

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2248/Chny/2019
निर्धारण वर्ष /Assessment Year: 2015-16

M/s.Balaji Logistics,
No.14, Jeevanlal Nagar,
Thiruvottiyur,
Thiruvallur-600 019.
[PAN: AALFB 2990 F]
(अपीलार्थी/Appellant)

v. The Asst. Commissioner-
of Income Tax,
Non-Corporate Circle-4(1),
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.Y. Sridhar, CA
प्रत्यर्थी की ओर से /Respondent by : Mr. AR.V.Sreenivasan,
Addl.CIT
सुनवाई की तारीख/Date of Hearing : 22.08.2022
घोषणा की तारीख /Date of Pronouncement : 07.09.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-5, Chennai, dated 30.05.2019 and pertains to assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:

- 1. The order of the Learned Commissioner of Income Tax (Appeals) ('Ld. CIT(A)') is bad in law and against the facts and circumstances of the case.*
- 2. The Ld. Assessing Officer erred in levying penalty u/s.271B of the Act for belated filing of audit report in terms of Section 44 AB of the Act without assigning proper reasons and justifications.*
- 3. Section 273 provides that no penalty shall be imposable on the person for any failure referred to in the relevant penalty section prescribed in Section 273B, if the*

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assessee proves that there was a reasonable cause for the said failure. In the present case, the partner Madhivanan is managing the day to day affairs of the firm. But, as the said partner was suffering from Asthma, BP and also diabetics, he was not in a position to attend the day to day activities of the firm and also, there was a considerate delay in finalizing the books of accounts due to his health problems. Thus, the assessee had been prevented by a reasonable cause from complying with relevant provision. A copy of the medical certificate issued by the doctor was produced before the Ld. CIT(A) during the appellate proceedings.

4. The Ld. Assessing Officer failed to appreciate that the tax audit report of the appellant has been made available during the scrutiny assessment proceedings u/s 143(3). It is also evident from the assessment order u/s 143(3) that the Ld. AO has accepted the returned income after verification of all the details including the tax audit report. It is only that the appellant had belatedly filed the report on 28.03.2016 along with the return of income, on mere basis of which levy of penalty u/s 27 IB is not justifiable,

5. Further, the Ld. Assessing Officer failed to appreciate that mere failure to furnish tax audit report in time will not justify levy of penalty u/s 271B, as the power under section 271B is discretionary.

6. Notwithstanding the above, it is a settled law that when there is a technical or venial breach of the provisions of law, the ends of justice require that discretion should not be exercised in favour of punishing a minor default as held in various cases.

7. For the above reasons and other reasons that may be adduced at the time of hearing, the penalty levied u/s 271B by the Ld. Assessing Officer and confirmed by the Ld. CIT(A) in its order, may kindly be deleted and justice be rendered.

8. The Appellant craves leave to amend, alter or delete any of the above grounds of appeal.

3. The brief facts of the case are that the assessee's firm filed its return of income for the AY 2015-16 on 28.03.2016 admitting total income of Rs.56,69,650/-. The case was selected for scrutiny and assessment has been completed u/s.143(3) of the Act, on 22.11.2017 and accepted the income declared in the return of income. Subsequently, the AO has initiated penalty proceedings u/s.271B of the Act, for delayed filing of Tax Audit Report in Form 3CB as required u/s.44AB of the Act, and after considering the relevant submissions of the assessee, levied penalty of Rs.1,50,000/- u/s.271B of the Act, for non-filing of Tax Audit Report along

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with return of income filed u/s.139(1) of the Act. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in his appellate order dated 30.05.2019, dismissed the appeal filed by the assessee and upheld the penalty levied u/s.271B of the Act.

4. The Ld.AR for the assessee submitted that although, the assessee has filed Tax Audit Report as required u/s.44AB of the Act, beyond due date specified u/s.139(1) of the Act, but such Audit Report was made available to the AO before completion of assessment and therefore, for venial technical breach without any mala fide intention, penalty cannot be levied. In this regard, relied upon the decision of co-ordinate Bench of the Tribunal in the case of M/s.T P D 101 Uthangarai Milk Producers Co-operative Society Ltd. v. ITO in ITA No.152/Chny/2021 for the AY 2015-16 dated 29.06.2022.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the law is very clear in as much as penalty u/s.271B of the Act, shall be levied for failure to submit Tax Audit Report u/s.44AB of the Act, within due date specified under the Act and thus, the AO has rightly levied penalty for non-filing of Tax Audit Report and hence, their order should be confirmed.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is an admitted fact that although the assessee has filed Tax Audit Report in Form 3CB as

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required u/s.44AB of the Act, beyond due date specified u/s.139(1) of the Act, but such Tax Audit Report was made available to the AO before completion of assessment proceedings u/s.143(3) of the Act, on 22.11.2017. It is evident from the fact that the assessee has obtained Tax Audit Report from an Accountant on 28.03.2016 and furnished before the AO during the course of assessment proceedings. Therefore, we are of the considered view that when the Tax Audit Report was made available to the AO before completion of assessment proceedings, then for venial technical breach without any mala fide intention, penalty cannot be levied u/s.271B of the Act. Further, a similar issue has been considered by the co-ordinate Bench of the Tribunal in the case of M/s.T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), where on identical set of facts, penalty levied u/s.271B of the Act, has been deleted. The relevant findings of the Tribunal are as under:

"...7. We have heard both the parties and perused the materials available on record and gone through the orders of the authorities below. The assessee supposed to have been filed audit report as required u/s.44AB of the Act, on or before 31.10.2015. However, such audit report has been filed on 05.03.2016, which is before the date of completion of assessment proceedings u/s.143(3) of the Act. In other words, although the assessee has filed tax audit report beyond the stipulated period, but such tax audit report was made available to the AO before he completes assessment proceedings. The assessee has given reasons for delay in filing tax audit report. As per which, the audit of accounts of society done by the Dept. of Cooperative Audit, could not be completed on or before 31.10.2015 and said delay was not in the hands of the assessee. Therefore, there is a reasonable cause for not filing the tax audit report within prescribed time limit ad thus, penalty cannot be levied. We find merits in the submission of the assessee for the simple reason that non-filing of audit report within the due date is a venial technical breach without any mala fide intention on the part of the assessee. Because, completion of audit of books of accounts of the society is under the control of Dept. of Cooperative Audit and thus, unless the Dept. of Cooperative Audit completes audit, the assessee cannot file return of income along with tax audit report. Therefore, we are of the considered view that reasons given by the assessee for not filing tax audit report prescribed u/s.44AB of the Act, is neither intention nor any mala fide

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intention, but it is venial technical breach and for this reason, penalty u/s.271B of the Act, cannot be levied. This principle is supported by the decision of the Hon'ble jurisdictional High Court in the case of P.Senthil Kumar v. PCIT reported in 416 ITR 336, where an identical issue had been considered by the Court and held that for venial technical breach without any mala fide intention, penalty cannot be levied. The ITAT Cochin Bench in ITA No.411/Cochin/2018 vide order dated 05.02.2019 had held that once audit report has been made available before the AO, when the assessment proceedings were completed, then, there is no reason for levy of penalty.

8. *In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that reasons given by the assessee for not filing tax audit report within due date comes under reasonable cause as provided u/s.271B of the Act, and thus, the AO is erred in levying penalty u/s.271B of the Act. Hence, we direct the AO to delete penalty levied u/s.271B of Act."....*

7. In this view of the matter and by following the decision of the co-ordinate Bench of the Tribunal in the case of M/s.T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), we direct the AO to delete penalty levied u/s.271B of the Act.

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

Order pronounced on the 07th day of September, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 07th September, 2022.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF