

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.2514/Del/2022**

**निर्धारणवर्ष/Assessment Year:2017-18**

Sumit Goel 6/78, WEA, Ajmal Khan Road, Karol Bagh, New Delhi.	<b>बनाम Vs.</b>	ITO Ward 51(5) Delhi.
<b>PAN No. AFPPG4431F</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

<b>Assessee by</b>	<b>Shri Ved Jain, Adv. Ms. Supriya Mehta, CA &amp; Ms. Uma Upadhyay, Adv.</b>
<b>Revenue by</b>	<b>Shri Jitender Kale, Sr. DR</b>

<b>सुनवाईकीतारीख/ Date of hearing:</b>	<b>01.05.2023</b>
<b>उद्घोषणाकीतारीख/Pronouncement on</b>	<b>09.06.2023</b>

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the assessee against Commissioner of National Faceless Centre (NFAC), Delhi dated 30.08.2022 for the AY 2017-18 in sustaining the penalty of Rs.1,36,035/- u/s 271B of the Act for delay in getting the books of accounts audited u/s 44AB of

the Act and furnishing the same beyond the due date for filing the return of income.

2. The Ld. Counsel for the assessee submits that the assessee is engaged in the business of manufacturing and selling of bakery and confectionary products through its proprietorship concern under the name of Anjlika Pastry Shop & Anjlika Bakers and Confectioners. The total business receipts during the year under consideration were Rs.2,72,07,135/-, which exceeds Rs. 1 crores and thus the provisions of section 44AB were applicable to the assessee and the assessee was required to get his books of accounts audited and furnish the tax audit report on or before 30.09.2017. The CBDT vide press release dated 31st October 2017, further extended the due date of filing tax audit report from 30.09.2017 to 07.11.2017. However the assessee could not file the tax audit report within the due date as the accountant looking after the accounts suddenly left the job. Due to this fact, the assessee filed tax audit report on 08.03.2018 which is placed at PB 16-32. Also, the assessee filed his return of income for the AY 2017-18 on 09.03.2018. Copy of the acknowledgement of return along with computation of income is placed at PB 1 to 4. Ld. Counsel submits that the case was selected for complete scrutiny under CASS and the assessment order u/s

143(3) was passed accepting the returned loss amounting to Rs. 2,93,393/- declared by the assessee. Copy of the assessment order dated 30.12.2019 is placed on record. Ld. Counsel submits that neither any adverse inference has been drawn against the assessee nor any prejudice has been caused to the revenue on account of delay in furnishing the tax audit report.

3. However, the penalty proceedings u/s 271B were initiated by issuing a show cause notice dated 31.05.2021 requiring the assessee to explain why the penalty not be imposed for delay furnishing of tax audit report for the year under consideration. The assessee furnished reply dated 01.02.2020 (PB Pg. 35) and explained that the delay in furnishing the tax audit report was because of the fact that the accountant who was responsible for maintenance of books of accounts had left the job and therefore the tasks could not be completed on time and there was a delay in furnishing the tax audit report. Thus, delay was not intentional but was because of the accountant leaving the job suddenly and thus the delay was by reason beyond the control of the assessee.

4. The assessee vide reply dated 14.06.2021 (PB Pg. 36-37) further submitted that assessee has been regular in filing its Tax Audit Reports for every year and it is not the case where AO

defaults in furnishing the tax audit report frequently. The assessee also furnished' the ITR Acknowledgements and Tax Audit Reports for preceding previous years and also for subsequent years i.e. AY 2015-16, AY 2016-17, AY 2018-19 & AY 2019-20 which are placed at PB Pg. 38-95 in support of his contention that he has been filing the Tax Audit report in time and this year the delay was because of accountant leaving the job. A table showing that the assessee is regular in filing its Tax Audit Report complying with the due dates is as below:

Particulars	Date of filing of Tax Audit Report
AY 2015-16	30-09-2015
AY 2016-17	15-10-2016
AY 2017-18	31-10-2018
AY 2018-19	30-10-2019

The above table clearly depicts that the assessee is regular in filing its tax audit report meeting the due dates this year i.e. AY 2017-18 is the exceptional year where tax audit report could not be furnished on/before due date due to uncontrollable circumstances.

5. However, Ld. AO ignoring the above explanation proceeded to impose a penalty u/s 271B equivalent 0.5% of the total turnover of Rs. 2,72,07,135/- i.e. Rs. 1,36,035/-. The relevant findings of the AO are on Page 4 Para 7 of the Penalty order dated 22.10.2021. The

Ld.CIT(A) sustained the penalty levied by the Assessing Officer ignoring the submissions made by the assessee.

6. The Ld. Counsel submits that no penalty shall be levied even though there is a delay in filing the tax audit report but assessment has been completed at returned income. Reliance was placed on the decision of the Pune Bench in the case of Sebastian Joseph vs. ACIT [ITA No.610/Pune/2022, dated 03.02.2023], the decision of Rajkot Bench of the Tribunal in the case of Dayal Ji Jamana Das Thacker vs. ITO [in ITA No.112/Rjt/2021, dated 31.01.2023] and the decision of the Jaipur Bench of the Tribunal in the case of Manju Saranm vs. ITO [in ITA No.423/Jpr/2022, dated 20.02.2023].

7. The Ld. Counsel further submits that penalty should not be imposed, where there is a technical or venial breach of the provisions of the Act or where the breach flows from a *bonafide* belief. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs. State of Orissa [83 ITR 26]. The Ld. Counsel placing reliance on the decision of the Madras High Court in the case of P. Senthil Kumar vs. PCIT [416 ITR 336] submits that there is a reasonable cause in not getting the accounts audited and furnished audit report before due date for filing of return and, therefore, no penalty is leviable u/s 271B of the Act.

8. On the other hand, Ld. DR supported the orders of the authorities below.

9. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. We observe that penalty was levied u/s 271B of the Act for the delay in getting the books of accounts audited u/s 44AB of the Act. The assessee submitted that the delay occurred due to the Accountant leaving the job abruptly in the month of February, 2017 and the assessee could appoint new Accountant after a gap of three months and, therefore, the delay occurred due to the Accountant leaving the job abruptly and it took time for the new Accountant to finalize the accounts. We observe that there is no dispute on this fact. Therefore, we observe that delay is not willful and it was occurred only due to the Accountant leaving the job. We also further observed that this is the only year where there is a delay in getting the books of accounts audited u/s 44AB of the Act. On perusal of the acknowledgements and tax audit reports for preceding previous year and also for subsequent years i.e. AY 2015-16 and 2016-17, AY 2018-19 and 2019-20, we find that the assessee has been filing the tax audit report in time. Therefore, we hold that there is a reasonable cause in not getting

the books of accounts audited u/s 44AB within the due date specified for the assessment year under consideration.

10. In the case of P. Senthil Kumar vs. PCIT the Hon'ble Madras High Court held as under:

*“10. Admittedly, the reasons assigned by the assessee have not been found to be false nor with any mala fide intention, the reasons were assigned. Therefore, this Court is of the view that the explanation offered by the assessee can be taken as a reasonable cause for his failure to file the audit report within time. We are also aware that the assessment was completed under Section 143(3) of the Act only on 29.3.2015 and on that date, the audit report was very much available with the Assessing Officer.*

*11. The Hon'ble Apex Court, in the case of Hindustan Steel Limited Vs. State of Orissa [reported in (1972) 83 ITR 26], considered the validity of levy of penalty under the provisions of the Orissa Sales Tax Act, 1947. One of the questions, which was framed for consideration was as to whether imposition of penalty for failure to register as a dealer was justified.*

*The Hon'ble Apex Court pointed out that the liability to pay penalty does not arise merely upon proof of default in registering as a dealer, that an order imposing penalty for failure to carry out a statutory obligation is the result of quasi criminal proceeding and that penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. It was further held that whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances and that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in*

*refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.*

12. *Though the above decision arises under the Orissa Sales Tax Act, 1947, the ratio decidendi of the said decision could very well be applied to the assessee's case. We find that the non filing of the tax audit report before 30.9.2012 is a technical breach and admittedly, the assessee filed the audit report along with the return of income on 31.3.2013 and that the assessment was framed by the Assessing Officer only on 29.3.2015, on which date, the audit report was very much on the file of the Assessing Officer. Thus, we are of the view that the explanation offered by the assessee can be accepted as a reasonable cause for his failure to file the audit report within time and the case on hand is not a fit case for imposing penalty on the appellant."*

11. The ratio of this decision squarely applies to the facts of the case. In the case on hand the tax audit report was filed on 08.03.2018, the return was filed on 09.03.2018 and the assessment was completed on 30.12.2019 on which date the tax audit report was very much before the Assessing Officer. Further the assessment was completed accepting the loss returned by the assessee. Thus, respectfully following the said decision, we hold that the assessee is prevented with reasonable cause in getting the books of accounts audited u/s 44AB of the Act within the due date specified. Reversing the order of the Ld.CIT(Appeals) (NFAC), we direct the AO

to delete the penalty levied u/s 271B of the Act. Ground raised by the assessee is allowed.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 09.06.2023

Sd/-  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Dated: 09.06.2023

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**