

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.104/Chny/2024
निर्धारण वर्ष/Assessment Year: 2012-13

Shri Subramanian Rathinakumar, 2/4, Salem Main Road, Nallampalli, Dharumapuri – 636 701.	v.	The Asst. Commissioner – of Income Tax, Circle-1, Hosur.
[PAN: ATJPR 1283 Q]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri I. Dinesh, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	21.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	05.07.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-/NFAC, (hereinafter in short 'the Ld.CIT(A)'), Delhi, dated 14.12.2023 for the Assessment Year (hereinafter in short 'AY') 2012-13 confirming the penalty levied u/s.271B of the Income Tax Act, 1961 (hereinafter in short 'the Act').

2. The brief facts are that the assessee had filed return of income (RoI) on 20.10.2012 admitting income of Rs.2,86,289/-. He is a dealer of Samsung Mobile Phones, Vodafone, SIM Cards, etc., in the name of M/s.N.R.Kuppuswamy Traders. The AO issued notice u/s.148 of the Act



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on 29.03.2019 and finding no response, passed an order on 06.12.2019 u/s.144 of the Act, assessing income at Rs.2,47,54,220/-. Later, on 17.03.2021, the AO reduced re-assessed income u/s.154 of the Act, to Rs.1,10,51,892/-. The AO noted that assessee had turnover of Rs.1,07,14,411/- when he filed RoI on 20.10.2022; and since assessee failed to get his accounts audited u/s.44AB and didn't file Tax Audit Report (TAR) along with return of income, he levied penalty of Rs.1,28,056/- u/s.271B of the Act.

3. Aggrieved, by the levy of penalty u/s.271B of the Act, the assessee preferred an appeal before the Ld.CIT(A), who confirmed the same, which action has been impugned before us.

4. We have heard both the parties and perused the material available on record. We note that assessee had filed return of income for AY 2012-13 on 20.10.2012 declaring total income of Rs.2,86,289/-. Thereafter, assessment order was passed on 06.12.2019 u/s.144 r.w.s.147 of the Act, making some addition which was later reduced by order u/s.154 of the Act on 17.03.2021. Thereafter, the AO initiated penalty proceedings u/s.271B of the Act, since, he noted that in the return filed on 20.10.2022, the assessee had shown his turnover of Rs.1,07,14,411/- and failed to get his accounts audited u/s.44AB of the Act; and consequently, the AO issued notice to the assessee 'as to why' the



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penalty should not be imposed upon him. Then, assessee replied that the assessee's Auditor, Shri C.K.Padmanabhan, CA had expired on 20.07.2014 and before that he always used to comply with the requirement of law and used to file the TAR when ever it was necessary; and to support this fact brought to the notice of the AO that the said Auditor has certified the trading P & L A/c for the year ending 31.03.2012, as well as the capital account of the assessee (refer Page No.24 & 25 of the paper book) and also the statement of income tax which has been certified by the Auditor (refer Page No.26 of PB as well as the copy of ITR filed Page No.1-23 of Paper Book) and also brought to AO's notice that the same Auditor has filed the Audit Report for subsequent AY 2013-14 (refer Page No.28 of Paper Book). And according to the assessee, after the demise of Shri C.K.Padmanabhan on 20.07.2014, a new Auditor was appointed, Shri Chettiyappan Vadivel who filed Audit Report for AY 2014-15. Thus, according to the assessee, he was of the bona fide belief that, earlier Auditor, Shri C.K.Padmanabhan ought to have filed the Audit Report for AY 2012-13 because auditor has himself certified that assessee's turnover was more than Rs.1 Cr [P&L A/c for the year ending 31.03.2012, refer Page No.24 PB]. Further, according to Ld AR, if the AO had taken action at the earliest [for the alleged non-filing of TAR] within a reasonable time and then, the Auditor could have answered the question as to whether assessee's return was filed along with TAR. The delay of



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more than eight years in initiating the ibid penalty, according to assessee has caused the assessee from ascertaining as to whether TAR was filed along with RoI for AY 2012-13. Before the Ld.CIT(A) also, the assessee reiterated the contention that the Auditor, Shri C.K.Padmanabhan would have definitely filed the TAR for AY 2012-13; and filed the proof of filing TAR for AY 2013-14, which fact itself shows that his Auditor would not have failed to file the TAR for AY 2012-13. And the assessee also admitted that he was depending upon the Auditor for filing of return/TAR; and that Auditor's office kept copies of relevant/income tax documents; and due to efflux of time and since the Auditor had passed away, the staff was also not able to provide the copy of the TAR. Therefore, assessee prayed that there is reasonable cause for non levy of penalty as provided in Sec.273B of the Act.

5. Per contra, the Ld.DR does not want us to interfere with the penalty action of the AO/Ld.CIT(A). We find that this is a peculiar case, the assessee had filed his RoI on 20.10.2012 declaring Rs.2,86,289/- and has shown turnover of more than Rs.1 Cr. (P&L Account certified by his Auditor, Shri C.K.Padmanabhan shows the turnover at Rs.1,07,14,411/-) and the AO imposed penalty on 16.03.2022 [after ten years of filing return] blaming assessee for non-filing TAR along with RoI. In this regard, assessee has brought to the notice of authorities below that the Auditor/CA who has audited his books has passed away on 20.07.2014



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Subramanian Rathinakumar

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and before that he has audited his accounts for earlier years including AY 2013-14. And since, assessee has entrusted the auditing/compliance of Income Tax aspects to auditor, he was sure that Shri C.K.Padmanabhan ought to have filed the TAR well within time. But, since the AO initiated penalty after '8' years, assessee was not able to get a copy of TAR from the office of late Shri C.K.Padmanabhan. In the aforesaid peculiar factual circumstances, the benefit of doubt is given to assessee and deem it appropriate not to levy penalty u/s.271B of the Act.

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

Order pronounced on the 05th day of July, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 05th July, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF