

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री मनोज कुमार अग्रवाल, लेखासदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1201/Chny/2023
निर्धारण वर्ष /Assessment Year: 2017-18

Rajarajeswari Krafts Pvt. Ltd.,
900, Kamak Road,
Sivakasi – 626 189.
[PAN: AADCR-8256-M]

The Income Tax Officer,
Vs. Corporate Ward-4,
Madurai.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Shri V.Rajasekaran, C.A
प्रत्यर्थी की ओर से /Respondent by : Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 28.02.2024
घोषणा की तारीख /Date of Pronouncement : 08.03.2024

आदेश / ORDER

PER MANOMOHAN DAS, J.M:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, [CIT(A)] dated 29-08-2023 relevant to the Assessment Year [AY] 2017-18. The Ld. CIT(A) has confirmed penalty as levied by Ld. A.O u/s. 271B of the Act.

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2. The brief facts of the case are that the assessee-company is engaged in manufacturing of paper/ card board etc. During Financial Year [FY] 2016-17 relevant to A.Y 2017-18, the assessee admitted turnover of Rs.11,14,27,496/- and accordingly, the assessee was required to get its accounts audited u/s. 44AB of the Income Tax Act 1961 (hereinafter "the Act"). However, the assessee filed its return of income and the Audit Report belatedly. As the Audit Report was filed belatedly, penalty proceedings u/s. 271B of the Act was initiated against the assessee and ultimately a penalty of Rs. 1,50,000/- was levied by Ld. A.O upon the assessee vide order dated 11.11.2021.

3. Being aggrieved, the assessee has filed 1st appeal before the Id. CIT(A). The Id. CIT(A) vide order dated 29-08-2023 dismissed the appeal of the assessee.

4. Being aggrieved, the assessee filed the present appeal before the Tribunal.

5. Heard the representatives of both the parties and perused the materials on record.

6. The Ld. AR submitted that the audit u/s 44AB of the Act was completed on 31-08-2017 but audit report was received on 22-02-2018 and the same was filed on same very date i.e., 22-02-2018 (The date

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was 07-11-2017). The Ld. AR further submitted that the Chartered Accountant was fully engaged in filing of ITR due to which he was not able to deliver the audit report to the assessee in time and therefore, the delay in filing of the audit report was beyond the control of the assessee. The Ld. AR relied on certain decisions favoring the assessee. On the other hand, the Ld. Sr. D.R supported the orders of the lower authorities in levying the penalty.

7. We have carefully considered the submissions of both the parties and also perused the materials as available on record. The Id. CIT(A) observed that the assessee did not furnish any evidence regarding the efforts made by him in getting the tax audit report early from the Chartered Accountant. The Ld. CIT(A) further observed that the assessee failed to demonstrate any reasonable ground of delay as stipulated u/s. 271B of the Act. The Id. CIT(A) relied on the decisions of Hon'ble Punjab & Haryana High Court in the cases of *Kwality Skin Co. vs. CIT [2001] 119 Taxman 876* , Hon'ble Kerala High Court in the case of *K. Ravindranath Nair vs. Dy. CIT [2009] 319 ITR 108* and Hon'ble Rajasthan High Court in the case of *Madhuban Chemicals & Fertilizers Ltd. vs. CIT [2006] 157 Taxman 374* and dismissed the appeal of the assessee. On the other hand, the assessee relied on certain decisions of Hon'ble jurisdictional High Court and Tribunal. We

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observe that this Tribunal in the case of *Balaji Logistics vs. ACIT in ITA No. 2248/Chny/2019 dated 07-09-2022*, inter alia, held that once audit report has been made available before the AO when the assessment proceedings were completed, then there would be no reason for levy of penalty u/s. 271B of the Act.

8. We find that the assessee has uploaded the audit report on 22-02-2018 and the assessment was completed vide order dated 28-12-2019. Thus, the assessee filed the audit report before the Id. AO prior to completion of the assessment order and it had reasonable cause for such delay. Accordingly, the cited decision of the Tribunal in the aforesaid case of *Balaji Logistics* is applicable in the case of the assessee.

9. The Hon'ble Madras High Court in the case of *CIT vs. Apex Laboratories Pvt. Ltd [2010] 320 ITR 498 (Mad)*, inter alia, held that no penalty is imposable u/s 271B of the Act for non-compliance with the provisions of Section 44AB of the Act on the ground that the returns were filed belatedly. Penalty is leviable only if the assessee fails to get his accounts audited and obtain a report.

10. Further, the Co-ordinate Bench of the Tribunal in the case of *Sri Ramunaicker Raja vs. ACIT dated 15-02-2013 under appeal No. ITA*

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603/Chny/2022 decided the similar issue in favour of the assessee. The Co-ordinate Bench of the Tribunal considered the case of Balaji Logistics vs. ACIT and accordingly, decided this issue in favour of the assessee.

11. We, therefore, respectfully follow the aforesaid decisions, conclude that it is not a fit case for levy of penalty under section 271B of the Act. By deleting the same, we allow the appeal of the assessee.

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

Order pronounced on 08th March, 2024.

Sd/-
(मनोज कुमार अग्रवाल)
(Manoj Kumar Aggarwal)
लेखा सदस्य /Accountant Member

Sd/-
(मनोमोहन दास)
(Manomohan Das)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 08th March, 2024.
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF