

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos. 143, 145 & 147/RPR/2023  
निर्धारण वर्ष / Assessment Year : 1993-94, 1994-95 & 1995-96

Santosh Jain  
Opp. P.N Tiwari, Gandhi Chowk,  
Durg (C.G.)-491 001  
PAN: AFYPJ6194D

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer-1(1),  
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.08.2023  
घोषणा की तारीख / Date of Pronouncement : 24.08.2023

**आदेश / ORDER****PER BENCH:**

The captioned appeals filed by the assessee is directed against the order passed by the CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 15.03.2023, which in turn arises from the order passed by the A.O. u/s.271B of the Income-tax Act, 1961 (for short 'Act'), dated 27.07.2015 for A.Ys.1993-94, 1994-95 & 1995-96. As a common issue is involved in the captioned appeals, the same are being taken up and disposed of by way of a consolidated order.

2. We shall first take up the appeal filed by the assessee in ITA No.143/RPR/2023 for the assessment year 1993-94 as lead matter and the order therein passed shall *mutatis-mutandis* apply for remaining appeals. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. Ld. CIT(A) erred in confirming penalty of Rs.1,00,000/- levied by the A.O u/s.271B, without appreciating the facts of the case properly. The penalty levied by the A.O and confirmed by CIT(A) is arbitrary and not justified.

2. Without prejudice to ground no.1 Ld. CIT(A) erred in confirming penalty without appreciating the fact that the A.O has levied penalty without providing any opportunity of being heard to the appellant.

3. Without prejudice to ground no.1, the penalty confirmed by Ld. CIT(A) is illegal inasmuch as the penalty order passe by the A.O was barred by limitation. The penalty order is liable to be quashed.

4. The appellant reserves the right to add, amend or alter any ground/s of appeal.”

3. Succinctly stated, as the assessee despite having substantial turnover from the business of manufacturing and trading of iron and steel items, had failed to file his return of income, therefore, proceedings u/s.147 of the Act were initiated in his case by the A.O. Notice u/s.148 of the Act dated 30.03.2000 was issued by the A.O.

4. The A.O, thereafter, framed the assessment vide order passed u/s. 147 r.w.s. 144 dated 15.03.2002, assessing income of the assessee at Rs.5,62,910/-. Also, the A.O while culminating the assessment, inter alia, initiated penalty proceedings u/s.271B of the Act for failure on his part to get his books of account audited as per the provisions of Section 44AB of the Act. Thereafter, the A.O vide his order passed u/s. 271B dated 27.07.2015 imposed penalty of Rs.1,00,000/- on the assessee.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. For the sake of clarity, observations of the CIT(Appeals) upholding the view taken by the A.O are culled out as under:

“8.2 I do not find any force in this contention of the appellant. The show-cause notices for imposition of penalty were issued as per the last known address available in records. This is an admitted position that the appellant had failed to intimate the change of address to the AO. The appellant has not made a single compliance during the entire assessment proceedings as also in the penalty proceedings. On these facts, I find that the appellant cannot take advantage of his

own failure. namely to intimate his new address to the AO, and take recourse to the argument that penalty was imposed without providing any opportunity of being heard, thereby violating the principles of natural justice. It is trite law that any legal right, including the right to be heard, can only be availed by those who are vigilante for their rights, and not by those who sleep over them. In the case at hand, it is the appellant who has not taken the due care to intimate the Department about his new address. Therefore, it is not open to the appellant to now raise an objection as to violation of procedure by the AO in imposing penalty. This ground of appeal is dismissed.

9. In Ground No. (3), the appellant has contended that the penalty order passed by the AO is barred by limitation.

9.1 During the appellate proceeding the appellant has •e written submission in respect of this ground of appeal which is produced as under:

"This ground of appeal is without prejudice to ground no. 1 & 2 and the penalty order is sought to be assailed being illegal ab initio void inasmuch as it is time barred. Following submission may kindly be considered: -

3.1 The assessment order was passed on 15.03.2002 u/s 144/147, as is mentioned in the first para of the penalty order.

3.2 As per the sec. 275(1)(c), no order imposing penalty could be passed after the expiry of financial year in which the proceedings, in the course of which action for imposition of penalty was initiated, are completed, or six months from the end of the month in which action for imposition on penalty is initiated, whichever is later.

3.3 We are enclosing herewith a copy of the assessment order dated 15.03.2002 (page no. 01 to 03) A perusal of such assessment order shows that the penalty proceeding u/s 271(1)(b) was initiated by AO along with passing of the assessment order and therefore. as per sec. 275(1)(c), the penalty order could be passed either by 31.03.2002 or 30.09.2002, whichever is later. Therefore, the penalty could have been imposed only by 30.09.2002 whereas it has been imposed on 27.07.2015. Therefore, the penalty order is barred by limitation.

3.4 The language of sec. 275(1) is noteworthy. It says "no order imposing a penalty under this Chapter shall be passed". Having regard to the language used, it is evident that beyond the limitation period prescribed u/s 275(1), no penalty order can be passed.

3.5 It appears that since the ITAT decided the case of appellant on 17.12.2014. the AO has counted the limitation period from that date. It is submitted that this stand of AO is contrary to law and is not justified. The limitation period is extended only in the cases which are covered by sub-clause (a) of section 275(1), which covers cases where the relevant assessment order or other order is subject matter of appeal to the CIT (A) or ITAT. The shelter of sub-clause (a) is available only in the cases where the quantum of addition/disallowance is being contested and appeal against such addition/disallowance was filed and penalty was initiated by AO in respect of such disputed additions.

It is further submitted that the matter carried before the ITAT was appeal against the assessment order, which had nothing to do with the penalty proceedings. Penalty proceeding u/s 271(1)(b) were initiated for non compliance during the assessment proceeding and therefore, what was required to be seen while levying penalty under the above section is, whether there was any reasonable cause for the alleged non-compliance.

The appeal against assessment order had no bearing upon the penalty proceedings for non-compliance of various notices and therefore, if there was appeal against the assessment order, there was no valid reason to keep the penalty proceedings pending till disposal of quantum appeal. The limitation period for imposition of penalty was extended only with reference to the penalty which was linked with the addition made, which was subject matter of appeal and since the penalty under consideration is not linked with the addition made, the limitation did not get extended.

3.6 Penalty u/s 271(1)(b) has nothing to do with the amount of addition/ disallowance made in assessment and the outcome in quantum appeal did not have any bearing upon penalty u/s 271(1)(b). Therefore, sub-clause (a) of section 275(1) is not applicable. Consequently, the penalty order dated 27.07.2015 passed by AO is time barred.

3.7 In view of above explanation, it is requested that the penalty order may kindly be quashed being time barred."

9.2 In the instant case, the penalty has been imposed for failure to get his books of accounts audited as per the provisions of section 44AB of the Act. Further, the action for imposition of penalty for not getting books of accounts audited, has been initiated in the course of assessment proceedings itself, by way of issue of notice under section 274 read with section 271 B of the Act. The relevant assessment order was admittedly a subject matter of appeal before the Appellate Tribunal. The appeal was dismissed by the ITAT, Raipur vide order dated 17.12.2014, which was received in the office

of C1T-1, Raipur on 20.01.2015. These facts are clearly mentioned at Para 5 of the penalty order itself, -

"5. The Hon'ble CIT(A), Raipur dismissed the appeals of the assessee on 10.07.2003. The Hon'ble ITAT, Bilaspur Bench, Bilaspur vide order dated 15.02.2008 set-aside the order of the Ld. CIT(A), Raipur. The Department had challenged the above order before the Hon'ble High Court of Chhattisgarh, Bilaspur. The Hon'ble High Court vide its order dated 17.01.2012 had restored it back to the Hon'ble ITAT. Subsequently, the Hon'ble ITAT, Raipur Bench, Raipur has dismissed all the appeals of the assessee vide order dated 17.12.2014 (received in the O/O the C1T-1, Raipur on 20.10.2015) and upheld the AO's order."

9.2.1 On these facts, it is evident that the period of limitation for imposing penalty has to be construed in accordance with the provisions of clause (a) of sub-section (1) of section 275. The period of six months, from the end of the months in which appellate order was received, expired on 31st July 2015. The order imposing penalty has been made on 27th July 2015, hence within the limitation provided under section 275(1)(a). Therefore, I do not find any force in the contention of the appellant that the penalty was barred by limitation. This ground of appeal is dismissed.

10. In Ground No. (4), the appellant prays to reserve the right to add, amend or alter any ground/s of appeal. No such option has been exercised by the appellant during the appeal proceedings and hence, does not require any adjudication.

11. In the result, the appeal is dismissed."

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We have heard the Id. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

8. Controversy involved in the present appeal lies in a narrow compass i.e. sustainability of penalty imposed by the A.O u/s.271B of the Act for his failure to get his books of accounts audited as per the mandate of Section 44AB of the Act.

9. At the very outset of hearing of the appeal, Shri R.B Doshi, Ld. Authorized Representative (for short 'AR') for the assessee took us through the order passed by the A.O u/ss.144/147 dated 15.03.2022. Referring to the aforesaid assessment order, it was submitted by the Ld. AR that the A.O while framing the assessment had, inter alia, initiated penalty proceedings u/s.271A of the Act i.e. for failure on the part of the assessee to maintain books of account and other documents as required u/s.44AA of the Act. Carrying his contention further, it was submitted by the Ld. AR that the A.O had, thereafter, vide his order passed u/s.271A of the Act dated 27.07.2015 imposed penalty of Rs.25,000/- on the assessee. Elaborating further on his aforesaid contention, it was submitted by the Ld. AR that now when the assessee had been subjected to rigors of penalty u/s.271A of the Act, i.e. for failure on his part to maintain books of accounts, therefore after having so done, the A.O could not have visited the assessee with the penalty u/s.271B of the Act, i.e. for failure on his part to get books of accounts audited u/s.44AB of the Act. Explaining the logic behind his aforesaid contention, it

was submitted by the Ld. AR that as the requirement of getting books of account audited could arise only where books of accounts were maintained, therefore, if for some reason the assessee had not maintained books of account, then, the assessee could only be visited with penalty u/s. 271A of the Act, i.e. failure on his part to maintain books of account as required under law. In sum and substance, it was the claim of the Ld. AR that now when the assessee had been penalized for not maintaining books of accounts by subjecting him to the rigors of section 271A of the Act, therefore, there was no justification for the A.O to have penalized him for not getting audited such books of accounts which were admittedly not maintained by the assessee. The Ld. AR in order to fortify his aforesaid contention relied on the judgment of the Hon'ble High Court of Allahabad in the case of CIT Vs. S.K Gupta & Co. (2010) 322 ITR 86 (All). Also, support was drawn by the Ld. AR from the order of the ITAT, "SMC" Bench, Pune in the case of Ram Prakash C Puri Vs. ACIT (2001) 77 ITD 210 (Pune) and order of the ITAT, "E" Bench, Delhi in the case of Mahit Garg Vs. ITO, ITA No.3355/Del/2017 dated 23.06.2020. On the basis of his aforesaid contentions, it was averred by the Ld. AR that now as the assessee had been penalized for failure on his part to maintain books of account, therefore, the A.O was divested from further saddling him with penalty for getting such non existing books of accounts audited as per the mandate of law.

10. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

11. We have thoughtfully deliberated on the aforesaid issue and find substance in the claim of the Ld. AR that now when the assessee had been penalized u/s.271A of the Act, i.e. for not maintaining his books of accounts and other documents as required u/s.44AA of the Act, then, he could not have further been saddled with failure of getting such books of account which were admittedly not maintained audited. Our aforesaid observation is duly fortified by the judgment of the Hon'ble High Court of Allahabad in the case of CIT Vs. S.K Gupta & Co. (supra). The substantial question of law for which indulgence of the Hon'ble High Court was sought read as under:

"Whether, on facts and in the circumstances of the case, the learned Tribunal was legally correct in holding that there was a reasonable cause for not getting the accounts audited as no accounts were maintained, and thus the assessee could not be penalized both under ss. 271A and 271B of the IT Act, whereas the assessee being a contractor having total receipts from contract work at Rs. 1,24,69,486 has failed to maintain books of account and has not got his accounts audited under s. 44AB of the IT ct. Thereafter, the assessee has violated the provisions contained in both the sections and he is liable for penal action both under ss. 271A and 271B of the IT Act, 1961?"

Answering the aforesaid issue, it was observed by the Hon'ble High Court that the requirement of getting the books of account audited could arise only where the books of account are maintained. It was further observed that if for some reason the assessee had not maintained books of account, then the

appropriate provision under which penalty proceedings could be initiated was section 271A of the Act. On the basis of the aforesaid observations, penalty that was imposed by the A.O on the assessee firm was quashed by the Hon'ble High Court by observing as under:

“4. We have heard Sri A.N. Mahajan, learned standing counsel for the Revenue and Sri R.R. Kapoor, learned counsel appearing for the respondent assessee.

5. Sri Mahajan contended that the Tribunal has erred in law while upholding order of the CIT(A) cancelling the penalty in as much as the assessee had failed to get its books of account audited.

6. The submission of Shri Mahajan is misconceived for the reason that the requirement of getting the books of account audited could arise only where the books of accounts are maintained. If for some reason the assessee has not maintained the books of account the appropriate provision under which penalty proceedings can be initiated is under s. 271A of the Act which recourse has also been taken by the assessee as would appear from the order of the Tribunal.

7. The Tribunal was, therefore, justified in upholding the order of the CIT(A) cancelling the penalty imposed under s. 271B of the Act.

8. The appeal fails and is therefore, dismissed.”

Also, as stated by the Ld. AR, similar view has been taken in the following judicial pronouncements:

(i) ITAT, “SMC” Bench, Pune in the case of Ram Prakash C Puri Vs. ACIT (2001) 77 ITD 210 (Pune);

(ii) ITAT, “E” Bench, Delhi in the case of Mahit Garg Vs. ITO, ITA No.3355/Del/2017 dated 23.06.2020

12. Considering the fact that the issue involved in the present appeal remains the same as was there in the aforesaid judgment/orders of the

Hon'ble High Court/Co-ordinate Benches of the Tribunal, therefore, we respectfully follow the same. Accordingly, on the basis of our aforesaid observations, penalty of Rs.1,00,000/- imposed by the A.O u/s.271B of the Act is quashed.

13. In the result, appeal of the assessee in ITA No.143/RPR/2023 for A.Y.1993-94 is allowed in terms of our aforesaid observations.

**ITA Nos. 145 & 147/RPR/2023**  
**A.Ys.1994-95 & 1995-96**

14. As the facts and issues involved in the captioned appeals remain the same as those before us in the case of the assessee in ITA No.143/RPR/2023 for the assessment year 1993-94; therefore, our order therein passed while disposing of the said appeal shall apply *mutatis-mutandis* for disposing of the captioned appeals, i.e., ITA No. (s) 145 & 147/RPR/2023 for the assessment years 1994-95 & 1995-96. In these cases also, penalty of Rs.1,00,000/- imposed by the A.O u/s.271B of the Act is quashed based on the observations which we have recorded while disposing the appeal in ITA No. 143/RPR/2023 for A.Y.1993-94.

15. In the result, both the appeal(s) of the captioned assessee(s) in ITA Nos. 145 & 147/RPR/2023 for A.Ys.1994-95 & 1995-96 are allowed in terms of our observations above.

16. In the combined result, all the captioned appeals are allowed in terms of our aforesaid observations.

Order pronounced in open court on 24<sup>th</sup> day of August, 2023.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 24<sup>th</sup> August, 2023  
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.