

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 237/Ind/2023
Assessment Year : 2017-18

M.P.Laghu Udyog Nigam Limited, 4 th Floor, Panchanan Building, T.T. Nagar, Bhopal	<u>बनाम/</u> Vs.	DCIT/ACIT, 2(1), Bhopal
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AABCM1366K		
Assessee by	Shri Sumit Kumar Khabya, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	27.09.2023	
Date of Pronouncement	09.10.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 10.05.2023 passed by Commissioner of Income-tax (Appeal), NFAC, Delhi ["CIT(A)"], which in turn arises out of penalty-order dated 16.03.2022 passed by learned DCIT/ACIT, 2(1), Bhopal ["AO"] u/s 271B of Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

1. That the Ld. CIT(A) erred in confirming penalty of Rs. 1,50,000/- levied u/s 271B of the Act.

2. That the levy of penalty u/s 271B of Rs. 1,50,000/- ought to be deleted when the due date of filing audit report was extended upto 07.11.2017 by CBDT and audit report was admittedly filed on 26.10.2017."

2. Heard the Ld. Representatives of both sides and case records perused.

3. The assessee is a public sector company/corporation whose entire share capital is held by State Govt. of Madhya Pradesh. During scrutiny-assessment, the AO found that the assessee had not filed "Tax Audit Report" in Form No. 3CA-3CD and thereby violated the provisions of section 44AB which attracted penalty u/s 271B. Therefore, the AO initiated penalty proceeding and ultimately imposed a penalty of Rs. 1,50,000/- u/s 271B vide order dated 16.03.2022. The assessee carried matter in first-appeal but did not get any relief. Now, the assessee has come in next appeal before us.

4. Ld. AR for assessee emphasized Ground No. 2 re-produced above and submitted that the CBDT extended date upto 07.11.2017 for filing of audit-report vide Order F.No. 225/270/2017/ITA.II dated 31.10.2017 u/s 119 of Income-tax Act, 1961 and the assessee filed audit-report on 26.10.2017. Ld. AR placed before us a copy of the impugned Order dated 31.10.2017 issued by CBDT. He also filed a copy of the proof of e-filing of audit-report, the same is scanned and re-produced below:

1 0 : 2 4

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Income Tax Department, Government of India

MP LAGHU UDYOG ...
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Audit report under section 44AB of the Income-tax Act, 1961, in a case where the accounts of the business or profession of a person have been audited under any other law

Form 3CA-3CD
6 filings till date

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A.Y.2017-18	Filing Date	Filing Type	Status	Acknowledgement No.	Filed By	View Details
	26-Oct-2017	Original	Form verified	258323821261017	CA	Download Form Download Receipt Download Attachments Download XML

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5. Therefore, the Ld. AR argued that there is no default on the part of assessee and the assessee cannot be saddled with penalty. He prayed to delete the penalty.

6. Per contra, Ld. DR for revenue supported the orders of lower authorities and prayed to uphold the penalty.

7. We have carefully examined the orders of lower-authorities. During hearing, we have made all efforts and sought assistance from learned Representatives of both sides to ascertain from the orders of lower-authorities, the exact status of filing, belated filing or non-filing of tax audit report but could not arrive at clear conclusion; there remained uncertainty which the learned Representatives of both sides accepted. However, since the assessee has filed a proof of e-filing, as scanned above, to demonstrate that Form No. 3CA-3CB was filed on 26.10.2017, we find it most appropriate to remand this matter back to the file of AO who shall verify the status of filing of report on 26.10.2017 as being claimed by assessee. The Ld. AO shall carry out a sincere exercise to adjudicate this claim of assessee from records of department. In the event Ld. AO finds that the assessee had actually filed audit-report in extended time, he would drop the penalty. In case he finds that the audit report was not filed within time, he shall still consider assessee's reasoning of failure because the assessee is a public sector company owned by State Govt. of Madhya Pradesh and the assessee has made some pleadings before AO and CIT(A) on that count also; only thereafter the AO shall take a final call. The matter stands remanded to AO.

8. Resultantly, this appeal is allowed for statistical purposes in terms mentioned above.

Order pronounced in the open court on 09.10.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 09.10.2023.

CPU/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore