

आयकरअपीलीयअधिकरण“ए”न्यायपीठपुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL “A”
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.46/PUN/2020
निर्धारणवर्ष /Assessment Year: 2011-12

Nikhilchandra Namdeorao Tawade, Plot No.1/C, Allakh Niranjn, Boys Town Road, Near Bramhan Samaj Karyalaya, College road, Nasik – 422002. PAN: ADWPT 1037 H	Vs	The Income Tax Officer, Ward-2(4), Nashik.
Appellant/ Assessee		Respondent/ Revenue

Assessee by	None.
Revenue by	Shri S P Walimbe – DR
Date of hearing	13/06/2022
Date of pronouncement	22/06/2022

आदेश/ ORDER

PER DR.DIPAK P.RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income-tax(Appeals)-2, Nashik’s, order dated 21.11.2019for the Assessment Year 2011-12, involving proceedings under section 271B of the Income Tax Act, 1961. The Assessee has raised the following grounds of appeal:

- “1. *I HAVE FILED INCOME TAX RETURN WITH TAX AUDIT REPORT AND IT IS SUBMITTED TO INCOME TAX OFFICER WARD 2(4) NASHIK AT SCRUTINY ASSESSMENT. BUT I DO NOT KNOW WHY HE INITIATED PENALTY. WHEN IN CASES THERE IS FORM*

*3CB AND 3CD AVAILABLE THERE SHOULD NOT BE
ANY PENALTY.”*

2. Brief facts of the case are that Penalty u/s 271B has been levied by the Assessing Officer for not filling Audit Report u/s 44AB of the Act. As per the CIT(A)'s order the audit report was received by the Assessee on 19.9.2011 and statutory date to file the audit report for the year was 31.10.2010. The AO has mentioned that the Assessee failed to file any reply to the show cause notice issued to him before levying penalty. Aggrieved by the order of the AO the assessee filed appeal before the CIT(A). Before the CIT(A) , the assessee claimed that there was delay in filling the audit report because of non-availability of “DSC” and paucity of funds. However, the ld.CIT(A) confirmed the penalty.

3. No one appeared on behalf of assessee before this Tribunal. No written submission has been filed by the appellant assessee. On perusal of the ld.CIT(A)'s order it is observed that the assessee claimed that he could not file the audit report in time because of non-availability of DSC and paucity of funds. However, the assessee has not filed any evidence to substantiate his claim that he had received DCS after 30.10.2010. The Assessee had not submitted any evidence to substantiate his claim that there was paucity of funds. The Assessee failed to explain how paucity of funds has resulted in Delay

in filling Audit report. In the absence of any bonafide explanation supported by evidence, it is not possible to accept the reasons submitted by the assessee. The Hon'ble Kerala High Court in the case of **K. Ravindranathan Nair 319 ITR 108 (Kerala)** held as under:

Quote “ *On going through the Tribunal's order we find that the appellant did not adduce any evidence to justify the delay in filing the audit report as required under section 44AB of the Act and if any acceptable explanation was filed, the appellant could have avoided penalty. In the absence of any evidence adduced by the appellant at least before the Tribunal, we do not find any ground to interfere with the minimum penalty imposed under section 271B for admitted delay of filing audit report. We, therefore, dismiss the appeal.*” Unquote.

4. Therefore, we are of the opinion that there was no bonafide reasons for delay, hence, the Penalty order is upheld, accordingly the ground raised by the assessee is dismissed.

5. In the result, appeal of the Assessee is dismissed.

Order pronounced in the open Court on 22nd June, 2022.

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

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 22nd June, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.