

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR – VIRTUAL COURT

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

आयकर अपील सं. / ITA No.172/NAG/2022

Assessment Year : 2016-17

Ritesh Khurana, 107, Near Panch Bhavan, Queta Colony, Nagpur, Maharashtra 440 008 PAN : AFOPK2308G	Vs.	ITO, Ward-4(2), Nagpur
Appellant		Respondent

Assessee by : Shri K.K. Thakkar
Revenue by : Shri Abhay Y. Marathe

Date of hearing : 02.02.2024
Date of pronouncement : 02.02.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of CIT(A) in National Faceless Appeal Centre, Delhi [‘NFAC’] dated 29.03.2022 confirming the levy of penalty u/s.271B of the Income Tax Act, 1961 (‘the Act’) for the assessment year 2016-17.

2. The appellant had raised the following grounds of appeal :

1. The order of the Learned CIT(A) is Bad in Law and on facts.
2. Learned CIT(A), erred in sustaining penalty u/s.271B – Rs.1,50,000/-

2. Briefly, the facts of the case are that the appellant is an individual who filed his return of income for the A.Y. 2016-17 on 16.03.2017 declaring total income at Rs.6,23,510/-. The assessment was completed by the Assessing Officer (AO) determining total income at Rs.7,01,510/-. It was observed by the AO that the appellant failed to get the accounts audited u/s.44AB of the Act before the stipulated date even though the gross turnover was above the threshold limit. Eventually, the AO levied penalty of Rs.1,50,000/- . Aggrieved by the order of the Assessing Officer, the appellant carried the matter before the CIT(A) who confirmed the said penalty.

3. Before the Tribunal, the assessee contested the confirmation of penalty by the CIT(A).

4. We have heard the rival submissions and perused the relevant material on record. On perusal of the order of CIT(A), it is evident that the CIT(A) has dismissed the appeal on the ground of delay as well as on merits. During the proceedings before the CIT(A), it was stated before him that the delay of 322 days had occurred on account of the fact that the Accountant had resigned. Thus, the appellant was unaware of the order. In the absence of any evidence contrary to the explanation stated by the assessee, the CIT(A) ought to have

condoned the delay of 322 days. Accordingly, we condone the delay and admit the appeal for adjudication on merits.

5. As regards the imposition of penalty u/s.271B, it was stated that the appellant was unaware of the statutory provisions governing the Audit u/s.44AB of the Act. The turnover of the appellant was beyond the prescribed limits under the said provisions for the first time. Though it is settled position of law that ignorance of law is not an excuse but it cannot be ruled out that assessee entertained the bonafide belief that it is not under obligation to get accounts audited under the provisions of section 44AB of the Act. Therefore, in our considered opinion, it constitutes a reasonable cause for not getting the accounts audited u/s.44AB of the Act and is not a fit case for levy of penalty. In the circumstances, we direct the Assessing Officer to delete the penalty of Rs.1,50,000/- levied u/s.271B of the Act.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 02nd day of February, 2024.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 02nd February, 2024.

Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर /
DR, ITAT, Nagpur.
4. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1.	Draft dictated on	02-02-2024	Sr.PS
2.	Draft placed before author	02-02-2024	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		