

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI**  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
**Before Shri V. Durga Rao, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A. No.491/Chny/2023  
निर्धारण वर्ष/Assessment Year: 2017-18

Balakrishnan Jagadeesan,  
No. 30, East Park Road,  
Shenoy Nagar, Chennai 600 030.

Vs. The Assistant Commissioner of  
Income Tax,  
Non Corporate Ward 10(1),  
Chennai.

**[PAN:ABPPN6488B]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Girish Kumar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT  
सुनवाई की तारीख/ Date of hearing : 28.08.2023  
घोषणा की तारीख /Date of Pronouncement : 30.08.2023

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), (National Faceless Appeal Centre) [NFAC], Delhi dated 17.02.2023 relevant to the assessment year 2017-18 passed under section 271B of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that the assessee has filed his return of income for the assessment year 2017-18 on 21.11.2017 declaring total

income of ₹.85,26,810/-. The incomes are under the heads “Business” and “Other sources”. The case was selected for complete scrutiny assessment under CASS and accordingly, a notice under section 143(2) of the Act dated 22.09.2018 was issued and served on the assessee. Subsequently, a notice under section 142(1) of the Act was issued on 07.02.2019 requiring the assessee to furnish details regarding income and expenses for the financial year 2016-17. From the submissions made by the assessee, the Assessing Officer has noted that the amount of ₹.66,73,913/- was debited to the profit and loss account as interest & financial expenses. On verification of the breakup of the same, the Assessing Officer seen that TDS interest of ₹.8,281/- has been claimed as expenses. Accordingly, by disallowing the same under section 37(1) of the Act, the Assessing Officer has completed the assessment under section 13.11.2019 assessing total income of the assessee at ₹.85,35,091/-.

3. During the course of assessment proceedings, the Assessing Officer found that the assessee showed turnover in excess of limit as specified in section 44AB of the Act, whereas, the tax audit report was filed on 21.11.2017 belatedly. Accordingly, the penalty proceedings under section 271B of the Act was initiated and notice under section 271B of the

Act dated 10.03.2021 was issued. However, the assessee did not file any replies against the penalty notices issued by the Assessing Officer. On verification of the records, the Assessing Officer has noted that the assessee had gross receipts of ₹.16,35,89,827/-. Thus, as per provisions of law, the assessee was required to get its accounts audited in terms of section 44AB of the Act and furnish the report before specified date as per the Act. Since the assessee has furnished the tax audit report belatedly on 21.11.2017 and in the absence of any reasonable cause for the delay and non-compliance to statutory provisions, the Assessing Officer levied penalty of ₹.1,50,000/- under section 271B of the Act. On appeal against levy of penalty, the Id. CIT(A) confirmed the penalty levied under section 271B of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the audit report under section 44AB of the Act was filed on 21.11.2017, much before the completion of the assessment, which was also considered by the Assessing Officer before concluding the assessment under section 143(3) of the Act dated 13.11.2019. It was further submitted that there was very short delay of 14 days in filing the tax audit report due to multiple health and personal domestic issues faced by the assessee who is a senior

citizen aged about 75 years old and prayed for deleting the penalty levied under section 271B of the Act.

5. On the other hand, the Id. DR supported the orders of authorities below.

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 turnover in the year under consideration were ₹.16,35,89,827/-. 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). By assigning reasons for the delay, it was submitted that the audit report under section 44AB of the Act were furnished on 21.11.2017, much before the completion of the assessment, which was also considered by the Assessing Officer before concluding the assessment order under section 143(3) of the Act dated 13.11.2019. Thus, we are of the considered opinion that when the Tax Audit Report was made available to the Assessing Officer before completion of assessment proceedings, then for venial technical breach without any

mala fide intention, penalty cannot be levied under section 271B of the Act since the assessee was prevented by reasonable cause for the delay of 14 days in filing the tax audit report.

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 coordinate 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 the result, the appeal filed by the assessee is allowed.

Order pronounced on 30<sup>th</sup> August, 2023 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 30.08.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,  
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.