

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 57/Coch/2023
(Assessment Year:2017-18)

Sobha Traders Kacherry Junction, Ambalapuzha Alappuzha 688561 [PAN:ACJFS8638K]	vs.	The Income Tax Officer Ward – 2 Alappuzha
(Appellant)		(Respondent)

Assessee by:	Shri Bijumon Antony, CA
Revenue by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	17.10.2023
Date of Pronouncement:	28.12.2023

ORDER

PerSanjay Arora, AM

Per the instant appeal the assessee challenges the confirmation of penalty under section 271B of the Income Tax Act, 1961 ("the Act") for assessment year 2017-18 per an order dated 11.1.2022 by NFAC [CIT(A)] vide it's order dated 12.12.2022.

2. The audit report under section 44AB of the Act was admittedly filed with a delay of nearly 9 months, i.e., on 20.6.2018, as against the due date of 30.9.2017, so that the only question arising for our consideration and adjudication is if the said delay stands explained by way of a reasonable cause, saving penalty u/s.273B of the Act, which excludes levy of penalty, *inter alia*, under section 271B of the Act, on a reasonable cause being proved. The reason stated by the assessee, explained to us during hearing by Shri Antony, the learned counsel for the assessee, was the health issues being faced by Shri Unnikrishnan G., Managing Partner of the assessee-firm, managing it since its reconstitution on 01.5.2015. The same was found un-

substantiated and, thus, penalty confirmed. Aggrieved, the assessee is in second appeal.

3. We have heard the parties, and perused the material on record.

3.1 The assessee-firm is running a retail provision store at Alappuzha, Kerala. The assessee's turnover for the relevant year is Rs.929.36 lakhs, indicating it to be a mid-sized business, necessitating involvement of the partners in the day-to-day business. It was statutorily obliged to file the audit report u/s. 44AB of the Act by the specified date there-under, i.e., 30.9.2017, for the relevant year. There was no response to the notices in the penalty proceedings, first of which was on 18.3.2020, followed by fresh notices on 09.09.2021 and 30.12.2021, i.e., on the migration of it's case to the National Faceless Appeal Centre (NFAC) penalty scheme 2021.No adjournment was also sought despite service of notices, both physically and per e-mail. *Noreason having been advanced, much less with evidence, how we wonder could the levy of penalty, which is at the minimum sum of Rs.1.50 lacs, be faulted with?*

3.2 Admission of additional evidence by way of a medical certificate dated 28.11.2022 by the assessee, adduced to substantiate the claim of the Managing Partner, Shri Unnikrishnan, facing health issues, i.e., without any reason being stated for the non-response during penalty proceedings, was thus clearly a concession extended by the Id. CIT(A), presumably for the reason that the matter gets decided, in the interest of justice, on merits, even as we cannot help observe that the same, being also a part of record (PB pg. 24), is by an Ayurvedic Doctor, certifying Sh. Unnikrishnan as suffering from low back ache, for which he was under treatment for one month from 10.05.2017 and, further was advised rest, avoiding any strenuous activity, for a period of 6 months. The same did not find approval by the Id. CIT(A) due to the inability of the assessee to produce any medical record to prove the illness which prevented him from carrying on his business or getting the accounts audited. This becomes also relevant due to the time gap of several years between the dates of

treatment and the certificate produced. Shri Antony, on being enquired by the Bench about the turnover of the assessee's business for the following year, would state of the same to be at over Rs.10 crores. *That is, the assessee's business continued uninterrupted during fy 2017-18.* As we see it, the assessee's case is unsustainable. Granting, on the basis of the certificate, absence from the business for a month in May – June, 2017, it ended well before the due date of furnishing the audit report and, in fact, even commenced weeks after the close of the year. The same does not therefore assist the assessee's case in any significant manner. The accounts could be made available for audit after the close of the year and, in any case, there was adequate time for its completion after 10/6/2017. The delay is for several months after 30/9/2017. It is in fact not even shown that he is managing the accounts of the firm. No reasonable cause, much less proof, attends the assessee's case.

3.3 For the reasons afore-stated, we find no merit in the assessee's case and, accordingly, confirm the impugned order.

4. In the result, the assessee's appeal is dismissed.

*Order pronounced on December 28, 2023 under Rule 34 of The Income Tax
(Appellate Tribunal) Rules, 1963.*

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: December 28, 2023
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order
Assistant Registrar
ITAT, Cochin