

आयकरअपीलीयअधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गाराव, न्यायिक सदस्य एवं श्री मनोजकुमारअग्रवाल, लेखा सदस्य के समक्ष।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकरअपीलसं./I.T.A.No.249/Chny/2023
निर्धारणवर्ष/Assessment Year:2018-19

Pondicherry Power Corporation
Limited, 10, 2nd Cross, Jawahar Nagar,
Boomianpet, Puducherry 605 005.

Vs. The Income Tax Officer,
CHE-C-(171)(1),
Chennai.

[PAN:AAACP6507E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by
प्रत्यर्थीकीओरसे/Respondentby

: Shri V. Meenakshi Sundar, CA
: Mrs. Jothi Lakshmi Nayak, CIT &
: Shri AR V Sreenivasan, Addl. CIT

सुनवाईकीतारीख/Date of hearing
घोषणाकीतारीख /Date of Pronouncement

: 30.03.2023
: 30.03.2023

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 31.01.2023 relevant to the assessment year 2018-19 passed under section 271B of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that the assessee has filed its return of income on 28.09.2018 for the assessment year 2018-19 declaring

income at ₹. 8,68,55,570/-. Subsequently, the assessee filed revised return on 28.03.2019 declaring income of ₹.3,71,77,220/-. The case of the assessee was selected for scrutiny. After following due procedures and considering the submissions of the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 01.02.2021 at the returned income of ₹.3,71,77,220/-.

3. Subsequently, the Assessing Officer initiated penalty proceedings under section 271B of the Act on the ground that the assessee has not filed tax audit report under section 44AB of the Act within the time limit prescribed under section 44AB of the Act as the assessee's total turnover was ₹.75,61,70,424/- and the assessee was required to get their accounts audited and liable to file the tax audit report as required under section 44AB of the Act before the due date. As the assessee has not filed the tax audit report within due date, the Assessing Officer levied penalty of ₹.1,50,000/- under section 271B of the Act. On appeal, the Id. CIT(A) confirmed the penalty levied under section 271B of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the C & AG has

appointed the Statutory Auditor on 13.06.2019 and the Statutory Auditor accepted the audit by 24.09.2019. The matters relating to Auditor appointment and acceptance by them is not within the control of the assessee as being a Government company. It was further submission that the audit report under section 44AB of the Act were furnished during the course of assessment proceedings under section 143(3) of the Act, which was also considered by the Assessing Officer before concluding the assessment and prayed for deleting the penalty levied under section 271B of the Act.

5. On the other hand, the Id. DR supported the orders of authorities below.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the penalty order, the Assessing Officer had noted that the assessee's turnover was at ₹.75,61,70,424/-. The assessee was required to get his accounts audited under section 44AB of the Act and filed within the due date. Since the assessee has not filed the tax audit report under section 44AB of the Act before the due date, the Assessing Officer levied penalty of ₹.1,50,000/- under section 271B of the Act, which was confirmed by the Id. CIT(A). Before us, it was submitted that the tax audit report under

section 44AB of the Act were furnished during the course of assessment proceedings under section 143(3) of the Act, which was also considered by the Assessing Officer before concluding the assessment. Thus, we are of the considered opinion that when the Tax Audit Report was made available to the Assessing Officer before completion of assessment proceedings, for venial technical breach without any mala fide intention, penalty cannot be levied under section 271B of the Act.

6.1 Similar issue on an identical fact was subject matter in appeal before this Tribunal in the case of Balaji Logistics v. ACIT in I.T.A. No. 2248/Chny/2019 dated 07.09.2022 for the assessment year 2015-16, wherein, the Tribunal has observed as under:

“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 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 and 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 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.”*

6.2 Respectfully following the above decision of the Coordinate Benches of the Tribunal in the case of Balaji Logistics v. ACIT (supra) for the assessment year 2015-16, we are of the considered opinion that it is not a fit case for the levy of penalty under section 271B of the Act and

accordingly, the penalty levied stands deleted.

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

Order pronounced on 30th March, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 30.03.2023

Vm/-

आदेशकीप्रतिलिपिअग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3.

आयकरआयुक्त (अपील)/CIT(A), 4. आयकरआयुक्त/CIT, 5. विभागीयप्रतिनिधि/DR &6.

गार्डफाईल/GF.