

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.128 & 129/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2014-2015 & 2012-2013)

Smt. Asha Didwania, Matrumandir, Near HP Petrol Pump, Charampa, Bhadrak	Vs	Assessment Unit, National Faceless Assessment Centre (NFAC), Delhi
PAN No. : AOODP 2243 Q		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri P.K.Mishra, Advocate
राजस्व की ओर से / Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	20/05/2024
घोषणा की तारीख / Date of Pronouncement	:	20/05/2024

आदेश / O R D E R

Per Bench :

These two appeals are filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 10.02.2024 & 09.02.2024 for the assessment years 2012-2013 & 2014-2015 respectively.

2. First, we shall take up the appeal of the assessee in ITA No.129/CTK/2024 filed for the assessment year 2012-2013, wherein the assessee has challenged the levy of penalty u/s.271B of the Act of Rs.1,50,000/- on account of not get the accounts audited u/s.44AB of the Act.

3. In this case the assessee filed her return of income declaring total income of Rs.1,71,920/- on 18.02.2013. Thereafter on the basis of information available with AO that the assessee has made deposits in her

bank account of more than Rs.8.12 crores which were not disclosed in the regular return, the case was reopened. The reassessment order was passed by applying profit rate of 2.3% on the undisclosed bank deposits by treating the same as business turnover. Against the quantum order, the assessee opted for Vivad Se Vishwas Scheme and settled the dispute. However, in the assessment order the AO has initiated the penalty proceedings u/s.271B of the Act for failure to get accounts audited u/s.44AB of the Act. The AO vide penalty order dated 16.03.2022 has levied the penalty u/s.271B of Rs.1,50,000/- by observing that the assessee has a turnover of Rs.8.12 crores which exceeds the limit of Rs.1 crore as prescribed u/s.44AB of the Act, therefore, the assessee has to get her accounts audited. In absence of the audit report u/s.44AB of the Act, the assessee is liable for penalty action u/s.271B of the Act and accordingly levied the penalty of Rs.1,50,000/- being half percent of the turnover or Rs.1,50,000/-, whichever is less.

4. Against such order, the assessee preferred appeal before the Id. CIT(A), who dismissed the appeal of the assessee. Thus, the present appeal is filed before us.

5. During the course of hearing Id. AR submitted that the assessee has not maintained any books of accounts, therefore, she is not required to get its account audited. It was further submitted that the AO has accepted this fact that the assessee has not maintained the accounts and in absence of the accounts he invoked the provisions of Section 144 of the Act and estimated the income by applying the profit rate of 2.3% on

bank deposits by treating it as turnover of the assessee. Therefore, it is an admitted position that when no books of accounts were kept by the assessee and in absence of books of accounts question of get their audited does not arise. Ld. AR further argued that in this case the assessment order was passed on 11.12.2019 where the satisfaction was recorded of initiation of the penalty proceedings u/s.271B of the Act. Against the said initiation the assessee has not filed any appeal, therefore, the time limit has been prescribed as per the Section 275 of the Act are applicable. According to Section 275(1)(c) of the Act, the penalty order should be passed within six months from the end of the month in which the said proceedings were initiated or six months from the end of Financial Year in which such proceedings were initiated whichever is later. In the present case the penalty proceedings were initiated in the assessment order passed on 11.12.2019 and the penalty has been imposed vide order dated 16.03.2022 which is barred by limitation as beyond the time allowed u/s.275(1)(c) of the Act, therefore, he prayed for cancellation of the order levying penalty u/s.271B of the Act.

6. Per Contra, Id. Sr. DR supported the orders of the lower authorities and contended that no action has been taken u/s.271A of the Act for non-maintenance of the books of accounts, therefore, the penalty u/s.271B of the Act is leviable. He further contended that due to Covid-19 time limit was extended, therefore, the penalty order was well within the time. He, thus, stated that the assessee is liable for the penalty u/s.271B of the Act for not getting the accounts audited more particularly when the assessee

admitted that the turnover was exceeded the maximum limit of turnover of Rs.1.00 crores as prescribed u/s.44AB of the Act.

7. We have heard the rival submissions and perused the material available on record. We find that it is an undisputed fact that the assessee has not maintained any books of accounts, thus, the question of getting the books audited does not arise. Ld. CIT(A), while confirming the penalty has observed that it is not a case of non-maintenance of books of accounts but it is a case of non-maintenance of books of accounts properly which are not correct observations. From the perusal of the assessment order it is clearly evident that assessee during the course of assessment proceedings categorically replied that she has not maintained any books of accounts. The AO also in assessment order observed that the assessee has not maintained regular books of accounts, therefore, the proper recourse available with the AO is to initiate penalty proceedings u/s.271A of the Act for non-maintenance of books of accounts which he failed to do so. Once the AO has granted immunity by not initiating the penalty proceedings u/s.271A of the Act, the initiation of penalty proceedings u/s.271B of the Act for non-audit of the books of accounts is not correct, therefore, the penalty levied u/s.271B of the Act is not sustainable.

8. With regard to the limitation, we find that the assessment order was passed on 11.12.2019 and the issue of initiation of penalty proceedings u/s.271B of the Act was not challenged in appeal, therefore, the time limit

for imposing the penalty as per section 271(1)(c) of the Act are applicable which reads as under :-

¹ ***[Bar of limitation for imposing penalties.***

275. *No order imposing a penalty under this Chapter shall be passed—*

(a) xxxxxxxx

(b) xxxxxxxx

(c) *in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.*

9. In the present case, as per Section 275(1)(c) of the Act, time limits of passing the penalty order expired on 30/09/2020, however, due to Covid-19, the date for completion of the assessment proceedings as well as for passing the penalty orders stood extended by the CBDT through various instructions and finally vide Instruction dated 25.06.2021, it was finally extended to 30.09.2021. The relevant instruction is reproduced here under :-

*Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
New Delhi, 25th June, 2021
PRESS RELEASE*

Government grants further extension in timelines of compliances. Also announces tax exemption for expenditure on Covid treatment and ex-gratia received on death due to Covid

A. Tax exemption

1. Many taxpayers have received financial help from their employers and well wishers for meeting their expenses incurred for treatment of Covid-19. In order to ensure that no income tax liability arises on this account, it has been

decided to provide income-tax exemption to the amount received by a taxpayer for medical treatment from employer or from any person for treatment of Covid-19 during FY 2019-20 and subsequent years.

II. Unfortunately, certain taxpayers have lost their life due to Covid-19. Employers and well-wishers of such taxpayers had extended financial assistance to their family members so that they could cope with the difficulties arisen due to the sudden loss of the earning member of their family. In order to provide relief to the family members of such taxpayer, it has been decided to provide income-tax exemption to ex-gratia payment received by family members of a person from the employer of such person or from other person on the death of the person on account of Covid-19 during FY 2019-20 and subsequent years. The exemption shall be allowed without any limit for the amount received from the employer and the exemption shall be limited to Rs. 10 lakh in aggregate for the amount received from any other persons.

Necessary legislative amendments for the above decisions shall be proposed in due course of time.

B. Extension of Timelines

In view of the impact of the Covid-19 pandemic, taxpayers are facing inconvenience in meeting certain tax compliances and also in filing response to various notices. In order to ease compliances to be made by taxpayers during this difficult time, reliefs are being provided through Notifications nos. 74/2021 & 75/2021 dated 25th June, 2021 Circular no. 12/2021 dated 25th June, 2021. These reliefs are:

- 1) **Objections to Dispute Resolution Panel (DRP) and Assessing Officer under section 144C of the Income-tax Act, 1961** (hereinafter referred to as "the Act") for which the last date of filing under that section is 1st June, 2021 or thereafter, may be filed within the time provided in that section or by 31st August, 2021, whichever is later.*
- 2) **The Statement of Deduction of Tax** for the last quarter of the Financial Year 2020-21, required to be furnished on or before 31st May, 2021 under Rule 31A of the Income-tax Rules, 1962 (hereinafter referred to as "the Rules"), as extended to 30th June, 2021 vide Circular No.9 of 2021, may be furnished on or before 15th July, 2021.*
- 3) **The Certificate of Tax Deducted at Source in Form No.16**, required to be furnished to the employee by 15th June, 2021 under Rule 31 of the Rules, as extended to*

15th July, 2021 vide Circular No.9 of 2021, may be furnished on or before 31st July, 2021.

- 4) **The Statement of Income paid or credited** by an investment fund to its unit holder in Form No. 64D for the Previous Year 2020-21, required to be furnished on or before 15th June, 2021 under Rule 12CB of the Rules, as extended to 30th June, 2021 vide Circular No.9 of 2021, may be furnished on or before 15th July, 2021.
- 5) **The Statement of Income paid or credited** by an investment fund to its unit holder in **Form No. 64C** for the Previous Year 2020-21, required to be furnished on or before 30th June, 2021 under Rule 12CB of the Rules, as extended to 15th July, 2021 vide Circular No.9 of 2021, may be furnished on or before 31st July, 2021.
- 6) The application under **Section 10(23C), 12AB, 35(1)(ii)/(ia)/(iii) and 80G** of the Act in **Form No. 10A/ Form No.10AB**, for registration/ provisional registration/ intimation/ approval/ provisional approval of Trusts/ Institutions/ Research Associations etc., required to be made on or before 30th June, 2021, may be made on or before 31st August, 2021.
- 7) **The compliances** to be made by the taxpayers such as investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purpose of **claiming any exemption under the provisions contained in Section 54 to 54GB** of the Act, for which the last date of such compliance falls between 1st April,2021 to 29th September, 2021 (both days inclusive), may be completed on or before 30th September, 2021.
- 8) **The Quarterly Statement in Form No. 15CC** to be furnished by authorized dealer in respect of remittances made for the quarter ending on 30th June, 2021, required to be furnished on or before 15th July, 2021 under Rule 37 BB of the Rules, may be furnished on or before 31st July, 2021.
- 9) **The Equalization Levy Statement in Form No. 1** for the Financial Year 2020- 21, which is required to be filed on or before 30th June, 2021, may be furnished on or before 31st July, 2021.
- 10) The **Annual Statement** required to be furnished under **sub-section (5) of section 9A of the Act by the eligible investment fund** in Form No. 3CEK for the Financial Year 2020-21, which is required to be filed on or before 29th

June, 2021, may be furnished on or before 31st July, 2021.

- 11) **Uploading of the declarations** received from recipients in Form No. 15G/15H **during the quarter ending 30th June, 2021**, which is required to be uploaded on or before 15th July, 2021, may be uploaded by 31st August, 2021.
- 12) **Exercising of option** to withdraw pending application (filed before the erstwhile Income Tax Settlement Commission) under sub-section (1) of Section 245M of the Act in **Form No. 34BB**, which is required to be exercised on or before 27th June, 2021, may be exercised on or before 31st July, 2021.
- 13) **Last date of linkage of Aadhaar with PAN under section 139AA of the Act**, which was earlier extended to 30th June, 2021 is further extended to 30th September, 2021.
- 14) **Last date of payment of amount under Vivad se Vishwas**(without additional amount) which was earlier extended to 30th June, 2021 is further extended to 31st August, 2021.
- 15) **Last date of payment of amount under Vivad se Vishwas (with additional amount)** has been notified as 31st October, 2021.
- 16) **Time Limit for passing assessment order** which was earlier extended to 30th June, 2021 is further extended to 30th September, 2021.
- 17) **Time Limit for passing penalty order** which was earlier extended to 30th June, 2021 is further extended to 30th September, 2021.
- 18) **Time Limit for processing Equalization Levy returns which was earlier** extended to 30th June, 2021 is further extended to 30th September, 2021.

(Surabhi Ahluwalia)
Commissioner of Income Tax
(Media & Technical Policy)
Official Spokesperson, CBDT

10. From perusal of the instructions, it is clear that all the cases where time limits for passing penalty orders expired within the Covid period, the limitation were extended by the CBDT upto 30th September, 2021. The

present case also falls under the above category. Therefore, the final date for passing the penalty order was 30.09.2021, however, the AO has levied penalty vide order dated 16.03.2022, which is beyond the time limit extended by the CBDT. Further, the assessee has opted for Vivad Se Vishwas Scheme and submitted before the Id. CIT(A) that once the assessee has opted for VSV Scheme, she got immunity from the penalty proceedings. In this regard, while rejecting the claim of the assessee, the Id. CIT(A) has referred the CBDT FAQ No.80 given in Circular No.21/2020 dated 04.12.2020, which reads as under :-

Question 80:

Whether appeal against penalties that are not related to quantum assessment lime penalty u/s.271B, 271A, 271DA of the Act etc. are also waived upon settlement of appeal relating to disputed tax.?

Answer :

No, appeal against such penalty order is required to be settled separately.

In view of the above it is held that VSVS does not grant immunity from penalty u/s.271B.

11. In the above FAQ, the CBDT has made it clear that the penalty proceedings u/s.271B is not related to the quantum assessment, therefore, that cannot be waived under VSV Scheme. This being so, it cannot be said that the time limit for levy of penalty should be extended till the disposal of the appeal in quantum proceedings or till the issue of final certificate under VSV Scheme. In view of these facts, in our considered view the penalty order dated 16.03.2022 is barred by limitation and therefore, deserves to be cancelled.

12. Under these circumstances, the penalty levied u/s.271B of the Act is deleted both on merits as well as on limitation issue. Thus, the appeal of the assessee is allowed.

13. In the appeal of assessee for the assessment year 2014-2015 in ITA No.128/CTK/2024, the assessee has challenged the levy of penalty u/s.271B of the Act of Rs.1,50,000/- for not getting accounts audited u/sd.44AB of the act. The facts as borne out in ITA No.129/CTK/2024 (supra), are similar to the facts except the date of penalty order i.e. in the present appeal the date is 02.02.2022 as against 16.03.2022, all other facts are identical, therefore, the view taken by us in the appeal i.e. ITA No.129/CTK/2024 is squarely applicable to the present appeal also. Thus, by following the reason given by us in the appeal of the assessee for A.Y.2012-2013 in ITA No.129/CTK/2024, the appeal of the assessee for A.Y.2014-2015 is allowed and the penalty levied u/s.271B is deleted.

14. In the result, both appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 20/05/2024.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)

लेखा सदस्य/ ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 20/05/2024

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Smt. Asha Didwania,
Matrumandir, Near HP Petrol Pump,
Charampa, Bhadrak
2. प्रत्यर्थी / The Respondent-
Assessment Unit, National Faceless
Assessment Centre (NFAC), Delhi
3. आयकर आयुक्त(अपील) / The CIT(A),

4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack