

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.88/Asr/2023
Assessment Year: 2016-17**

M/s In Construction Pvt. Ltd. Flat No.203, Dream Home Appartment, Greater Kailash, Jammu & Kahsmir. [PAN:-AADCI2808N] (Appellant)	Vs.	ITO, Ward-1(1), Jammu. (Respondent)
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Appellant by	Sh. Hardeep Aggarwal, CA
Respondent by	Sh. Vedanshu Tripathi, Sr. DR

Date of Hearing	24.05.2023
Date of Pronouncement	26.05.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals) -5, Ludhiana,[in brevity the 'CIT (A)'] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity 'the Act'] for

A.Y. 2016-17. The impugned order was emanated from the order of Id. Income Tax Officer, Ward-1(1), Jammu [in brevity 'AO'] order passed u/s 271B of the Act.

2. Brief fact of the case is that the penalty was levied u/s 271B for delay filing of tax audit report for assessment year 2016-17 by contravening section 44AB of the Act. The penalty was levied amount of Rs.81,843/- against the assessee. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved on the order of appeal, the assessee filed the appeal before us.

3. The Id. AR filed a written submission which is kept in the record. The Id. AR first placed that the assessee company filed its audit report for assessment year 2016-17 on dated 22.03.2018 beyond the due date because the fact that it went into litigation with one of its major clients namely M/s Simula Infra Pvt. Ltd. (Paradise Avenue). The litigation was necessitated due to the fact that a cheque amounting to Rs. 73,00,000/- issued by M/s Simula Infra Pvt. Ltd., got dishonoured as the payment was stopped by the drawer and the client refused to clear the pending dues. The copy of the complaint, cheque and dishonoured instrument are duly filed in **APB 1 to 4**. The Id. AR claimed that the tax audit report was completed within

due date i.e. 30.09.2016 but due to the litigation and in hazardous condition the tax audit was filed in delay.

4. The Id. DR argued and fully relied on the order of the revenue authorities and invited our attention in para 5.3 page 4 of the appeal order which is annexed as below:

“5.3 Grounds of Appeal Nos. 2 & 5: In these grounds, the AR has contended that the AO has levied the penalty u/s 271B on account of the fact that the assessee did not submit the audit report within the specified date in the prescribed form duly signed and verified by the accountant as provided u/s 44AB of the Income Tax Act, 1961. During the appellate proceedings, the AR submitted that the assessee company filed its Audit Report for AY 2016-17 on 22.03.2018 which was beyond the due date as it went into litigation with one of its major clients namely M/s. Simula Infra Pvt. Ltd. The AR further submitted that the assessee company had submitted his books of accounts to the Auditor and the audit was completed well before the due date i.e. 30.09.2016 but the assessee company erred in filing the tax audit report belatedly on 22.03.2018 because of the distraction created by the litigation with Simula Infra Pvt. Ltd. The wordings of the section 44AB are very clear in this regard and the assessee is required to fulfil both the conditions i.e. to get the accounts audited and to furnish by the specified date,

the report of such audit in the prescribed form duly signed and verified by the auditor. There was an amendment in Section 44AB and the word 'obtain before' has been replaced by the word 'furnished by' to bring a transparency in this regard with a view to avoid litigation.

Earlier the requirement was that the assessee would get the accounts audited and obtain before the specified date the audit report. However under the changed provisions of law applicable to the year under consideration, the assessee was required not only to get the accounts audited but also to furnish the audit report by the specified date applicable to the case of the assessee. The assessee company has itself acknowledged the audit report was furnished after a gap of more than 1.5 years. The requirement of the law is that the assessee after getting the accounts audited is also required to furnish to the department the audit report by the specified date. Considering these facts of the case, the arguments of the AR appears unacceptable. The action of the AO is found as per law and hence the penalty imposed under section 271B in this case amounting to Rs. 81,843/- is sustainable and hence confirmed.”

5. We heard the rival submission and relied on the documents available in the record. The assessee completed the tax audit within the due date. But the assessee

filed the tax audit report before the authority with a delay which is contravening of section 44AB of the Act. The assessee filed a proper reason for delay in filing tax audit report. In factual matrix the assessee was suffering a financial exigency with legal battel. In our consider view, this is a sufficient reason for delay in filing the tax audit report before the authority which follow the Section 273B of the Act. Accordingly, the penalty U/s 271B amount of Rs.81,843/- is quashed.

6. In the result, the appeal of the assessee bearing **ITA No. 88/Asr/2023** is allowed.

Order pronounced in the open court on 26.05.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

Sd/-

(ANIKESH BANERJEE)
Judicial Member

True Copy
By order