

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER &  
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

I.T.A. Nos.153 & 154/Ind/2019  
(Assessment Years: 2012-13 & 2013-14)

M/s. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited 3/54, Free Press House, Press Complex, A.B. Road, Indore [M.P.]	Vs.	The DCIT-3(1) Range-3, Indore (M.P.)
<b>PAN No.AADCM7525Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

&

I.T.A. Nos.497 & 498/Ind/2019  
(Assessment Years: 2011-12 & 2013-14)

M/s. SEZ Indore Limited 1 <sup>st</sup> Floor, Free Press House, Press Complex, A.B. Road, Indore [M.P.]	Vs.	The DCIT-3(1) Range-3, Indore (M.P.)
<b>PAN No.AAJCS7745J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri S. N. Agrawal & Shri Bhavesh Agrawal, A.Rs.
<b>Respondent by :</b>	Shri Ashish Porwal, Sr.D.R.

<b>Date of Hearing</b>	15.09.2022
<b>Date of Pronouncement</b>	21.09.2022

O R D E R

**PER Ms. MADHUMITA ROY - JM:**

This bunch of four appeals filed by two assesseees are directed against the orders dated 03.12.2018 (in ITA Nos. 153 & 154/Ind/2019) & 05.02.2019 (in ITA Nos. 497 & 498/Ind/2019), passed by the Commissioner of Income Tax (Appeals)-I, Indore arising out of the orders all dated 29.03.2017 passed by the Dy. Commissioner of Income Tax, Circle-3(1), Indore under section 271B of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Years 2012-13 & 2013-14 (in ITA Nos. 153 & 154/Ind/2019) & 2011-12 & 2013-14 (in ITA Nos. 497 & 498/Ind/2019) respectively.

2. Since, the issue involved in these appeals are common, these are heard analogously and are being disposed of by a common order.

**ITA No. 153/Ind/2019 (A.Y. 2012-13) in case of M/s. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited is taken as a lead case**

3. We have heard the parties and perused the materials available on record.

4. The assessee has challenged the penalty to the tune of Rs.1,50,000/- levied under Section 271B of the Act. The assessee, a Government company, wherein appointment of Auditor in the case of the appellant was governed by

the provision of section 619(2) of the Companies Act, 1956 for the year under consideration. In short, the Auditor, in the case of the appellant was to be appointed by the Comptroller and Auditor-General of India. In this particular case for the year under consideration, the Auditor was appointed late and was entrusted with the work of completing the audit and furnishing the statutory audit report for the relevant financial year. The Auditor completed the audit and finalized their reports only on 19.12.2012 whereas the due date for furnishing of tax audit report in terms of provision of Section 44B of the Act for the year under consideration was 30.09.2012. As the finalization of the statutory audit was made only on 19.12.2012, tax audit report could not be filed within the prescribed date i.e. 30.09.2012 instead of the same could be filed only on 16.05.2013. The crux of the submission made by the assessee is this that the delay in completion of statutory audit constitutes a reasonable cause for the delay in completion and submission of tax audit report under section 44AB of the Act. Such delay is not attributable to the appellant since neither the appointment of the statutory auditor nor the completion of statutory audit was within the control and domain of the appellant. In that view of the matter the case made out by the appellant, when reasonable cause for delay in furnishing of tax audit report as per provision of Section 271B r.w.s. 273B of the Act has been established, we find substance in the argument as advanced by the Ld.AR that the levy of penalty under S.271B of the Act is not sustainable and requires to be deleted. In this regard, we have carefully considered the judgment passed by the Jaipur Bench in the case of M/s. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. vs. ACIT ITA No.100/JP/2018 order dated 28.03.2018 as relied upon by the appellant, copy

whereof also has been handed over to us. Upon perusal of the same, we find the following observation made by the said Bench on the identical issue is as follows:

*“ 10. It is noted that a similar issue has been examined and by us recently in case 01-M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd. (ITA No.100/JP/2018dated28/03/2018)wherein we have held as under:-*

*“7. We have heard the rival contentions and pursued the material available on record. In the instant case, the limited issue for consideration is whether there is a reasonable cause for the delay in completing the tax audit and submitting the report of the tax auditor within the specified due date. Under section 273B, no penalty shall be imposed on the assessee for any failure which interalia include the defaults mentioned in section 271B, if the assessee proves that there was reasonable cause for the said failure. In the present case, the reason for the delay has been stated to be the delay in completing the statutory audit for the earlier years which has resulted in delay in completion of statutory audit for the year under consideration and the resultant delay in completing the tax audit and submitting the report thereof. It was submitted that without completing the statutory audit, the tax audit could not have been completed. We find that the statutory auditors are appointed by the Comptroller & Auditor General of India under section 619(2) of the Companies Act, 1956 and they have completed the statutory audit and submitted their audit report dated 27.03.2014. Thereafter, the tax audit has been completed on 15.07.2014 and the revised return was filed on 16.09.2014. The Hon’ble Punjab & Haryana High Court in the case of CIT v. Punjab State Leather Development Corpn. Ltd. [2001] 119 Taxman 258 has held that delay in completion of statutory audit was a reasonable cause for noncompliance with section 44AB and it was held that the Tribunal was right in cancelling penalty levied under section 271B. Respectfully following the same, we are of the view that in the instant case, where there has been a delay in completion of statutory audit, there exist a reasonable cause for the delay in completion and submission of the tax audit report under section 44AB of the Act. The penalty levied under section 271B is therefore deleted.*

*11. In the instant case, we find that there is a reasonable cause for the delay in completion and submission of the tax audit report under section 44AB of the Act due to delay in appointment of statutory auditors and consequent delay in finalization of annual accounts for the earlier years. Following our aforesaid decision, the penalty levied under section 271B is hereby directed to be deleted.”*

In this particular case, the penalty was deleted on the ground that delay in appointment of Auditor and consequent delay in finalization of annual accounts cannot be attributable to the assessee. Under these circumstances,

respectfully relying upon the judgment mentioned above, the impugned penalty, in our considered opinion, is not sustainable in the eye of law and thus, the same is hereby deleted.

5. In the result, assessee's appeal is allowed.

6. The grounds of appeal as argued by the Ld. AR in ITA Nos.154, 497 & 498/Ind/2019 are identical to that of the issue already been dealt with by us in ITA No.153/Ind/2019 for A.Y. 2012-13 and in the absence of any changed circumstances the same shall apply mutatis mutandis. Hence, these grounds of appeal preferred by the assessee in ITA Nos.154, 497 & 498/Ind/2019 are allowed.

7. In the combined result, all captioned appeals of assessee are allowed.

**This Order pronounced in Open Court on 21/09/2022**

Sd/-  
(BHAGIRATH MAL BIYANI)  
**ACCOUNTANT MEMBER**  
Indore; Dated 21/09/2022

Sd/-  
(MADHUMITA ROY)  
**JUDICIAL MEMBER**

S. K. Sinha, Sr. PS

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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Sr. PS)  
ITAT, Indore