

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.7/Nag./2024
(Assessment Year : 2017-18)

Shri Nandlal Dharamdas Virwani
Near Zulelal Bhawan, Sindhi Camp
Akola 444 001 PAN – AANPV7482Q

..... Appellant

v/s

Income Tax Officer
Ward-3, Akola

..... Respondent

Assessee by : None
Revenue by : Shri Rajat Singhai

Date of Hearing – 26/06/2024

Date of Order – 26/06/2024

ORDER

PER V. DURGA RAO, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 16/11//2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi, [“learned CIT(A)”], for the assessment year 2017-18.

2. The assessee in its appeal has raised following grounds:-

"1) That the learned CIT(A) has erred in imposing penalty u/s 271B at Rs. 1,50,000/-

2) That the learned CIT(A) has erred in not accepting contention of the assessee that, audit report obtained before specified date could not be furnished to the department before the due date u/s 139, since, return income

was below taxable limit and hence there was no occasion to furnish audit report separately.

3) That the learned CIT(A) has erred in not accepting that, there was sufficient reasonable cause with the appellant as provided u/s 273B for non-furnishing of audit report before the due date prescribed u/s 139.

4) That the learned CIT(A) ought to have accepted the fact that, appellant was under bonafide belief that, audit report obtained on 31/10/2017 could not be furnished separately without furnishing the return of income.

5) That the learned CIT(A) ought to have appreciated the fact that, audit report Dtd. 31/10/2017 was furnished by the appellant alongwith the return of income furnished in response to notice u/s 147 / 148. Without prejudice, audit report was available with the department quite before finalizing the assessment.

6) That the order is bad-in-law and against the fact of the case.

7) That the appellant craves for leave to raise any other grounds of appeal either before or at the time of hearing of appeal."

3. The solitary issue raised by the assessee in its appeal relates to imposition of penalty of ₹ 1,50,000, under section 271D of the Income Tax Act, 1961 ("*the Act*").

4. Facts in Brief:- For the year under consideration, initially, the assessee has not filed return of income under section 139(1) of the Act, but subsequently filed its return of income under section 148 of the Act declaring total income of ₹ 2,43,940. However, the assessee furnished / uploaded audit report dated 30/09/2019, belatedly which was beyond the prescribed time limit. During 148 proceedings, the assessee filed its reply dated 16/01/2020, confirming that the gross turnover of the assessee is ₹ 3,50,53,213. Since there was delay in filing the audit report, the Assessing Officer initiated penalty proceedings under section 271B of the Act on 14/12/2019 and issued show cause notice from time to time. During the penalty proceedings, the

assessee has explained that his tax auditor has given advice that, neither there was any provision in law to furnish audit report independently that of the return, nor there was any necessity to furnish the audit report, if return was not to be filed due to below taxable limit. Hence on the advice of tax expert, assessee has obtained the audit report before due date and furnished the same along with the return of income in response to notice under section 148 of the Act.

5. The First Appellate Authority has sustained the penalty under section 271B at ₹ 1,50,000, as imposed by Assessing Officer on the ground that, the assessee has not fulfilled the requirement of provisions of law in not furnishing the Audit Report under section 44AB before the specified date. Being aggrieved, the assessee has preferred the appeal before the Tribunal.

6. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. It is not in dispute that the assessee has obtained audit report in time, however, there has been a delay in furnishing the same electronically. However, we find that the audit report dated 30/09/2019, was made available before completion of the assessment and in our view this is a technical violation. There is no loss of revenue to the Department as such. Consequently, imposition of penalty under section 271B of the Act does not arise. Therefore, we quash the penalty order issued by the Assessing Officer under section 271B of the Act which was subsequently confirmed by the learned CIT(A). Thus, all the grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 26/06/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 26/06/2024

Copy of the order forwarded to:

- (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