

**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.64/Nag./2023**  
(Assessment Year : 2017-18)

Shubhangi Pundlikrao Kohade  
1, Shivaji Nagar, Behind Police Station  
Ner, Ner Parsopant, 445 102  
PAN – CLPPK2578D

..... Appellant

v/s

Income Tax Officer  
Ward-2, Yavatmal

..... Respondent

Assessee by : None  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 15/07/2024

Date of Order – 15/07/2024

**ORDER**

**PER V. DURGA RAO, J.M.**

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

2. The grounds of appeal raised by the assessee are reproduced below:-

*“1. Whether on the facts and circumstances of the case the learned CIT-(A) was justified in affirming the order of Assessing officer levying penalty of Rs. 92,900 u/s 271B of the Income Tax Act, 1961.*

*2. The Appellant craves leave to add or alter any other ground that may be taken at the time of hearing.”*

3. When the case was called for hearing, none appeared on behalf of the assessee. There is no application for adjournment either. Therefore, this Bench was of the view to proceed to dispose off the present appeal on merit qua the assessee appellant on the basis of material available on record and after hearing the learned Departmental Representative.

4. Facts in brief:- For the year under consideration, the assessee did not file her return of income within the due date. The Assessing Officer issued notice under section 142(1) of the Income Tax Act, 1961 ("*the Act*") dated 11/12/2017 to the assessee, asking her to produce her return of income by 10/01/2018. However, the assessee failed to file her return of income within the time stipulated in the aforesaid notice under section 142(1) and also before the end of the assessment year as well. In view of the above, the assessment proceedings under section 144 were initiated during which the assessee filed a computation of total income for the year under consideration showing total income at ₹ 2,53,540, and also filed an alleged document stated to be a copy of the Tax Audit Report in Form 3CB, showing net profit from business @ 1.36% of the total turnover of ₹ 1,85,80,065, however, no return of income was filed by the assessee at all. Subsequently, the assessment was completed vide order under section 144 dated 22/10/2019, assessing the total income at ₹ 42,80,010. Since, the assessee was liable for audit under section 44AB of the Act, however, failed to furnish the Tax Audit Report in the prescribed format within the due date. The Assessing Officer also initiated penalty proceedings under section 271B of the Act and a Notice under section 274 r/w section 271B of the Act dated 22/10/2019, was issued and served

upon the assessee. However, the assessee failed to respond to the aforesaid notice. Thereafter, the assessee was given an opportunity of being heard on 20/01/2020, vide notice under section 271B of the Act dated 10/01/2020, and/or to file her submissions by the aforesaid date. However, once again, no response has been filed by the assessee in respect of the aforesaid notice under section 271B of the Act. In view of the same, the Assessing Officer concluded that it is apparent that the assessee has nothing to say in this matter since it is a proven fact that sometimes non-compliance is better than compliance with a wrong reasoning which may lead to further consequences. Hence, considering the above facts, the Assessing Officer levied penalty of ₹ 92,900, as per the provisions of section 271B of the Act. The Assessing Officer placed reliance on the decision of the Hon'ble Supreme Court in Union of India v/s Dharmendra Textile Processors, [2008] 174 Taxman 571/306 ITR 277 (SC) wherein it has been held that "*mens rea is not an essential element for imposing penalty for breach of civil obligations. Imposition of penalty for non-compliance of statutory provision, is not a criminal liability, but is only a civil liability and therefore, bad motive on the part of the assessee is not essential to be proved*". The Assessing Officer also stated that the assessee has not furnished the Tax Audit Report electronically for the year under consideration, which has been mandated by the Act. However, he has not denied that manual filing was done.

5. The matter was carried in appeal, the learned CIT(A) dismissed the appeal by upholding the order passed by the Assessing Officer. The relevant observations of the learned CIT(A) are reproduced below:—

*"6.1 On perusal of the submissions filed by the appellant on 13-08-2022 and 05-01-2023, it is seen that the appellant has narrated his explanation in respect of the additions made by the AO u/s 69A in respect of cash deposits made by the appellant. The appellant has not mentioned any single reason about the delay in filing the tax audit report as required as per the provision of section 44AB of the income tax act. In fact, the appellant had admitted that it had a turnover of Rs 1,86,80,065/- during the relevant period. Since, the appellant could not come forward with any explanation for non-filing of the audit report, it is concluded that the appellant does not have any valid reason for delay in filing the audit report as required as required as per the provision of section 44AB of the income tax act. In view of the same, there is no reason to interfere with the order of the AO. Accordingly, the ground No. 1 of appeal filed by the appellant is dismissed and order of the AO is upheld."*

6. The learned Departmental Representative relied upon the order passed by the authorities below. There was no representation from the appellant assessee, but we had proceeded to adjudicate since the dispute lies in a narrow compass.

7. We have heard the arguments and perused the material available on record. The short point of adjudication is regarding levy of penalty under section 44AB of the Act for failure to furnish the tax audit report in the prescribed format within the due date. It appears from the penalty order that the assessment proceedings under section 144 of the Act were initiated during which the assessee filed a computation of total income for the year under consideration showing income of ₹ 2,52,540, and also filed an alleged document stated to be copy of Tax Audit Report in Form no.3CB, showing net profit of the business @ 1.36% of the total turnover of ₹ 1,85,80,065. No return of income was filed by the assessee at all. The assessment was completed assessing the total income of ₹ 42,80,010. The penalty of ₹ 92,900, was imposed for the fault committed by the assessee in not filing the Tax Audit Report under section 44AB of the Act within the specified due date.

It is crystal clear from the above facts that the tax audit report was available before the Assessing Officer while computing the assessment. We appreciate, there can be a delay due to some technical glitch or the assessee being a lady was not properly advised to file the return of income along with Tax Audit Report within the due date. However, there is no loss of revenue to the Department. The learned Departmental Representative failed to contradict that the report was filed albeit with delay. However, since the report was submitted only with certain delay and was available before assessment, we are inclined to delete the penalty levied by the Assessing Officer and as confirmed by the learned CIT(A) under section under section 271B of the Act for ₹ 92,900. Thus, the entire penalty of ₹ 92,900, is deleted. Accordingly, all the grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 15/07/2024

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 15/07/2024**

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