

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री जी. मंजुनाथ, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष

**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No: 537/Chny/2022

निर्धारण वर्ष / Assessment Year: 2017-18

Indsure Healthcare Private
Limited
No. 77-C2/1,
Sadhana,
Asaripallam Road,
Nagercoil – 629 001.

Income Tax Officer,
v. National Faceless Assessment
Centre,
Delhi.

[PAN: AADCI-8088-E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. T. Vasudevan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri. A.S. Sumanth, JCIT

सुनवाई की तारीख/Date of Hearing : 17.08.2022

घोषणा की तारीख/Date of Pronouncement : 26.08.2022

आदेश /O R D E R

PER SONJOY SARMA:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), NFAC, Delhi vide Appeal No. NFAC/2016-17/10066103, dated 26.05.2022. The penalty order was framed by the Income Tax Officer, NFAC, Delhi for the Assessment Year 2017-18 u/s. 271B of the Income Tax Act, 1961 (hereinafter "the Act"), vide order dated 31.12.2021.

2. The assessee has raised the following Grounds of appeal that are as under:

- 1. The impugned order is illegal, opposed to the facts, contrary to law, without jurisdiction and against the principles of natural justice and therefore liable to be quashed.*
- 2. The learned CIT (Appeals) erred in confirming the penalty of Rs.98,475/- without considering the reasonable cause as explained before him and the assessing officer,*
- 3. The learned CIT (Appeals) failed to note that this is the first full year of operation of the company after taking over Dr. Gopala Pillai's Hospital during latter half of the year.*
- 4. The learned CIT (Appeals) ought to have seen that the assessing officer levied penalty without obtaining prior approval of the JCIT as required under section 274,*
- 5. The learned CIT (Appeals) ought to have seen that the remarks of the assessing officer that the audit report was not available in the website of the department was factually incorrect.*
- 6. The appellant prays for leave to add, alter, amend or modify any or all the grounds at any time before or at the time of hearing.*

3. The brief facts of the case are that the assessee declared income of Rs. 1,52,930/- and filed its return of income electronically on 13.03.2018. Subsequently, the assessee revised its return of income on 13.11.2018 admitting a total income of Rs. 2,99,870/-. Immediately after filing the return the case of the assessee has selected for scrutiny and assessment order u/s 143 sub section 7 of the Act was passed on 24.04.2019 by determining total assessed income at Rs. 4,95,768/- and penalty proceedings u/s. 271B of the Act were initiated. Since the assessee had not filed tax audit report within the prescribed time limit as prescribed under the Income Tax Act, 1961. The AO

alleged that appellant assessee did not file any submissions to show that reasonable cause for failure to file tax audit report in due course prescribed under law and levied penalty of Rs. 98,475/-.

4. Dissatisfied with the above order, the assessee preferred an appeal before Ld. CIT(A), where assessee pleaded that the reason for delay in getting accounts audited u/s. 44AB, as the assessee's profession was being carried out by the grand children of the founder and subsequently they have converted the same into a private limited company for continuation by the future generation and the assessment year in question is the first full year of the company and they were many formalities to be complied with under the Companies Act and various other laws for smooth transition of the business to the company. Therefore, there was delay in filing the return and tax audit report on time which was accidental and unintentional on the part of the assessee. While passing the order the Ld. CIT(A) observed that, the AO in assessment proceedings stated that the appellant submitted audit report on 30.03.2018 and assessee failed to provide a copy of the audit report moreover it was not found at online portal. The appellant assessee failed to furnish the report within the specified time required to be filed u/s. 44AB of the Act.

Ultimately, the CIT(A) dismissed the appeal of the appellant assessee by noting in his order as follows:

"1. However, on going through the submissions of the appellant I find that the reason mentioned by the appellant does not constitute a "reasonable cause". This proves beyond doubt the appellant's failure to furnish the audit report within time was voluntary and intentional. The reasons recorded by the learned AO are, in our opinion, sufficient to hold that the appellant failed to discharge his burden and hence the penalty levied is confirmed. All the grounds of the appellant are decided together and hereby dismissed."

Against this order, assessee is in appeal before Tribunal.

5. We have heard both the parties and perused the material available on record. In this case, return was filed on 13.03.2018 and revised return on 01.09.2018 also on 13.11.2018 respectively. However, from the submissions made by the assessee before the Ld. AO, assessee stated that it had filed audit report on 13.11.2018 however, contention of the AO in this regard that it was not available as per online record, he states there was a delay for filing the audit report within the time frame prescribed under law and levied penalty u/s. 271B of the Act. It was brought to our notice that the delay in filing the audit report occurred due to conversion of the business into private limited company and it was the first year of the company and due to the said reason assessee company required to do several formalities in compliance with the Companies Act and other ancillary laws do

smooth transaction of the business to the company. There is only delay in filing the return of tax audit report on time which was accidental and unintentional on the part of the appellant assessee. According to the Ld. AR their exists reasonable cause for filing the audit report belatedly and under the foregoing reasons he submitted before us to quash the impugned order, we have satisfied with the explanation given by the assessee and in our opinion this is not a fit case for levying penalty u/s. 271B of the Act due to technical breach which was beyond the control of the appellant assessee and considering the facts and circumstances of the case, we are inclined to delete the penalty levied u/s. 271B of the Act.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 26th August, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखासदस्य/Accountant Member

Sd/-

(संजय शर्मा)

(SONJOY SARMA)

न्यायिकसदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 26th August, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |