

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

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| ITA Nos.117 to 119/Bang/2024 |
| Assessment Years : 2016-17 to 2018-19 |

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| Shri. Dommallur Shivanna Nandish, C-12 No. 156 Epsilon Ventures Villa Layout, Ammani Belandur Marathalli, Bengaluru – 560 037. PAN : AAZPN 5719 J | Vs. | DCIT, Central Circle – 1(2), Bengaluru. |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Shri. C. Ramesh, CA |
| Revenue by | : | Mrs. Akta Jain, Addl. CIT (DR)(ITAT), Bengaluru. |

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| Date of hearing | : | 19.03.2024 |
| Date of Pronouncement | : | 20.03.2024 |

ORDER

Per George George K, Vice President:

These appeals at the instance of the assessee are directed against consolidated order of CIT(A), dated 24.11.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Years are 2016-17 to 2018-19.

2. Common issues are raised in these appeals. Hence, they were heard together and are being disposed off by this consolidated order. The solitary issue that is raised is whether CIT(A) is justified in confirming the penalty imposed under section 271B of the Act amounting to Rs.1,50,000/- for each of the Assessment Years.

3. Brief facts of the case are as follows:

Assessee is an individual engaged in the business of consultancy services in the medical field. For the Assessment Years 2016-17 and 2017-18, the return of income was filed under section 139(4) of the Act on 31.03.2017 and 31.03.2018 respectively. For the Assessment Year 2016-17, assessee had declared a total loss of Rs.3,88,37,970/- and for Assessment Year 2017-18 assessee declared income of Rs.2,70,68,460/-. For the Assessment Year 2018-19, assessee did not file the return of income but filed return of income on 07.05.2019, declaring total income of Rs.1,37,71,230/- in response to the notice issued under section 142(1) of the Act. There was a survey conducted under section 133A of the Act in the business premises of the assessee on 03.05.2017. It was noticed that assessee had reportedly received consultancy fees totaling to Rs.7,77,01,526/-, Rs.6,50,00,000/- and Rs.4,50,00,000/- for Assessment Years 2016-17, 2017-18 and 2018-19 respectively. Further, it was noticed that despite the receipt of the above-mentioned significant amounts, assessee had not submitted the audit reports as required under section 44AB of the Act within the due date prescribed. Since in each of the Assessment Years, assessee had gross receipts exceeding Rs.1,00,00,000/- and did not adhere to the stipulated timeline for furnishing the audit report as required under section 44AB of the Act, penalty was imposed under section 271B of the Act amounting to Rs.1,50,000/- for each of the Assessment Years.

4. Aggrieved by the order imposing penalty under section 271B of the Act for the Assessment Years 2016-17 to 2018-19, assessee filed appeals before the CIT(A). The CIT(A) confirmed the imposition of the penalty under section 271B of the Act. The CIT(A) held that assessee has been consistently filing the return of income and audit reports belatedly without explaining the valid reasons for the delay. The case laws relied on by the assessee was distinguished by the CIT(A)

by observing that in those cases reported, the assessee had established 'reasonable cause' and hence there was waiver of penalty.

5. Aggrieved by the Order of the CIT(A) confirming the imposition of penalty under section 271B of the Act, assessee has filed the present appeals before the Tribunal. Assessee has filed two sets of Paper Books. In one set of Paper Book, assessee has enclosed the case laws relied on. In the other set of Paper Book assessee has enclosed the written submissions filed, notices issued under section 274 r.w.s. 271B of the Act, the income tax returns filed in response to notice issued under section 153A of the Act, etc. The learned AR's main contention was that the audit report though filed belatedly was available prior to completion of assessment and the AO had taken note of the same in the Assessment Orders completed. Therefore, it was contended that it is only a technical venial breach which does not create any loss to the exchequer. Hence it was contended that the penalty imposed may be deleted. In support of his contention, the learned AR relied on the following orders of the Tribunal:

- *Attinkara Electronics Vs ITO, ward -1, Thiruvalla of Hon'ble Cochin Tribunal ITA no.601/Coch/2018 AY 2012-13, vide order dated 01.03.2019*
- *Dummi Shivaraj Deepak Vs ITO, Ward -1, Davanagere of Hon'ble Bangalore ITAT, in ITA no.74/Bang/2023 —AY 2017-18 dated 25.04.2023*

6. Further, by referring to the notice issued under section 274 r.w.s. 271B of the Act, it was contended that AO had not struck off the relevant portion in the said notice, hence, the notice not being specific, the imposition of penalty is bad in law.

7. The learned DR supported the orders of the AO and the CIT(A).

8. We have heard the rival submissions and perused the material on record. A survey was conducted under section 133A of the Act in the business premises of the assessee on 03.05.2017. During the course of survey, it was revealed that assessee had established multiple companies, firms and business entities, utilizing their bank accounts for depositing cash which was unaccounted. In addition to the same, it was noticed that assessee had received consultancy fees totaling to Rs.7,77,01,526/-, Rs.6,50,00,000/- and Rs.4,50,00,000/- for Assessment Years 2016-17 to 2018-19. Despite the receipt of significant amounts, assessee did not file audit report within the prescribed due date as required under section 44AB of the Act. The specific details regarding the return filing dates and the due dates for filing the audit reports are as follows:

| AY | Due date to file ROI and audit report | Date of audit report and Filing of Audit report | Return Filing Date& Section | Income declared |
|-----------|--|--|--|------------------------|
| 2016-17 | 30.09.2016 | 27.03.2017 | 31.03.2017 u/s 139(4) | 3,88,37,971 |
| 2017-18 | 30.09.2017 | 16.03.2018 | 31.03.2018 u/s 139(4) | 2,70,68,460 |
| 2018-19 | 30.09.2018 | 07.05.2019 | 14.05.2019 u/s 142(1) | 1,37,71,230 |

9. As per section 273B of the Act, penalty under section 271B of the Act shall not be levied if assessee establishes that the said failure to file the audit report within the due date prescribed under section 44AB of the Act was on account of 'reasonable cause'. In the instant case, assessee had not stated any 'reasonable cause' for not furnishing the audit report under section 44AB of the Act within the prescribed due date. Assessee has merely stated before the CIT(A) and reiterated before the Tribunal that he was travelling abroad, consequently, could not comply

with the requirement of furnishing the audit report within the due date prescribed. The above explanation of the assessee in our view would not constitute 'reasonable cause' as mandated under section 273B of the Act. Further, it has been noticed by the CIT(A) that assessee had failed to comply with the timelines for furnishing the audit report in the preceding years which leads to a conclusion that assessee is a consistent defaulter in so far as filing the return of income and furnishing the audit report on time. Therefore, on the facts of the instant case, assessee has not proved 'reasonable cause' for the delay in furnishing the audit report within the due date prescribed.

10. The case laws relied on by the assessee is distinguishable on the facts. The case laws relied on by the assessee involved a scenario where the late filing of audit reports was attributable to the technical glitches leading to penalty being waived as 'reasonable cause'. Further, in some cases there is a clear finding that there was a 'reasonable cause' as mandated under section 273B of the Act coupled with the fact that audit report was filed before the completion of the Assessment and same has been utilized by the AO in the assessment completed. Mere availability of audit report during the course of assessment proceeding, without mentioning any 'reasonable cause' for the delay in filing the audit report would render otiose the time line provided under section 44AB of the Act. In the instant case, as mentioned earlier, admittedly, assessee has not stated any 'reasonable cause' as mandated under section 273B of the Act for the failure to file the audit report within the prescribed time limit under section 44AB of the Act.

11. As regards the assessee's contentions that the notice issued under section 274 r.w.s. 271B of the Act is bad in law for the reason that AO has not struck off the relevant portion, we are of the view that this plea of the assessee cannot be entertained at this stage. We find that assessee has not taken this contention either before the AO or before the CIT(A). Assessee has not even raised a specific

ground before the Tribunal. We are of the view that assessee ought to have raised this contention at the very threshold i.e., before the AO. Assessee has not been able to establish any prejudice on account on non-striking of the relevant portion of the notice. In this context, we rely on the latest judgment of the Hon'ble Bombay High Court in the case of Veena Estate Pvt. Ltd., Vs. CIT reported in 461 ITR 483 (Bombay). In light of the aforesaid reasoning, we reject the appeals of the assessee.

12. In the result, appeals filed by the assessee are dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 20.03.2024.

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.