

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasima Chary, Judicial Member

ITA No.31/Hyd/2023		
Assessment Year: 2017-18		
Mrs.Suryavathi Gandiboina, Ramagundam PAN:ASTPG2015J (Appellant)	Vs.	Asstt. C. I. T. Circle 1 Karimnagar (Respondent)
Assessee by:	Shri T. Rajendra Prasad, CA	
Revenue by:	Shri K.P.R.R. Murthy, CIT(DR)	
Date of hearing:	20/03/2023	
Date of pronouncement:	24/03/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 22.11.2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the CIT (A) NFAC in confirming the levy of penalty of Rs.1,50,000/- by the Assessing Officer u/s 271B of the I.T. Act.

3. Facts of the case, in brief, are that the assessee is an individual engaged in the business of trading in automobile parts under the name and style of 'Durga Automobiles'. She filed her

return of income on 13/03/2018 declaring total income of Rs.19,76,250/-. The Assessing Officer initiated penalty proceedings u/s 271B of the Act on 23.6.2021 on the ground that the assessee had filed the audit report on 10.3.2018 which is beyond the extended due date of filing of the return i.e. 7.11.2017 and as such there is a failure on the part of the assessee to file the audit report within the due date. Accordingly, show cause notice was issued to the assessee asking him to explain as to why penalty u/s 271B should not be levied. It was explained by the assessee that the audit report was obtained on 10.03.2018 with delay of 123 days due to health issues. Relying on various decisions, it was submitted that the main purpose of the audit u/s 44AB is to assist the Assessing Officer in completing the assessment and it has been held that where such audit report was available at the time of assessment, there was no impediment for the Assessing Officer to complete the assessment after taking note of the audit report which was admittedly available before him. It was argued that in the instant case also the audit report was available at the time of scrutiny proceedings itself. It was accordingly argued that the proceedings u/s 271B should be dropped.

4. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and levied penalty of Rs.1,50,000/- u/s 271B of the I.T. Act being 0.5% of the total sales of Rs. 1,50,000/- whichever is less.

5. In appeal, the learned CIT (A) confirmed the penalty levied by the Assessing Officer.

6. Aggrieved with such order of the CIT (A) NFAC, the assessee is in appeal before the Tribunal.

7. The learned Counsel for the assessee referring to page 15 to 27 of the Paper Book drew the attention of the Bench to the prescriptions of Doctor and submitted that due to health reasons, the assessee was not in a position to obtain the audit report in time for which the delay occurred. Referring to provisions of section 273B of the I.T. Act, 1961, he submitted that since there is a reasonable cause the penalty levied by the Assessing Officer u/s 271B and confirmed by the CIT (A) is not justified. He also relied on the following decisions:

- i) *Hindustan Steel Ltd vs. State of Orissa (1972) 83 ITR 26 (S.C)*
- ii) *Star Agencies vs. Income Tax Officer (2006) (5 SOT 336) Cochin-Tribunal.*

8. The learned DR, on the other hand, heavily relied on the order of the CIT (A). He submitted that the assessee is duty bound to obtain the Audit Report before the specified date. In the instant case, as mentioned earlier, the assessee has obtained its audit report with delay of 123 days therefore, the CIT (A) was fully justified in sustaining the penalty levied by the Assessing Officer u/s 271B of the I.T. Act.

9. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT (A), NFAC and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case levied penalty of Rs.1,50,000/- u/s. 271B on the ground that the assessee did not

obtain the audit report and file the same within the statutory due date. We find the learned CIT (A) upheld the action of the Assessing Officer. It is the submission of the learned Counsel for the assessee that due to health reasons, the assessee was unable to obtain the audit report and file the same within the due date, a fact already brought to the notice of the Assessing Officer which is not disputed by him and, therefore, the Assessing Officer was not justified in levying the penalty u/s 271B of the Act and the CIT (A) NFAC was not justified in sustaining penalty levied by the Assessing Officer. It is also his submission that the assessment has been completed u/s 143(3) and the audit report was available before the Assessing Officer at the time of assessment proceedings.

10. We find some force in the above argument of the learned Counsel for the assessee. A perusal of the various details filed by the assessee shows that the assessee was not keeping good health for which she was not in a position to obtain the Audit Report in time, and, therefore, could not file the same before the statutory due date. As per the provisions of section 273B of the I.T.Act, 1961, no penalty shall be imposable u/s. 271B on the person or the assessee as the case may be for any failure referred to in the said provision, if the assessee proves that there was a reasonable cause for the said failure. In the instant case, the submission of the assessee during the course of penalty proceedings that she was not keeping good health for which documentary evidences were filed are not disputed. Under these circumstances, we are of the considered opinion that there was a reasonable cause on the part of the assessee for not getting the accounts audited timely and file the same on or before the due

date. We, therefore, set aside the order of the CIT (A), NFAC and direct the Assessing Officer to cancel the penalty.

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

Order pronounced in the Open Court on 24th March, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 24th March, 2023.

Vinodan/sps

Copy to:

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3	CIT-NFAC
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order