

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.464 & 468/NAG/2016
निर्धारण वर्ष / Assessment Year : 2009-10

M/s. J.V. Kulkarni & Friends Associates,
Krupaldas Wadhwani Complex,
Buldhana Road, Malkapur-443101

PAN : AAEFJ4299C

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Central Circle-1(4),
Nagpur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rachit Thakar
Revenue by : Smt. Rashmi Mathur

सुनवाई की तारीख / Date of Hearing : 18-07-2023
घोषणा की तारीख / Date of Pronouncement : 05-09-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These two appeals filed by the assessee against the separate order dated 13-06-2016 and 21-06-2016 passed by the Commissioner of Income Tax (Appeals)-3, Nagpur [‘CIT(A)’] for assessment year 2009-10.

2. First, we shall take up appeal in ITA No. 464/NAG/2016 for A.Y. 2009-10.

3. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in confirming the penalty imposed by the AO u/s. 271B of the Act.

4. We note that the assessee is a firm and civil contractor. According to the AO, the assessee has shown gross receipt of Rs.36.33 crores and liable to be audited the books of account u/s. 44AB of the Act. The AO initiated penalty proceedings for not getting the books of account audited as per requirement of law. The assessee submitted its reply which is reproduced by the AO at page 2 of the penalty order. On perusal of the same, we note that the assessee had undertaken the job of toll collections from Buldhana Urban Credit Co-op. Society, Buldhana and the toll collection fixed for Rs.1,55,000/- per day. As the said toll collection went into losses, the assessee made an application to Buldhana Urban Credit Co-op. Society, Buldhana for its consideration, however, there was no decision taken by the said society up to 31-03-2009. According the assessee that the books of account were test checked before 30-09-2009, but however, audit was held up for want of letter from the said society. The assessee has received the said letter from the said society on 09-01-2010 and immediately passing entry, completed the audit on 01-02-2010. The AO did not accept the said submissions of the assessee and rejected the same by its reasons vide para 5 of the penalty order, imposed penalty of Rs.1,00,000/- u/s. 271B of the Act. The CIT(A) confirmed the same.

5. The ld. AR, Shri Rachit Thakar submits that there was no malafide intention of the assessee for not getting the audit of books of account, but however, for want of letter from the Buldhana Urban Credit Co-op. Society, Buldhana, the audit of books were delayed. The said fact was brought to the notice of AO as well as the CIT(A) in the concerned proceedings, but

however, they did not accept the submissions of the assessee. The ld. AR drew our attention to the case laws in the case of Hindustan Steel Ltd. reported in 83 ITR 26 (SC) of the Hon'ble Supreme Court and placed reliance the said decision which was followed by the Hon'ble Madras High Court in the case of P. Senthil Kumar reported in 416 ITR 336 (Mad.). The ld. DR relied on the order of CIT(A).

6. After hearing both the parties, we note that the provisions u/s. 44AB of the Act mandates every person carrying on business requires audit of books, if turnover or gross receipts exceeds Rs.45 lacs. As discussed above, the assessee has shown gross receipt as Rs.36.33 crores, the provisions u/s. 44AB are applicable to the facts of the case. The Hon'ble Supreme Court in the case of Hindustan Steel Ltd. (supra) held the liability to pay penalty does not arise merely upon proof of default and that penalty cannot be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. In the present case, the assessee offered its explanation in the penalty proceedings stating the delay for getting the books audited for want of letter from Buldhana Urban Credit Co-op. Society, Buldhana and the books were audited immediately after the letter received from the said society. Further, books were audited on 01-02-2010 and were available for examination during the assessment proceedings which was completed on 20-12-2011 u/s. 143(3) of the Act. Therefore, it was a mere technical breach as the books were not audited before specified time as provided by the statute, in our opinion that the delay as explained by the assessee flows from bonafide belief and no penalty could be imposed for a mere technical or venial breach of the provisions of the Act. Thus, penalty imposed by the AO and confirmed by

the CIT(A) u/s. 271B of the Act is not justified and it is set aside. Thus, the grounds raised by the assessee are allowed.

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

8. Now, we shall take up appeal in ITA No. 468/NAG/2016 for A.Y. 2009-10.

9. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in restricting the disallowance to an extent of Rs.4,55,470/-.

10. We find the AO after examining the record asked the assessee to furnish the list of sub-contractors to whom sub-contract has been allotted with PAN, ledger accounts of the said contractors with identity proof. On perusal of the assessment order, we note that the assessee failed to prove the identity furnishing of PAN of the said sub-contractors. Accordingly, the AO disallowed an amount of Rs.11,15,462/-. Before the CIT(A), it is noted that the assessee submitted details of four contractors with PAN and Aadhar and Election Card. Considering the same allowed the expenditure to an extent of Rs.6,59,992/- and confirmed the addition of Rs.4,55,470/- (Rs.11,15,462/- - Rs.6,59,992/-). Before us, no evidence whatsoever furnished in support of remaining four sub-contractors regarding identity, ledger, PAN and Aadhar Card. Therefore, we find no infirmity in the order of CIT(A) and it is justified. Thus, the grounds raised by the assessee are dismissed.

11. In the result, the appeal of assessee is dismissed.

12. To sum up, the appeal of assessee in ITA No. 464/NAG/2016 is allowed and appeal in ITA No. 468/NAG/2016 is dismissed.

Order pronounced in the open court on 05th September, 2023.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th September, 2023.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Nagpur
4. The CIT(Central), Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune