

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. N. K. Choudhry, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4981/Del/2018 : Asstt. Year: 2013-14

Polymer Papers Ltd., 12, Friends Colony West, New Delhi	Vs	DCIT, Circle-20(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACP0271B		

Assessee by : None

Revenue by : Sh. S. L. Verma, Sr. DR

Date of Hearing: 19.01.2023

Date of Pronouncement: 25.01.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-7, New Delhi dated 25.04.2018.

2. Assessment in this case completed u/s 143(3) of the Income Tax Act, 1961 on 09.03.2016 at total loss of Rs.2,18,29,848/- as against declared loss of Rs.2,75,75,972/-. Assessee has furnished income tax return on 08.09.2014 instead of due date i.e. 31.10.2013 and audit report of the assessee was signed on 06.12.2013. Penalty proceedings u/s 271B of the Income Tax Act, 1961 was initiated for failure on the part of the assessee to furnish the tax audit report as per the provision of Section 44AB of the Income Tax Act, 1961 along with Income Tax Return within due time.

3. Show cause notice dated 20.02.2017 was issued by the AO. There was no reply from the assessee. Hence, the AO held that it is apparent that the appellant has no reasonable cause for not furnishing Income Tax Return in time and audit their books of account as required u/s 44AB within the stipulated time and then imposed penalty u/s 271B amounting to Rs.1,50,000/-.

4. The provisions of Section 271B reads as under:

"Failure to get accounts audited.

271B. *If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less."*

5. The provisions of Section 44AB reads as under:

Audit of accounts of certain persons carrying on business or profession.

44AB. ¹⁶*Every person,—*

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year ¹⁷*[***]:*

¹⁸*[Provided that in the case of a person whose—*

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five

per cent of the said payment, this clause shall have effect as if for the words "one crore rupees", the words "¹⁹[ten] crore rupees" had been substituted:]

²⁰[Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash; or]

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

Provided that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:

Provided further that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later :

Provided also that in a case where such person is required by or under any other law to get his accounts audited , it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

Explanation.—For the purposes of this section,—

(i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means ²¹[date one month prior to] the due date for furnishing the return of income under sub-section (1) of section 139."

6. As per Section 271B, the assessee had to get his accounts audited or furnish a report as required u/s 44AB. The Section 44AB in turn mandates to get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit. In the instant case the assessee has failed to follow the mandate given in the Act,

- a) To get his accounts audited before the specified date,
- b) And to furnish before the due date the report of the audit.

7. Hence, we decline to interfere with the order of the Id. CIT(A).

8. In the result, the appeal of the assessee is dismissed.
Order Pronounced in the Open Court on 25/01/2023.

Sd/-

Sd/-

(N. K. Choudhry)
Judicial Member

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 25/01/2023

Subodh Kumar, Sr. PS
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR