

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.124/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2017-18)**

Marturi Srinivasa Rao
D.No.1-75, 2nd Line
Rajeev Nagar Colony
Atchampet Post, Guntur
[PAN : BVNPM4138E]

Vs. Income Tax Officer
Ward-1(1)
Guntur

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri G.V.N.Hari, AR
: Shri ON Hari Prasada Rao, DR

सुनवाई की तारीख / Date of Hearing

: 30.05.2023

घोषणा की तारीख/Date of Pronouncement

: 14.07.2023

आदेश / O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1049765296(1) dated 15.02.2023, arising out of assessment order passed u/s 271B of the Income Tax Act, 1961 (in short 'Act') dated 28.11.2021 for the Assessment Year (A.Y.) 2017-18.

2. Brief facts of the case are that the assessee, an individual carrying on business under the name and style of M/s Aditya Communications as agent / service provider, had e-filed his return of income on 31.03.2018, declaring total income at Rs.3,01,680/-. Subsequently, the case was selected for scrutiny under CASS and statutory notice u/s 143(2) and 142(1) of the Act along with detailed questionnaire were also issued to the assessee. The assessment was completed u/s 143(3) of the Act, after considering the details and documents filed during the course of assessment proceedings and the assessment order dated 26.12.2019 was passed, accepting the returned income of Rs.3,01,680/-. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had purchased prepaid load balances from the M/s Bharati Airtel Ltd. (Principal) and sold such prepaid load balances to the retailers and was deriving commission on distribution of e-load recharge. The day to day sale proceeds collected by him were deposited in his bank account and then these amounts were sent to the company through NEFT as per the terms and conditions fixed by the company and the commission receipts on this business activity were admitted for taxation purpose for the period under consideration. The assessee had also explained with documentary evidence that the sources for cash deposits

made during the demonetization period pertains to his day to day business sale proceeds received during demonetization period and accumulated savings only. The AO found the explanation / sources and evidences with regard to the cash deposits made in his bank accounts during the year including demonetization period to be reasonable and accepted. Thus the AO made no addition in the assessment order. However, since, the cash deposits of Rs.1,84,36,300/-, made during the year under consideration exceeded the threshold limit as per section 44AB of the Act, the AO had levied penalty of Rs.92,181/- u/s 271B of the Act.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) held that since the assessee failed to get his accounts audited u/s 44AB of the Act, treated the cash deposits as turnover of the assessee, though it was affected on behalf of the Principal and since the assessee was getting commission and discounts on such sales.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds :

- 1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*

2. *The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the penalty of Rs.92,181 levied by the assessing officer u/s 271B of the Act.*
3. *Any other grounds may be urged at the time of hearing.*
5. Ground No.1 and 3 are general in nature which does not require specific adjudication.
6. Ground No.3 is related to levying of penalty of Rs.92,181/- u/s 271B of the Act. At the outset, the Ld.AR contended that the assessee is a service provider and commission agent for the Principal, from where he gets commission and discount for providing services by selling, recharging coupons and e-charging of airtel sim cards and admitted the same for taxation. The cash of Rs.1,84,36,300/-, thus collected was deposited in his current account No.3494721686 maintained with State Bank of India, Cahampet Branch in the name of M/s Aditya Communications (Prop.Marturi Srinivasa Rao) and the amount was sent to the company through NEFT as per terms and conditions. The Ld.AR further contended that the deposit of cash is on receipt from various persons for the services provided on behalf of the Principal, which is not his sales turnover. Hence, submitted that the AO erred in treating the cash deposits as his turnover which was collected on behalf of the Principal Ltd and levied penalty of Rs.92,181/- u/s 271B of the Act, which

is against law and the Ld.CIT(A) erroneously confirmed the same. The Ld.AR relied on the decision of coordinate bench of the Tribunal in the case of Anunoy Mukherjee Vs. ITO, Ward-1(4), Durgapur in I.T.A.No.555/Kol/2022 dated 23.02.2023 in support of his contention and pleaded to set aside the order passed by the Ld.CIT(A) and allow the appeal of the assessee.

7. Per contra, the Ld.DR relied on the order of the Ld.CIT(A) and the decision of Hon'ble High Court of Allahabad in the case of Attara Gas Service Vs. Commissioner of Income Tax, Kanpur [2014] 50 taxmann.com 445 (Allahabad) and pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

8. We have heard both the parties and perused the material available on record. The only issue that arises for consideration is whether the Ld.CIT(A) is justified in confirming the penalty levied by the AO u/s 271B at Rs.92,181/- for not getting the books of account audited u/s 44AB of the Act. On perusal of the Master Service Provider Agreement dated 04.06.2014, held between the Aditya Communications [Prop:Marturi Srinivasa Rao (agent / service provider) and Bharti Airtel Ltd. (Principal), we observe that the Principal i.e. Bharti Airtel Ltd. is liable to deduct tax

at source. The service provider is responsible for collection of moneys from the post paid subscribers of Airtel, on behalf of Airtel in accordance with the terms of the Agreement and the Airtel shall pay the commission / incentives. The agent is liable to pay tax only on the commision / incentive received. The AO levied penalty of Rs.91,181/- on the assessee as the cash deposit of Rs.1,84,36,300/- during the F.Y.2016-17 exceeded the threshold limit u/s 44AB of the Act, treating the same as turnover of the assessee, though he is only an agent who provided services for the Principal. The only contention of the assessee is only an agent / service provider and he was under bonafide belief that he was not liable to get the books of accounts audited as the commission income was below the threshold limit and thus the assessee's case is covered u/s 273B of the Act, which reads as follows :

Penalty not to be imposed in certain cases.

273B. Notwithstanding anything contained in the provisions of clause (b) of sub- section (1) of [section 271](#), [section 271A](#), [section 271AA](#), [section 271B](#), [section 271BA](#), [section 271BB](#), [section 271C](#), [section 271CA](#), [section 271D](#), [section 271E](#), [section 271F](#), [section 271FA](#), [section 271FAB](#), [section 271FB](#), [section 271G](#), [section 271GA](#), [section 271GB](#), [section 271H](#), [section 271-I](#), [section 271J](#), clause (c) or clause (d) of sub-section (1) or sub-section (2) of [section 272A](#), sub-section (1) of [section 272AA](#) or [section 272B](#) or sub-section (1) or sub-section (1A) of [section 272BB](#) or sub-section (1) of [section 272BBB](#) or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of [section 273](#), no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.

On similar set of facts, the decision was taken in favour of the assessee by the coordinate bench of the Tribunal in the case of Anunoy Mukherjee Vs. ITO, Ward-1(4), Durgapur in I.T.A.No.555/Kol/2022 dated 23.02.2023. For the sake of clarity and convenience, relevant part of the order of the Tribunal is extracted as under :

“4. We have heard rival contention and perused the material available on record.

5. We notice that the assessee is an individual and is engaged in the business of mobile recharging and earns income from commission from sale of such recharge coupons of Idea Cellular. Tax at source is deducted u/s 194C of the Act by the employer i.e., M/s. Ideal Cellular on the commission income on recharge coupons sold by the assessee. Income of Rs.4,21,640/- declared in the return filed for Assessment Year 2017-18 claiming TDS of Rs.30,896/-. The case selected for limited scrutiny through CASS for the reason of cash deposit during the year. During the course of assessment proceedings, the Id. Assessing Officer on going through the details of bank account held by the assessee with HDFC Bank observed that cash of Rs.1,48,19,170/- was deposited. So far as the issue under consideration regarding penalty levied u/s 271B of the Act is concerned, the Id. Assessing Officer noticed that the books of accounts have not been audited u/s 44AB of the Act. The Id. Assessing Officer took basis of cash deposited in the bank account treating it as sales turnover. Before us, it is stated by the Id. Counsel for the assessee that the assessee was under the impression that as income is only from commission and the deposit of cash on receipt from various persons for sale of recharge coupons is not its sales but is amount collected on behalf of Telecom company. Further it is submitted that it was the first year of its business.

6. We find force in the contention of the Id. Counsel for the assessee and considering the fact that assessee is receiving commission income and tax is deducted at source by the Telecom company treating the cash deposits as amount collected on behalf of the Telecom company from various customers and deposited in the bank account and commission on such deposits is given by the Telecom company. The reasons cited by the Id. Counsel for the assessee prima facie found to be reasonable because the assessee was under bonafide belief that he was not liable to get the books of accounts audited as the commission income was below the threshold limit and this was the first

year of the business venture taken up by the assessee and thus assessee's case is covered u/s 273B of the Act, which reads as under:-

Penalty not to be imposed in certain cases.

273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of [section 271](#), [section 271A](#), [section 271AA](#), [section 271B](#), [section 271BA](#), [section 271BB](#), [section 271C](#), [section 271CA](#), [section 271D](#), [section 271E](#), [section 271F](#), [section 271FA](#), [section 271FAB](#), [section 271FB](#), [section 271G](#), [section 271GA](#), [section 271GB](#), [section 271H](#), [section 271-I](#), [section 271J](#), clause (c) or clause (d) of sub-section (1) or sub-section (2) of [section 272A](#), sub-section (1) of [section 272AA](#) or [section 272B](#) or sub-section (1) or sub-section (1A) of [section 272BB](#) or sub-section (1) of [section 272BBB](#) or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of [section 273](#), no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.

8. The provisions of Section 273B of the Act, squarely applies and since the assessee has a reasonable cause for not getting the books of account audited, he should not be visited by penalty u/s 271B of the Act. Hence, we delete the penalty and allow the appeal of the assessee."

Respectfully following the decision of the coordinate bench of the Tribunal, we hold that the provisions of section 273B of the Act applies to the case of the assessee since the assessee has a reasonable cause for not getting the books of account audited and the penalty shall not be imposable on the assessee u/s 271B of the Act. Hence, we quash the order passed by the Ld.CIT(A) and direct the AO to delete the penalty levied.

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

Order pronounced in the open court on 14th July, 2023.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated :14.07.2023

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Shri Marturi Srinivasa Rao, D.No.1-75, 2nd Line Rajeev Nagar Colony, Atchampet Post, Guntur
2. राजस्व/The Revenue - The Income Tax Officer, Ward-1(1), Guntur
3. The Principal Commissioner of Income Tax-1, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
 ITAT, Visakhapatnam