

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No.66/Mum/2023  
(Assessment Year: 2017-18)

Rasik Nemchand Pethad Gala No.3, Nausibai Compound, Near Sarkari Bunglow, Chitalsar Manpada, Thane-400 610	Vs.	DCIT, CC-1 Thane
PAN/GIR No. AANPP 1791 J		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri Shashank Mehta
<b>Revenue by</b>	:	Smt. Mahita Nair
<b>Date of Hearing</b>	:	02.03.2023
<b>Date of Pronouncement</b>	:	24.05.2023

**ORDER**

**Per Kavitha Rajagopal, JM:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-11 Pune ('ld.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The solitary issue involved in this appeal is challenging the penalty levied u/s. 271B of the Act without considering the fact that the tax audit report was belatedly furnished by the assessee.

3. The brief facts are that the assessee is an individual and is engaged in the business of retail and wholesale trading of food grains, grocery items, dry fruits and masala items under the name and style of M/s. R. N. Trading. The assessee filed his return of income

dated 19.02.2018, declaring total income at Rs.18,97,960/-. The assessee's case was selected for scrutiny and the assessment order dated 19.12.2019 was passed u/s. 143(3) of the Act where the Assessing Officer (A.O. for short) accepted the returned income and determined the total income at Rs.18,97,960/-. The A.O. observed that the assessee had filed tax audit report on 19.02.2018 and, therefore, levied penalty u/s. 271B of the Act, amounting to Rs.1,50,000/- for failure to comply with the provision of section 44AB of the Act which mandates that tax audit report to be filed within the specified time as per section 139(1) of the Act vide order dated 06.07.2021.

4. Aggrieved by the said order, the assessee was in appeal before the Id. CIT(A).

5. The Id. CIT(A) confirmed the penalty levied by the A.O. for the reason that the assessee has failed to substantiate any reasonable cause for non filing of tax audit report within the due date specified under the Act.

6. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

7. The learned Authorised Representative (Id. AR for short) for the assessee contended that the assessee has always been prudent in filing the tax audit report for the previous years and even during the subsequent years. The Id. AR for the assessee further stated that since the assessee has changed his accounting software during October, 2016 and had also sifted his place of operation during the month of December, 2016, some of the files were misplaced and the assessee had called for the duplicate copy of those files which had taken considerable time. The Id. AR for the assessee further stated that the assessee's Accountant had left service without intimation and that because of these reasons, there was delay in filing the tax audit report. The Id. AR for the assessee

submitted that there was reasonable cause for the delay and prayed that the impugned penalty be deleted.

8. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, controverted the said facts and contended that the assessee has not specified as to why the change in the accounting software has caused the delay. The Id. DR also contended that the assessee has not furnished any documentary evidence to prove that the delay was caused due to the shift in the place of operation of the assessee. The Id. DR brought our attention to the fact that the assessee had not filed his return of income for the impugned year till a survey u/s. 133A of the Act was conducted on the business premises of the assessee dated 25.01.2018. The Id. DR further contended that the reason stated by the assessee was not sufficient to consider it to be a reasonable cause and relied on the orders of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee had not filed his return of income for the impugned year and only subsequent to the survey action u/s. 133A of the Act conducted on the business premises of the assessee, the assessee is said to have filed the returns for the impugned year dated 05.02.2018. It is also observed that the assessee had paid the taxes and filed ITR along with the tax audit report subsequent to the survey action. The assessee has submitted its tax audit report in Form 3CD along with the audited copy of P & L account and balance sheet on 19.02.2018 and, hence, the A.O. levied penalty u/s. 271B of the Act after issuing show cause notice dated 10.06.2021. The assessee in its reply to the said show cause notice had stated that the delay was due to change in

accounting software, shifting of his place of operation and due to the reason that his Accountant left service without prior intimation. As the assessee's case falls under the provision of section 44AB of the Act which mandates that the accounts has to be audited by the Accountant before the specified date and the audited report has to be furnished within the specified date and the failure of the same will attract penalty of a sum equal to one half percent of the total sales, turnover or gross receipts as the case may be or sum of Rs.1,50,000/-, whichever is less. The A.O. calculated 0.5% of the total sales, turnover or gross receipts of Rs.4,65,47,200/- and worked out at Rs.2,32,756/-, thereby levied a maximum penalty of Rs.1,50,000/- u/s. 271B of the Act. The Id. AR for the assessee has relied upon the decision of the Tribunal in the case of *Lata Keshao Thaokar vs. ITO* (in ITA No. 2256/Mum/2022 vide order dated 30.01.2023), wherein it was held that the penalty levied u/s. 271B was to be deleted, if there was a reasonable cause for the delay in filing the audited report. The Id. AR had also furnished the copy of the leave and license agreement dated 03.12.2016 executed by the licensor and the assessee to substantiate the fact that the assessee had shifted his place of operation and, hence, in the process had misplaced some of the document required for the purpose of auditing his accounts. It is pertinent to point out that section 273B of the Act mandates that penalty shall not to be imposed in certain cases where the assessee proves that there was a reasonable cause for the failure which cost the A.O. to levy penalty. It is also pertinent to point out that section 271B is very much covered by section 273B where if the assessee is able to substantiate that there was a reasonable cause for the failure to comply with the provision, then the penalty shall not be imposed in such cases. Upon consideration of the reasons stated by the assessee for the delay in filing the audit report, we deem it fit to

delete the impugned penalty for the reason that the assessee has substantiated the delay by having a reasonable cause. We find merit in the submission of the assessee and, hence, the A.O. is directed to delete the penalty levied u/s. 271B of the Act.

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

*Order pronounced in the open court on 24.05.2023*

Sd/-

(Prashant Maharishi)  
Accountant Member

Mumbai; Dated : 24.05.2023

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)  
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai