2022
उदघोषणा की तारीख / Date of Pronouncement : 19/04/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These are six appeals filed by the assessee against the respective orders of Id. CIT(Appeals), National Faceless Appeal Centre, (NFAC), Delhi, [hereinafter referred to as (NFAC)] dated 06.10.2021 & 12.10.2021 arising from penalty order passed U/s. 271B of the Income Tax Act, 1961 (in short the "Act") for the AY 2003-04, 2005-06 to 2009-10 respectively. Since common issues are involved, all these appeals were heard together and disposed off by this common order.

2 As a lead case, for deciding the appeals, we take ITA No. 287/JP/2021 for the A.Y. 2003-04 wherein following grounds have been raised by the assessee:-

“1. Under the facts and the circumstances of the case and in law, the order dated 06.10.2021 passed by the Ld. National Faceless Appeal Centre, Delhi u/s 250 of the Income Tax Act, 1961 is perverse, arbitrary, and in law and violative of principal of natural justice.

2. Under the facts and the circumstances of the case and in law, the Ld. National Faceless Appeal Centre, Delhi has not justified in upholding the penalty of Rs. 1,00,000/- u/s 271B of the Income Tax Act, 1961.

3. The appellant Company craves leave to add, amend and modify all or any ground of appeal on or before the date of hearing.”

3. Brief facts of the case are that the assessee- AOP Urban Improvement Trust (UTI) did not file its return of income for the assessment year 2003-04. Statutory notices u/s 142(1) of the Act were issued to the assessee on 01.02.2005 and 15.09.2005 asking it to file the return. As the assessee did not comply, the AO completed the assessment u/s 144 of the Act on 28.03.2006 assessing the total income at Rs. 43,68 lakhs.

4. The Assessing Officer issued show cause notice u/s 271B of the Act to the assessee for the default of not getting its accounts audited and has violated of the provisions of section 44AB of the IT Act 1961.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(E). Before the Id. CIT(E), the assessee has reiterated its arguments. The Id. CIT(E) for the reasons stated in his order has rejected the arguments and submissions made by the assessee.

6. The Id. CIT(E) observed that the defense put forwarded by the assessee is no of ignorance of law. Ignorance of law, it is trite, is no excuse of law and if that be so, ignorance of law cannot also be a reasonable cause as contemplated under section 273B of the Act. In view of the above, as the assessee has failed to get its books of accounts audited more so when the total receipts admitted by the assessee in its income and expenditure account was Rs. 4426.39 lakhs, the levy of penalty u/s 271B of the Act amounting to Rs. 1,00,000/- by the AO is sustained and ground Nos. 1 to 3 are hereby dismissed.

7. Aggrieved by the CIT(E) order, the assessee is in appeal before us. Before the CIT (E), the assessee has reiterated that his submissions and which was not taken on record by the CIT (E). Before us the Ld AR for assessee submitted a detailed submission and during the course of hearing, the Id. AR submitted that the assessee furnished the relevant document pertaining to the provisions Section 9 and 13 of the Rajasthan Urban Improvement Act, 1959 relevant para where the AR relied upon is as follows:-

“68. Accounts and Audit- (1) The Trust shall maintain Proper accounts and order relevant records and prepare an annual statement of accounts including the balance sheet in such form as the State Government may prescribe.

(2) The accounts of the Trust shall be subject to audit annually by the examiner of Local Fund Audit and the provisions of the Rajasthan Local Fund Audit Act, 1954 (Rajasthan Act 38 of 1954 shall apply).”

And copy of the order of Id. CIT(E) dated 28.08.2019 providing reasonable opportunity u/s 12AA of the Act, where CIT(E)in its order dated 28.08.2019 granted registration U/s 254/12AA(1)(b) of the IT Act, 1961. The Ld AR for assessee as taken to relevant para in the order, which is as under:-

“04. From the details furnished by the applicant, it is transpired that the Trust was constituted in exercise of the power conferred by Section 9 and 13 of the Rajasthan Urban Improvement Act, 1959 (Act no. 35 of 1959). The application for registration was filed on 28.05.2007. In view of the above direction of Hon’ble ITAT, the applicant Trust is granted registration as “General Public Utility” Trust and the provisions of Sections 11 and 12 shall apply in the case with retrospective effect from 01.04.2007. The Trust is registered as AAALU0110D/08/2019-20/T-040/12AA/ITAT dated 08.08.2019 of the register maintained in this office. The registration is granted subject to the outcome of further judicial proceedings with following conditions:-

शर्तें:-

1. *न्यास/सोसायटी/अलाभकारी कम्पनी/संस्थान धारा 12 ए ए (1)(बी) के तहत पंजीकरण आदेश मात्र से आयकर अधिनियम 1961 की धारा 11, 12 तथा 13 के अधीन कराधान से छूट का अधिकारी नहीं होगा। इस प्रकार की कराधान से छूट प्रत्येक निर्धारण वर्ष से सम्बन्धित वित्त वर्ष में की गई संकल्पित गतिविधियों की वास्तविकता के बारे में निर्धारण अधिकारी के संतुष्ट होने पर ही प्राप्त होगी तथा उस पर सभी विधि के प्रावधान लागू होंगे। इस छूट हेतु आयकर अधिनियम, 1961 की धारा 2 (15) की शर्तें भी लागू होंगी।*

Order u/s 12AA (1) (b) does not confirm any right of exemption upon the applicant u/s 11, 12 and 13 of the Income-tax Act, 1961. Such exemption from taxation will be available only after the Assessing Officer is satisfied about the genuineness of the activities promised or claimed to be carried on in each financial year relevant to the assessment year and all the provision of law acted upon. This will be further subject to provisions of section 2 (15) of the Income –tax, 1961.

2. *न्यास/सोसायटी/अलाभकारी कम्पनी/संस्थान को नियमितरूप से हिसाब रखना होगा तथा आयकर अधिनियम, 1961 की धारा 12 ए (1)(बी) के प्रावधानों के अनुसार इनकी लेखा अंकेक्षण कराना होगा। न्यास विलेख पत्र में विनिर्दिष्ट प्रत्येक गतिविधि के सम्बन्ध में अलग से लेखा रखना होगा तथा उन लेखों की एक प्रतिलिपि निर्धारण अधिकारी को प्रेषित करनी होगी। संस्था द्वारा किए जा रहे या की जाने वाली गतिविधियों तथा लक्ष्यीत समूह (लाभान्वित व्यक्तियों) से सम्बन्धित जानकारी संस्था के पंजीकृत/प्रधान कार्यालय पर प्रदर्शित करनी होगी।*

The Trust/ Society/Non-profit Company/Institution shall maintain accounts regularly and shall get these audited in accordance with the provision of section 12A(1) (b) of the Income-tax Act, 1961. Separate accounts in respect of each activity as specified in deed / memorandum of association shall be maintained. A copy of such account shall be submitted to the Assessing Officer. A public notice of the activities carried on / to be carried on and the target group(s) (intended beneficiaries) shall be duly displayed at the Registered/Designated Office of the Organization.

3. आयकर अधिनियम, 1961 की धारा 11(4ए) के अनुपालन में उद्देश्यों की प्राप्ति के लिए आनुषंगिक/सांयोगिक व्यापार के लाभों तथा अभिलाभों के लेखे अलग से रखने होंगे।

Separate accounts in respect of profits and gains of business incidental to the attainment of objects shall be maintained in compliance to section 11(4A) of the Income-tax Act, 1961.

4. न्यास/सोसायटी/अलाभकारी कम्पनी/संस्थान को प्रत्येक वर्ष, आयकर अधिनियम में निर्धारित समय सीमा में आय की विवरणी प्रस्तुत करनी होगी।

The Trust/Society/Non-profit Company/Institution should furnish a return of income every year within the time limit prescribed under the act.

5. न्यास/सोसायटी/अलाभकारी कम्पनी/संस्थान विभाग के साथ सभी पत्राचार में स्थाई खाता संख्या का उल्लेख करना होगा।

The Trust/Society/Non-profit Company/Institution should quote the PAN in all its communications with the Department.

6. आयकर अधिनियम, 1961 की धारा 12 ए ए के अधीन इस पंजीकरण से दानदाताओं को धारा 80 जी के तहत छूट अधिकार स्वतः ही प्राप्त नहीं होगा।

The registration u/s 12AA of the I.T. Act, 1961 does not automatically confer any right on the donors to claim deduction u/s 80G.

7. इस प्रमाणपत्र का निवेश इत्यादि के सम्बन्ध में टी.डी.एस. की कटौती नहीं करने के दावों के लिए आधार के रूप में उपयोग नहीं किया जा सकेगा।

This certificate cannot be used as a basis for claiming non-deduction of tax at source in respect of investments etc. relating to the Trust/Society/Non-profit Company/Institution.”

And copy of the order of Assessments order for the Assessment year 2003-04 where the assessee himself has accepted for the disallowances of capital Receipts and Expenditure and subsequently was reconstructed and further relied on the order of the Hon'ble ITAT dated 13.09.2017 in ITA No. 387/JP/2013 and relied on the order of the Hon'ble ITAT dated 28.04.2020 in ITA No 77/JP/2020 on relevant paras 11 and 14 which is reproduce as under:-

“11. We have considered the rival contentions and perused the material available on record. The assessee trust has been granted registration u/s 12AA. The limited issue under consideration is whether such registration should be granted from the date of inception of the trust or from the first day of the financial year in which application seeking registration has been filed by the assessee trust. In this case, the assessee trust was constituted on 9.07.1970 in exercise of the powers conferred by section 9 and 13 of the Rajasthan Urban Improvement Act, 1959 and the application seeking registration was filed by the assessee trust on 28.05.2007 before the Id CIT, Kota along with a prayer seeking condonation for the delay in filing the application. In this regard, we refer to the relevant provisions of section 12A which read as under:

“12A. (1) The provisions of [section 11](#) and [section 12](#) shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

- (a) *the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and in the prescribed manner to the Principal Commissioner or Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, whichever is later and such trust or institution is registered under [section 12AA](#):*

Provided that where an application for registration of the trust or institution is made after the expiry of the period aforesaid, the provisions of [sections 11](#) and [12](#) shall apply in relation to the income of such trust or institution,—

- (i) from the date of the creation of the trust or the establishment of the institution if the Principal Commissioner or] Commissioner is, for reasons to be recorded in writing, satisfied that the person in receipt of the income was prevented from making the application before the expiry of the period aforesaid for sufficient reasons;*
- (ii) from the 1st day of the financial year in which the application is made, if the Principal Commissioner or Commissioner is not so satisfied:*

Provided further that the provisions of this clause shall not apply in relation to any application made on or after the 1st day of June, 2007”

14. Having said that, the question that arises for consideration is whether the ld CIT(E) while passing impugned order dated 28.08.2019 has taken cognizance of the condonation application so filed by the assessee and whether any satisfaction has been recorded in this regard disposing off the said application. On perusal of the impugned order, we find that ld CIT(E) has granted registration to the assessee trust as general public utility trust and has held that the provisions of Section 11 & 12 of the Act shall apply with retrospective effect from 01.04.2007 i.e. from the first day of the financial year in which application for registration was filed by the assessee-trust. However, there is nothing in the said order which remotely suggest that he has taken cognizance of the condonation application so filed by the assessee trust and has stated his reasons as to why the explanation of the assessee seeking condonation in filing the application has been rejected. The ld.CIT/DR has drawn our reference to the letter dated 14.02.2019 issued by the ITO (Hqrs) on behalf of ld CIT (E) wherein the ITO (Hqrs) has stated that “I am directed to inform you that as per the provisions of Income tax Act, retrospective effect/application of the provisions of section 12AA of the said Act is not possible.” We find that the said

communication dated 14.02.2019 is not clear at all. It is not clear from the said communication as to whether the ld CIT(E) has examined the condonation application dated 28.05.2007 and explanation so furnished by the assessee trust for the delay in filing the application. It is also not clear whether the ld CIT(E) has considered the law as applicable for application seeking registration filed before 1.06.2007 wherein the powers have been conferred on the ld CIT(E) for condonation of delay, or the amended law for application seeking registration filed on or after before 1.06.2007 wherein no such powers for condonation of delay have been conferred on the ld CIT(E). Even where it is assumed that the ld CIT(E) has taken cognizance of the assessee's application and has applied the applicable law, the aforesaid communication doesn't reflect the precise reasons as to why the explanation of the assessee seeking condonation of delay was not accepted. At most, such communication reflects the conclusion and not the reasoning and thus, doesn't satisfy the requirement of law which mandate the CIT(E) to specify the reasons in writing which helped him reach a conclusion that the explanation of the assessee seeking condonation is not acceptable. Therefore, in absence of findings of the ld CIT(E), we are constrained in deciding the matter and deem it appropriate that the matter is remanded back to the file of the ld CIT(E) to examine and expeditiously adjudicate the matter relating to delay in filing the application seeking registration u/s 12AA and pass a speaking order as per law after providing reasonable opportunity to the assessee trust."

8. The ld. AR of the assessee submitted that the penalty levied by the Assessing officer is not in accordance with law. The ld. AR of the assessee submitted the Hon'ble Supreme Court, vide order dated 12.10.2018 held that UIT, Kota is not exempted under section 10(20) of the Income Tax Act, 1961 and reversed the judgment of the Hon'ble Rajasthan High Court and held that the benefit of section 12AA of the Income Tax Act, 1961 was also not allowed during the year under consideration as the assessee did not fulfil the conditions for applicability of Section 11 and 12 of the Income Tax Act, 1961. In view of the above, the income generated is to be taxed as per normal provisions as the

assessee did not possess any exemption for the year under consideration. Accordingly assessment was completed u/s 144 of the Act determining the assessed income at Rs. 43.68 lakhs and penalty proceedings u/s 271B were correctly initiated for violating the provisions of Section 44AB of the Act.

9. The Id. AR for the assessee submitted that there was a reasonable cause for not getting account audited and furnishing a report of such audit as required under section 44AB of the Act. The Id. AR further submitted that the income of the assessee is not a business income and the assessee is not doing any business or profession, therefore, the provisions of section 44AB is not applicable. The Id. AR of the assessee submitted that the assessee is not carrying out any business activity. The activities of the public welfare as carried on by the assessee are conducted from its own building. The Id. AR for the assessee submitted that the assessee is a local authority and as per the judgment of the Hon'ble High Court of Rajasthan bench at Jaipur, in the case of appeal filed by the assessee itself for the assessment year 2003-04 and assessment year 2004-05. The Hon'ble High Court has allowed the appeals filed by the assessee and rendered the assessee exempt under section 10(20) of the IT Act.

10. On the other hand, the Id. DR supported the order of the lower authorities.

11. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We note that the assessee has committed the default for not maintaining the regular books of accounts as required U/s 44AA of the Act. The AO has imposed the penalty U/s 271B for not getting the books of accounts audited. It is pertinent to note that when the assessee did not maintain the regular books of account then the question of getting of books of accounts audited does not arise.

12. We are of the considered opinion that imposing penalty under section 271B of the Act will be a fit case only for non compliance of notice. In the present case, the Assessing Officer erred in imposing penalty for not getting audit to account by the CA defined under section 288(2) of the Income Tax Act, 1961. The Assessing Officer erred in imposing penalty U/s 44AB of the IT Act, where the assessee's contention are genuine. The Id. CIT(A) erred in not accepting the facts and submissions made before the Assessing Officer. The Id. CIT(A) erred in accepting the submissions made before him that Hon'ble Supreme Court order was passed after the Id. CIT(A) order. Further submitted that the penalty order should be revived again.

13. We are considering the view of The Hon'ble Rajasthan High Court in the case of *Bajrang Oil Mills vs. ITO, 295 ITR 314*, relevant paras as under:-

*“55. In terms of law laid down by the Supreme Court, the penalty could not be levied for every venial and technical breach of procedural laws. In this connection, it may be apposite to draw attention to decision of Supreme Court in **Hindustan Steel Ltd. v. State of Orissa [1972] 83 ITR 26** where it was laid down that even if minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. In our opinion, the aforesaid ratio in *Hindustan Steel Ltd.*'s case (*supra*) fully governs the facts of the present case and, therefore, the assessee was entitled to absolution from the liability to penalty under section 271B for noncompliance of section 44AB. Failure to comply with the provisions of section 44AB can be directly related to a bona fide belief by the assessee that he was not liable to get his accounts audited under section 44AB looking to the different nature of receipts by him from the different activities.*

56. *For the same reason, raising a contest by taking a plausible stand as true construction of statute which may ultimately be not found correct in the given circumstances constitutes a reasonable cause due to which the assessee can be said to have failed to comply with requirement of section 44AB by not getting his accounts audited for the relevant assessment year. If that were not so, it will be deterrent to a taxpayer even to raise any plausible defence to contest his liabilities and obligations within the framework of statute itself. It will be altruist statement, that where the assessee succeeds in stand taken by him on construction of statute, no case will survive for levy of penalty. It is only where his contention fails on merit, and he is found in breach of a given provisions ultimately, question of consequence befalling for such noncompliance arises. In that view of the matter, the opportunity could have been given to the assessee to remove the defects in return by complying with the requirement of law so that his return became complete. On the return being complete, no penalty could otherwise have been levied, as no breach would survive. In other case where the compliance with section 44AB becomes redundant, due to completion of assessment, the question as to levy of penalty has to be considered in the light of provisions of statute, in the present case section 271B, read with section 273B.*

57. *It may also be noticed that for the reason that the accounts are not audited where section 44AB is attracted it does not affect the proper computation of income in terms of provisions of Act of 1961 nor does it affect any claim to any deduction by the assessee under any provisions of the Act. In such event the breach remains a technical breach of the procedural requirement. The conduct of the assessee cannot be said to be lacking in bona fide or of gross negligence when he raised issue about the interpretation of a provision which had used multiple expressions, construction of which cannot be said to be self-evident but needed interpretorial (sic-interpretational) exercise. Because ultimately on construction of statute the stand taken by the assessee is found to be wrong, it does not become a case of 'self-evident' interpretation, impinging on conduct of assessee. Even in the absence of provisions like section 273B, which aptly governs the present case, the ratio of Supreme*

Court decision in Hindustan Steel Ltd.'s case (supra), keeping in view the object of provisions of mischief it was intended to suppress.

58. Therefore, levy of penalty in the aforesaid circumstances under section 271B for noncompliance of section 44AB regarding assessment year 1994-95 cannot be sustained.”

14. It is further noted that the consequence of noncompliance with the requirement of furnishing of a valid return takes effect only after the assessee fails to remove the defects within the time allowed until the assessee has opportunity to remove such defects, the consequence of such failure to comply with such defects cannot follow. If no such report is submitted the question may not carry further as in that event the return itself becomes invalid and it becomes a case where it is to be deemed that the assessee has failed to submit any return which may lead to consequence of default in filing the return. Hence, it cannot be said that there is any failure on the part of the assessee to furnish the audit report u/s.44AB of the Act at the request of the Id. Assessing Officer.

15. By placing reliance on the judgments of Rajasthan High Court in the case of *Bajrang Oil Mills (supra)*, and identical case by the coordinate Bench in *I.T.A. No.837/Mds/2017*, we are inclined to delete the penalty levied u/s. 271B of the Act and set aside the order passed by the NAFC.

I.T.A No(s). 288 to 292/JP/2022
(Assessment Year: 2005-06 to 2009-10)

16. As the facts and the issues involved in the captioned appeals remain the same as were involved in the aforementioned appeal in ITA No. 287/JP/2021, therefore, our order therein passed shall apply mutatis mutandis for the purpose of disposal of the captioned appeals.

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

Order pronounced in the open Court on 19/04/2022.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(एस.सीतालक्ष्मी)
(Dr. S. Seethalashmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19 /04/2022.

***Santosh**

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

1. अपीलार्थी / The Appellant- Urban Improvement Trust, Kota.
2. प्रत्यर्थी / The Respondent- National Faceless Appeal Centre, Delhi.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 287 to 292/JP/2021 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar