

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI R.K. PANDA, VICE PRESIDENT AND
SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA no.116/Nag./2023
(Assessment Year : 2017-18)

Vinay Jamnadas Udeshi
247, Shri Vallabh Building
Daraskar Road, Itwari, Nagpur 440 002
PAN – AAAPU8573G

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-4, Nagpur

..... Respondent

Assessee by : Shri Himesh Damble
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 01/05/2024

Date of Order – 01/05/2024

ORDER

PER V. DURGA RAO, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 02/03/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (*"the learned CIT(A)"*), for the assessment year 2017-18.

2. In the assessment order, the A.O. noticed that the assessee has reported a total revenue from operation exceeding statutory limit for tax audit as per section 44AB of the Act and tax audit report has not been filed. After following the due procedure, assessment was completed and penalty proceedings u/s 271B of the Act was imposed.

3. On appeal against the penalty order passed by the A.O. u/s 271B of the Act, the learned CIT(A) confirmed the order of the A.O.

4. When this appeal was taken up for hearing, the learned Counsel for the assessee submitted that there is strained relationship between the assessee's Chartered Accountant and the assessee and, therefore, he was not able to file relevant details before the learned CIT(A) and, hence, one more opportunity should be given to substantiate his case before the learned CIT(A). He also filed certain additional evidences before the Tribunal.

5. On the other hand, the learned D.R. strongly supported the order passed by the learned CIT(A).

6. We have heard the arguments of the rival parties and perused the material available on record. We find that the A.O. in the instant case, imposed penalty u/s 271B of the Act on the ground that audit report was not obtained as per the provisions of section 44AB of the Act. The case of the assessee is that the assessee and the assessee's Chartered Accountant has a strained relationship and, therefore, he was not able to file the audit report and he was not able to explain his case before the learned CIT(A) properly. Now the assessee filed some details in shape of additional evidence and in view of the above, we are of the opinion that one more opportunity should be given to the assessee to substantiate his case before the learned CIT(A). In view of the above, we set aside the order passed by the learned CIT(A) and restore the matter back to the file of the learned CIT(A) and direct him to consider the evidence to be filed by the assessee after giving reasonable opportunity of being heard to the assessee. Accordingly, all the grounds raised by the assessee in this appeal are allowed for statistical purposes.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 01/05/2024.

Sd/-
R.K. PANDA
VICE PRESIDENT

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 01/05/2024

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- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur