

आयकर अपीलिय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No.74/RPR/2022
(Assessment Years: 2013-2014)

M/s Pioneer Carbon Co. Pvt. Ltd. 8, Civil Center, Bhilai, Chhattisgarh	Vs	Income-tax Officer, Ward-1(1), Bhilai
PAN No. :AABCP 3472 D		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)
निर्धारित की ओर से /Assessee by	:	Shri Nilesh Jain, CA
राजस्व की ओर से /Revenue by	:	Shri Choudhary N.C.Roy, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	11/07/2023
घोषणा की तारीख/ Date of Pronouncement	:	11/07/2023

आदेश / O R D E R

Per Arun Khodpia, AM :

The present appeal by the assessee is directed against the order passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 18.04.2022 u/s.250 of the Income Tax Act, 1961 (in short 'th Act') against the penalty order passed u/s.271B of the Act, dated 29.06.2018 for the assessment year 2013-2014, on the following grounds:-

- 1. In the facts and circumstances of the case and in law the Id. Commissioner of Income-tax (Appeals) has erred in confirming penalty of Rs. 1,50,000/- imposed under section 27 IB of the Income- tax Act, 1961.*
- 2. In the facts and circumstances of the case and in law the Id. Commissioner of Income-tax(Appeals) has erred in confirming penalty imposed by wrongly interpreting provision of section 44AB of the Income-tax Act, 1961*
- 3. The impugned order is bad in law and on facts.*
- 4. The appellant reserves the right to addition, after or omit all or any of the grounds of appeal in the interest of justice.*

2. Briefly stated that the assessee is engaged in the business of manufacturing and trading in calcinate petroleum cock. The assessment of the assessee company was completed u/s.143(3) r.w.s.147 of the Act on 28.12.2017, wherein the Id.AO has observed that the assessee company did not upload the audit report in time as per the Act, therefore, penalty proceedings u/s.271B of the Act is to be initiated separately. According to such observation, an order u/s.271B of the Act was passed on 29.06.2018 imposing a penalty of Rs.1,50,000/- on the assessee. The reason mentioned by the Id. AO that the assessee being a company was required to get its accounts of the previous year relevant to the assessment year 2013-2014 audited by an accountant before the specified date, irrespective of annual turnover or capital, and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant as per the provisions of section 44AB of the Act, However, during the course of assessment proceedings, it was revealed that the assessee company failed to do so. Resultantly, the penalty proceeding u/s.271B of the Act was imposed on the assessee. Before imposing the penalty, a show cause notice was issued on the assessee and in response to which the assessee responded by filing a written submission on 14.06.2018. According to the written submission of the assessee that the turnover or revenue during the relevant previous year was much less than the limit prescribed u/s.44AB of the Act, therefore, it was not obligatory for the assessee to get its books of accounts audited or to file/upload the audit report u/s.44AB of the Act and

as a corollary it is not liable for a penalty as proposed in the show cause notice and therefore, the penalty proceedings may be dropped. Explanation of the assessee was not found convincing by the Id.AO and, thus, the penalty was levied on the assessee.

3. Aggrieved with the said penalty order u/s.271B of the Act, the assessee preferred appeal before the Id. CIT(A), NFAC during the appellate proceedings but in absence of any compliance of the notices issued u/s.250 of the Act on three occasions i.e. on 17.02.2021, 01.12.2021 & 30.03.2022, respectively, Id. CIT(A) has dismissed the appeal of the assessee observing that the non-compliance of the statutory provisions is not acceptable and no reason has been furnished by the assessee in spite of reasonable opportunities by the AO & NFAC and, thus, upheld the order of the Id.AO and dismissed the appeal of the assessee.

4. To challenge the observation of the Id. CIT(A), now, the assessee is in appeal before us with the grounds as mentioned above.

5. Ld. AR of the assessee submitted that the turnover of the assessee for the relevant assessment year was Rs.12,31,000/-. As per copy of profit and loss account submitted before us, which was duly audited under the Companies Act, 1956. According to the provisions of sub-clause (a) to Section 44AB of the Act, every person, carrying on business shall, if his/its total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds rupees sixty lakhs in any previous year (rupees 60 lakhs was the limit fixed by the Finance Act, 2012 effective

from 1st April, 2013, therefore, applicable for the relevant assessment year i.e. AY.2013-2014). It was the submission of the Id. AR that the assessee was liable to get its accounts audited under the provisions of the Companies Act. However, since the turnover of the assessee company was below Rs.60 lakhs i.e. Rs.12,31,223/-, it was not mandatory for the assessee company to get its accounts audited under the provisions of Section 44AB of the Income Tax Act, 1961 also and to uphold such audit report in Form 3CA and Form 3CD. Ld. AO has misconceived the mandate of law and thereby has held that the assessee company was required to have audited its books of accounts u/s.44AB of the Act. It was further submitted by the Id. AR that the Id. CIT(A) was also not appreciated the facts of the case and has decided the issue against the assessee by wrongly interpreting the provisions of Section 44AB of the Act. It was, therefore, prayed that the penalty levied u/s.271B of the Act cannot be levied on the assessee since assessee's turnover was below the prescribed limit of Rs.60 lakhs for which the audit u/s.44AB was stipulated to be carried out.

6. Ld.Sr. DR, on the other hand, vehemently supported the orders of the authorities below.

7. We have considered the rival submissions and perused the relevant material on record. On perusal of the penalty order u/s.271B of the Act, in para 2 the AO, while not convinced with the explanation of the assessee has reiterated the provisions, wherein it has been mentioned that all type of companies including private limited company or one person company

are required to get their accounts audited by an accountant before the specified date, irrespective of annual turnover or capital, under their respective law and also obtain a report of audit by the chartered accountant in the form prescribed under section 44AB i.e. Form No.3CA and Form 3CD on or before the specified date, and also required to file/upload the audit report by the specified date. The observation of the Id. AO pointed, having emphasis on the words, “irrespective of annual turnover or capital”, but has not noticed the sentence after these words, “under their respective laws”, thereby has concluded that such audit was mandatory within the provisions of Section 44AB of the Act. Provisions of sub-clause (a) to Section 44AB of the Act are reproduced hereunder for ready reference :-

Audit of accounts of certain persons carrying on business or profession.

44AB. Every person,—

- (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year ⁸⁹[***]:

⁹⁰[**Provided** that in the case of a person whose—

(a) *aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and*

(b) *aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment,*

this clause shall have effect as if for the words "one crore rupees", the words "five crore rupees" had been substituted; or]

8. According to sub-clause (a) to Section 44AB of the Act, the audit is mandatory for every person carrying business if its turnover of the said assessee exceeds rupees sixty lakhs (for A.Y.2013-2014) i.e.

Rs.12,31,223/- only. Since in the present case, the turnover of the assessee was below rupees sixty lakhs, we are of the considered opinion that the audit u/s.44AB of the Act in Form 3CA had to furnish the particulars in form 3CD are not required. On perusal of the order of the Id. CIT(A), it is transpired that the assessee was absolutely non-compliant on all the occasions to the notices issued u/s.250 of the Act. However, since the facts of the case are before the authorities below, the issue should have been decided on its merits in stead of upholding the findings of AO in absence of non-response by the assessee. We, therefore, in the interest of justice, are of the considered opinion that according to the provisions of sub-clause (a) to Section 44AB of the Act, the assessee is out of the ambit of mandatory requirement of audit u/s.44AB of the Act. Therefore, the question of imposing penalty u/s.271B of the Act for not getting the accounts audited u/s.44AB of the Act, does not arise in the present case, consequently, levy of penalty u/s.271B of the Act is directed to be deleted. We, thus, set aside the order of the Id. CIT(A), NFAC and direct the AO to delete the penalty so levied.

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

Order pronounced in the court on 11/07/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 11/07/2023

Prakash Kumar Mishra, Sr.P.S(on tour)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur