

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.652/Chny/2023
निर्धारण वर्ष /Assessment Year: 2018-19

Mr.Muthiah Lakshmanan,
Plot No.59, Anna Nagar,
Madurai-625 020.

[PAN: AAAPL 9022 F]
(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख /Date of Pronouncement

v. The Asst. Commissioner-
of Income Tax,
Non-Corporate Circle,
Madurai.

(प्रत्यर्थी/Respondent)

: Mr.T. Vasudevan, Adv.

: Mr. AR.V.Sreenivasan,
Addl.CIT

: 26.06.2023

: 28.06.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi, dated 28.03.2023, and pertains to assessment year 2018-19.

2. The brief facts of the case are that the assessee is an individual has filed his return of income for AY 2018-19 on 17.02.2019, admitting a total income of Rs.2,91,990/-. During the course of assessment proceedings, the AO noticed that although, the assessee is liable to furnish Tax Audit

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Report as required u/s.44AB of the Income Tax Act, 1961 (in short "the Act"), but such Tax Audit Report was not filed on or before due date prescribed under the Act. Therefore, issued a show cause notice and proposed to levy penalty u/s.271B of the Act, and called upon the assessee to explain 'as to why' penalty shall not be levied for non-furnishing of Tax Audit Report. In response, the assessee submitted that although, the Tax Audit Report was not filed on or before due date for filing return of income, but such audit report has been filed on 17.02.2019 before the AO completed the assessment u/s.143(3) of the Act, on 16.06.2020. Therefore, the delay in filing of Audit Report at best can be considered as a technical error and for said technical error, penalty cannot be levied u/s.271B of the Act. The AO after considering relevant submissions of the assessee, levied penalty of Rs.1,50,000/- u/s.271B of the Act, for non-submission of Audit Report on or before due date prescribed under the Act.

3. Being aggrieved by the penalty order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated the submissions made before the AO and argued that delay in filing of Audit Report, is a technical mistake, for which, penalty cannot be levied u/s.271B of the Act. The Ld.CIT(A) after considering relevant submissions of the assessee opined that although, the assessee is required to file Tax Audit Report u/s.44AB of the Act, on or before 31.10.2018, but the assessee has filed said Audit Report on 17.02.2019 beyond the due date prescribed under the Act. Therefore, opined that there is no error in

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the reasons given by the AO, to levy penalty u/s.271B of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in confirming the penalty levied u/s.271B of the Act, without appreciating the fact that Tax Audit Report was filed on 17.02.2019 with a short delay and that delay was also explained by the assessee. Therefore, for delay in filing of Audit Report, penalty cannot be levied. He further submitted that when the Audit Report was made available to the AO before completion of assessment, then, the delay in filing of Audit Report at best can be considered as technical breach, which cannot be treated as fatal for levying penalty u/s.271B of the Act. In this regard, he relied upon the decision of ITAT Chennai benches in the case of Rajendran Sreedharan v. ACIT in ITA No.165/Chny/2023 dated 21.04.2023.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that when the statute is provided for due date for filing certain reports, including Audit Report, the assessee ought to have complied with the provisions and file the Audit Report on or before due date. Therefore, the AO after considering relevant facts that the assessee did not file the Audit Report as required u/s.44AB of the Act, on or before due date, has rightly levied penalty u/s.271B of the Act, and their orders should be upheld.

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6. We have heard both the parties, and perused the materials available on record. The fact borne out from the record clearly indicates that the assessee has filed Tax Audit Report as required u/s.44AB of the Act, on 17.02.2019 i.e. much before the AO completed assessment u/s.143(3) of the Act on 16.06.2020. Therefore, the issue of levy of penalty needs to be considered in light of delay in filing of Audit Report as required under the Act. Admittedly, it is a well settled principle of law by the decision of the Hon'ble Madras High Court in the case of P. Senthil Kumar v. PCIT reported in 416 ITR 336 (Madras), where the Hon'ble Madras High Court by considering the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v. State of Orissa reported in [1972] 83 ITR 26 (SC) held that non-filing of Audit Report on or before due date, is a technical breach and admittedly, when such Tax Audit Report has been filed before assessment was passed by the AO, the question of levy of penalty u/s.271B of the Act, does not arise. The ITAT Chennai Benches in the case of Rajendran Sreedharan in ITA No.165/Chny/2023 dated 21.04.2023 had considered an identical issue and held that when the Tax Audit Report was made available to the AO before he completes assessment u/s.143(3) of the Act, then penalty u/s.271B of the Act, cannot be levied for delay in filing of such Audit Report. In this case, there is no dispute with regard to the fact that the assessee, although, filed Tax Audit Report beyond due date prescribed under the Act, but such Audit Report has been filed before the AO completes the assessment. Therefore, we are of the considered view

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that the AO is erred in levying penalty u/s.271B of the Act, for non-furnishing of Tax Audit Report, and thus, we direct the AO to delete the addition made towards penalty levied u/s.271B of the Act.

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

Order pronounced on the 28th day of June, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28th June, 2023.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR

5. गार्ड फाइल/GF