

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 600/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2015-16)

Vizag Apparel Park for
Export,
Visakhapatnam
[PAN No. AACCV3708M]

Vs. Income Tax Officer,
Ward-17(1),
Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri G.V.N. Hari, AR
राजस्व द्वारा/Revenue by: Ms. Aditi Goyal, DR

सुनवाई की तारीख/Date of hearing: 26/12/2023
घोषणा की तारीख/Pronouncement on: 28/12/2023

आदेश / ORDER

Aggrieved by the order dated 09/10/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Vizag Apparel Park for Export ("the assessee") for the assessment year 2015-16, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a government company. Though it received certain amounts during the year towards rent and interest during the financial year 2014-15, it did not file the return of income. Having noticed such receipts as per the information available under the AIMS module of ITBA, learned Assessing Officer proposed to reopen the assessment under section 147 of the Income Tax Act, 1961

(‘the Act’) and issued notice under section 148 thereof. It could be seen from the assessment order that the assessee informed the department that they were trying to file return under section 148 of the Act, but could not file the same, and the grievance application that was filed that was not responded to and, therefore, paper return was filed with a request to consider the same.

3. Learned Assessing Officer concluded the assessment by order dated 21/03/2022 passed under section 147 read with section 144 read with section 144B of the Act, accepting the income as per computation of income as offered at Rs. 25,40,240/-. Learned Assessing Officer, however, initiated proceedings under section 271(1)(c) of the Act. Assessee pleaded that the assessee being a public limited company with entire capital infused by State Government of Andhra Pradesh, and appointment of its auditors shall be done by Comptroller and Auditor General of India; that its auditors are being appointed and complete the audit and audited financials were signed on 20/09/2016 for the financial year 2014-15; that there was a delay in conducting the audit; that the due date for filing of ITR for Corporate assesses under section 139(1) of the Act is 30/09/2015; that the audited financials were ready by 20/09/2016, they couldn't file the returns by due date; that after completing the statutory audit, audit report will have to be sent to Board of Directors for their comments and approval; that the Board of Directors meeting for considering the annual accounts was not convened on time; that as the statutory audit and Board meeting was not convened on time, they couldn't file the returns by due date under section 139(1) of the Act by 30/09/2015 and 139(4) of the Act by 31/03/2017; that since the due dates for filing the returns were expired

they were not able to file the returns after 31/03/2017; that notices were issued to file the returns under section 142(1) of the Act, but they were not able to file the returns due to glitches in the new portal; that the portal is not showing the option to file the return under section 142(1) of the Act; and that, therefore, the assessee paid all the taxes along with interest and submitted the paper return and tax paid challans while replying to notice. Assessee specifically pleaded that they did not have any intention to conceal the income since the company owned and managed by State Government. On this set of facts, assessee requested the learned Assessing Officer to consider this explanation and drop the penalty proceedings under section 271(1)(c) of the Act.

4. Learned Assessing Officer, however, concluded the penalty proceedings by order dated 23/09/2022 with the levy of penalty of Rs. 7,84,934/-.

5. Assessee preferred appeal before the learned CIT(A) and reiterated the plea as was advanced before the learned Assessing Officer.

6. learned CIT(A), however, held that the case of the assessee is not tenable, since the assessee clearly concealed income and furnished inaccurate particulars of his income as it is clearly a taxable income of Rs.25,40,240/- and this fact was to be brought to light by the learned Assessing Officer with the reopening of proceedings. According to the learned CIT(A), no bona fide explanation was provided for the addition made and the case of the assessee is squarely covered by Explanation-1(B) below section 271(1) of the Act. Learned CIT(A), therefore, upheld the

penalty and dismissed the appeal. Assessee is, therefore, before me in this appeal.

7. Learned AR pleaded that as a matter of fact, due to the bifurcation of the erstwhile State of Andhra Pradesh, there took some time in the appointment of auditors and completion of the audit and audited financials were signed on 20/09/2016 for the financial year 2014-15, but in the meanwhile, the learned Assessing Officer issued notice under section 148 of the Act and when the assessee tried to upload the return of income there were some technical problems which the assessee brought to the notice of the learned Assessing Officer while submitting the paper return.

8. Learned AR further submitted that though the learned Assessing Officer took cognizance of the computation of income, he did not consider the return of income that is the reason why the authorities observed that the assessee did not file return of income. Learned AR submitted that when the income was assessed at the returned income, there is no occasion for levy of penalty. He placed reliance on two decisions of the Co-ordinate Benches of the Tribunal in Ashvin Narayan Bajoria (HUF) vs. ITO in ITA No. 369/SRT/2022, for the assessment year 2012-13 dated 07/03/2023 and in the case of Pooja Upadhyay vs. ITO in ITA No. 258/JP/2022 for the assessment year 2012-13, dated 17/04/2023.

9. Per contra, learned DR submitted that, but for the reopening of the assessment, the taxable income in the hands of the assessee should have escaped assessment and, therefore, the conduct of the assessee in

not filing the return of income, in view of the subsequent assessment, amounts to concealment of income.

10. I have gone through the record in the light of the submissions made on either side. It is not in dispute that the assessee is a public limited company with entire capital infused by State Government of Andhra Pradesh, and appointment of its auditors shall be done by Comptroller and Auditor General of India. It cannot also be disputed that there was bifurcation of the erstwhile state of Andhra Pradesh with effect from 02/06/2014. There is no reason to doubt that the appointment of auditors of the assessee and consequent completion of the audit took some time and the audited financials were signed on 20/09/2016 for the financial year 2014-15. These events are bound to consume time. I am inclined to believe that there was a delay in conducting the audit and that subsequent to the completion of the statutory audit, audit report will have to be sent to Board of Directors for their comments and approval and that the Board of Directors meeting for considering the annual accounts was not convened on time. There is nothing to suspect when the assessee said that as the statutory audit and Board meeting was not convened on time, they couldn't file the returns by due date under section 139(1) of the Act by 30/09/2015 and 139(4) of the Act by 31/03/2017. In these circumstances, I believe that there were reasons for the assessee not to be able to file the return of income within the stipulated time.

11. It is pertinent to note that subsequent to the issuance of notice under section 148 of the Act, assessee informed the learned Assessing Officer that though they tried, due to technical reasons, there was a difficulty in uploading the e-return and their grievance application also

went un-answered and, therefore, they were submitting the paper return with a request to consider the same. It is not the case of the Revenue that the assessee took a false plea in respect of the technical difficulty in uploading the return of income. It is also not the case of the Revenue that the assessee did not raise any grievance at all or that such a grievance was attended to. Law does not require any person to do an impossible thing. In this case, when it was not possible for the assessee to file the e-return, they submitted the paper return by explaining the difficulty. In such situation, unless otherwise proved, according to me, it is sufficient compliance. As a matter of fact, learned Assessing Officer considered the amount of income of Rs. 25,40,240/- as offered by the assessee in the computation and accepted the same.

12. In the case of Ashvin Narayan Bajoria (HUF) (supra), learned Assessing Officer noticed some escapement of income, issued notice under section 148 of the Act and in the proceedings under section 147 of the Act, he accepted the income that was offered in response to notice under section 148 of the Act. A Co-ordinate Bench of the Tribunal, following the decision of the Hon'ble Punjab and Haryana High Court in the case of CIT vs. Rajiv Garg [2008] 175 Taxman 184 (P&H) held that the return filed in response to notice under section 148 of the Act is to be considered as return filed under section 139 of the Act for the purpose of penalty under section 271(1)(c) of the Act. In the case of Pooja Upadhyay (supra), the learned Assessing Officer, while completing the assessment under section 147/143(3) of the Act, with respect to the income so offered in the return of income filed in response to notice under section 148 of the Act, initiated the penalty proceedings under section 271(1)(c) of the Act. The

Tribunal on a review of the case law, reached a conclusion that the assessee voluntarily deposited the tax along with computation of income in response to the notice issued under section 133(6) of the Act and declared such income in the return of income filed in response to notice under section 148 of the Act and, therefore, no penalty is attracted. Learned AR clarified that in the case of Pooja Upadhyay (supra), the occasion for the assessee to respond was the issuance of notice under section 133(6) of the Act, whereas in this case such an occasion for the assessee is the issuance of notice under section 148 of the Act.

13. On a careful consideration of the matter in its entirety, I am of the considered opinion that in this case, the delay occasioned in filing the return of income by the assessee is for the reasons beyond their control and when the learned Assessing Officer considered and accepted the income returned by the assessee, by respectfully following the decisions in the cases of Ashvin Narayan Bajoria (HUF) and Pooja Upadhyay (supra), I find it difficult to sustain the penalty levied. Accordingly the penalty is directed to be deleted.

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

Order pronounced in the open court on this the 28th day of December, 2023.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 28/12/2023

TNMM

Copy forwarded to:

1. Vizag Apparel Park for Export, IDA, Block-E, Phase-II, Auto Nagar,
Visakhapatnam.
2. Income Tax Officer, Ward-17(1), Hyderabad.
3. Pr.CIT,
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD