

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **166/Chny/2023**
निर्धारण वर्ष / Assessment Year: 2018-19

Rajendran Sreedharan, Assistant Commissioner of
13-85/42A, Parthitta Vilai Veedu, v. Income-tax,
Chitharal, Chitharal Post, Circle -1,
Kanyakumari District – 629 151. Nagercoil.
[PAN:AFQPR-2835-H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. G. Vasudevan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 26.07.2023

घोषणा की तारीख/Date of Pronouncement

: 02.08.2023

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 26.12.2022 and pertains to assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:

"1. The impugned order is illegal, opposed to the facts, contrary to law, without jurisdiction and against the

principles of natural justice and therefore liable to be quashed.

2. The learned CIT (Appeals) ought to have seen that there was no prejudice caused to the assessing officer as the tax audit report had been filed before the assessing officer initiated the assessment proceedings.

4. The learned CIT (Appeals) ought to have seen that there was reasonable cause for belated filing of the return along with tax audit report as explained before the assessing officer.

5. The learned CIT (Appeals) ought to have seen that the impugned order was passed without taking the approval of the Joint/ Addl CIT as required under section 274.

6. The appellant prays for leave to add, alter, amend or modify any or all the grounds at any time before or at the time of hearing."

3. The brief facts of the case are that, the assessee has filed his return of income for assessment year 2018-19, admitting a total income of Rs. 14,20,09,250/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has filed tax audit report as required u/s. 44AB of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 27.12.2018, even though, due date for filing said tax audit report was 31.10.2018. Therefore, considering the provisions of section 271B of the Act, in light of explanation furnished by the assessee, levied penalty of Rs. 1,50,000/- for belated filing of

tax audit report as required u/s. 44AB of the Act. The assessee carried the matter in appeal before first appellate authority, but could not succeed. The Id. CIT(A), for the reasons stated in their appellate order dated 26.12.2022, rejected arguments of the assessee and sustained penalty levied u/s. 271B of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, submits that when the tax audit report as required u/s. 44AB of the Act, was made available to the Assessing Officer, before he completes assessment u/s. 143(3) of the Act, then for belated filing of said audit report, penalty u/s. 271B of the Act cannot be levied. In this regard, Ld. Counsel for the assessee relied upon the decision of ITAT, Chennai Benches in assessee's own case for assessment year 2017-18.

5. The Id. DR, Shri. AR V Sreenivasan, Addl. CIT, supporting the order of the Id. CIT(A) submits that when law mandates compliance with relevant provisions of the Act, the assessee needs to comply with such mandatory laws. In case, there is a violation of relevant laws, then penalty prescribed under the

law should be imposed. The Assessing Officer, after considering relevant facts has rightly imposed penalty u/s. 271B of the Act, for belated submission of the tax audit report and their order should be upheld.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts with regard to the impugned dispute are that, the assessee ought to have filed tax audit report for the impugned assessment year on or before 31.10.2018, but such tax audit report in Form no. 3CA and 3CD has been filed on 27.12.2018, along with return of income. The assessee explained reasons for delay in filing of tax audit report and said delay is beyond control of the assessee. We find that there is a reasonable cause for not filing the tax audit report as required u/s. 44AB of the Act, on or before due date prescribed under the provisions of the Act, but said tax audit report has been filed before the Assessing Officer completes his assessment u/s. 143(3) of the Act on 20.03.2021. Therefore, in our considered view when tax audit report required to be filed u/s. 44AB of the Act, has been filed before the Assessing Officer completes his assessment u/s. 143(3) of

the Act, then delay in filing of said audit report can be considered as venial breach, for which penalty cannot be levied and this principal is supported by the decision of Hon'ble Madras High Court in the case of P. Senthil Kumar vs Pr. CIT [2019] 416 ITR 336 (Mad). Further, the ITAT, Chennai Benches in assessee's own case for assessment year 2017-18 in ITA No. 165/Chny/2023, had considered an identical issue and held that for belated filing of tax audit report, if said report was made available to the Assessing Officer before completion of assessment, penalty u/s. 271B of the Act cannot be levied. The relevant findings of the tribunal are as under:

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the penalty order, the Assessing Officer had noted that the assessee's gross receipt in the year under consideration were to the tune of ₹.23,14,80,500/-. Therefore, the assessee was required to get his accounts audited under section 44AB of the Act and filed within the due date. Since the assessee has not filed the tax audit report under section 44AB of the Act before the due date, the Assessing Officer levied penalty of ₹.1,50,000/- under section 271B of the Act, which was confirmed by the Id. CIT(A)(NFAC). Before us, it was submitted that the assessment under section 143(3) of the Act has been completed on the basis of the audit report and return of income filed by the assessee and prayed for deleting the penalty levied under section 271B of the Act.

6.1 Similar issue on an identical fact was subject matter in

appeal before this Tribunal in the case of Balaji Logistics v. ACIT in I.T.A. No. 2248/Chny/2019 dated 07.09.2022 for the assessment year 2015-16, wherein, the Tribunal has observed as under:

"6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is an admitted fact that although the assessee has filed Tax Audit Report in Form 3CB as required u/s.44AB of the Act, beyond due date specified u/s.139(1) of the Act, but such Tax Audit Report was made available to the AO before completion of assessment proceedings u/s.143(3) of the Act, on 22.11.2017. It is evident from the fact that the assessee has obtained Tax Audit Report from an Accountant on 28.03.2016 and furnished before the AO during the course of assessment proceedings. Therefore, we are of the considered view that when the Tax Audit Report was made available to the AO before completion of assessment proceedings, then for venial technical breach without any mala fide intention, penalty cannot be levied u/s.271B of the Act. Further, a similar issue has been considered by the co-ordinate Bench of the Tribunal in the case of M/s. T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), where on identical set of facts, penalty levied u/s.271B of the Act, has been deleted. The relevant findings of the Tribunal are as under:

"...7. We have heard both the parties and perused the materials available on record and gone through the orders of the authorities below. The assessee supposed to have been filed audit report as required u/s.44AB of the Act, on or before 31.10.2015. However, such audit report has been filed on 05.03.2016, which is before the

date of completion of assessment proceedings u/s.143(3) of the Act. In other words, although the assessee has filed tax audit report beyond the stipulated period, but such tax audit report was made available to the AO before he completes assessment proceedings. The assessee has given reasons for delay in filing tax audit report. As per which, the audit of accounts of society done by the Dept. of Cooperative Audit, could not be completed on or before 31.10.2015 and said delay was not in the hands of the assessee. Therefore, there is a reasonable cause for not filing the tax audit report within prescribed time limit and thus, penalty cannot be levied. We find merits in the submission of the assessee for the simple reason that non-filing of audit report within the due date is a venial technical breach without any mala fide intention on the part of the assessee. Because, completion of audit of books of accounts of the society is under the control of Dept. of Cooperative Audit and thus, unless the Dept. of Cooperative Audit completes audit, the assessee cannot file return of income along with tax audit report. Therefore, we are of the considered view that reasons given by the assessee for not filing tax audit report prescribed u/s.44AB of the Act, is neither intention nor any mala fide intention, but it is venial technical breach and for this reason, penalty u/s.271B of the Act, cannot be levied. This principle is supported by the decision of the Hon'ble jurisdictional High Court in the case of P.Senthil Kumar v. PCIT reported in 416 ITR 336, where an identical issue had been considered by the Court and held that for venial technical breach

without any mala fide intention, penalty cannot be levied. The ITAT Cochin Bench in ITA No.411/Cochin/2018 vide order dated 05.02.2019 had held that once audit report has been made available before the AO, when the assessment proceedings were completed, then, there is no reason for levy of penalty.

8. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that reasons given by the assessee for not filing tax audit report within due date comes under reasonable cause as provided u/s.271B of the Act, and thus, the AO is erred in levying penalty u/s.271B of the Act. Hence, we direct the AO to delete penalty levied u/s.271B of Act.”...

7. In this view of the matter and by following the decision of the co-ordinate Bench of the Tribunal in the case of M/s.T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), we direct the AO to delete penalty levied u/s.271B of the Act.

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

6.2 Respectfully following the above decision of the Coordinate Benches of the Tribunal in the case of Balaji Logistics v. ACIT (supra) for the assessment year 2015-16, we are of the considered opinion that it is not a fit case for the levy of penalty under section 271B of the Act and accordingly, the penalty levied stands deleted.”

7. In this view of the matter and by following the decision of co-ordinate bench of ITAT in assessee’s own case for assessment year 2017-18, we are of the considered view that

there is a reasonable cause for not filing tax audit report on or before due date prescribed under the Act and thus, we direct the Assessing Officer to delete penalty levied u/s. 271B of the Act.

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

Order pronounced in the court on 02nd August, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 02nd August, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF