आयकरअपीलीयअधिकरण,'डी'न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवंश्री एस.आर. रघुनाथा, लेखा सदस्यके समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 813/CHNY/2024**
निर्धारण वर्ष/Assessment Year:2017-18

Goodwill Team Papers Ltd., 1, Team Garden, Uthappanaikanur, Usilampatti, Madurai – 626 537	Vs.	**The Assistant Commissioner of Income Tax,** Non-Corporate Circle -2, Madurai.
PAN: AABCG 0538R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri J. Saravanan, Advocate
प्रत्यर्थीकीओरसे/Respondent by : Shri G. Suresh, JCIT

सुनवाई की तारीख/Date of Hearing : 11.07.2024
घोषणा की तारीख/Date of Pronouncement : 11.07.2024

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1060617906(1) dated 07.02.2024. The assessment was framed by the Addl./Joint/Deputy/Asst. Commissioner of Income Tax /Income Tax Officer, National Faceless Assessment Centre, Delhi for

the assessment year 2017-18 u/s.147 r.w.s.144B of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 29.03.2022. The impugned penalty u/s.271B of the Act, under dispute was levied by the Assessing Officer, Non-Corporate Circle-2, Madurai vide order dated 09.09.2022.

2. The only issue in the appeal of the assessee is as regards to order of the Ld.CIT(A) confirming penalty levied by the Assessing Officer u/s.271B of the Act for violation of the provisions of section 44AB of the Act for not filing the audit report. For this, the assessee has raised following the grounds:-

> *"For that the order of the Ld. Commissioner of Income-Tax (Appeals), NFAC, Delhi[CIT (A)]under section 271B of the Income-Tax Act, 1961 (Act) is erroneous, bad in law, and was passed ignoring the facts and merits of the case and disregarding the evidences relied on by the appellant.*
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> *2.1 For that the Ld. CIT(A) ought to have seen that the major portion of appellant's time during the previous year relevant to the AY 2017-18 was spent in attending to litigations caused by loan default, running after funds to procure inputs for the company plant without which the company operations would have come to a standstill, which caused the appellant to miss out on filing the audit report u/s 44AB of the Act within the due date for such filing.*
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> *2.2 For that the Ld. CIT(A) failed to note that except the AY 2017-18, in none of the Assessment Years (AYs) between 2014-15 to 2022-23, the appellant missed out to file the audit report in time.*
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> *2.3 For that the Ld. CIT(A) ought to have seen that the Assessing Officer (AO) failed to choose the limb (out of the two limbs found in section 271B),in the Show Cause Notice (SCN) dated 29.03.2022, under which the appellant committed the default for attracting penalty u/s 271B of the Act."*

3. Brief facts are that the assessee has not filed return of income u/s.139(1) of the Act for the relevant assessment year 2017-18. No audit report u/s.44AB of the Act was filed within the due date of filing of return of income u/s.139(1) of the Act. The assessment proceedings were initiated by issuing notice u/s.147 r.w.s 144B of the Act and accordingly, assessment was completed u/s.144B of the Act. The Assessing Officer, during the course of assessment proceedings, noticed that the assessee's turnover is exceeding Rs.10,05,74,574/- and despite having this turnover, the assessee failed to comply with the provisions of section 44AB of the Act. The Assessing Officer recorded this fact in para 4, 5.2 as under:-

> *"4. In response, the assessee submitted the cash book on 24/03/2022 and reiterated his explanation regarding the reason for cash deposits and withdrawals. After verification of cash book and bank statement on test check basis and considering the turnover of Rs. 10,05,74,574/- of the assessee, during the relevant year, the reply is accepted.*
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> *5 (i) ……..*
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> *5.ii) Despite having a turnover of Rs. 10,05,74,574/- the assessee failed to comply to the provisions of section **44AB** of the Act. The assessee submitted that due to litigations and business problems, the Audit Report u/s 44AB could not be submitted in time. This justification of the assessee cannot be accepted. Penalty proceedings u/s 271B are initiated for failure to comply to the provisions of section 44AB of the Act."*

The Assessing Officer initiated penalty proceedings and issued show cause notice dated 29.03.2022 as to why penalty be not

levied u/s.271B of the Act. In reply dated 22.04.2022, the assessee has stated as under:-

> *"it is an infant sick company due to various factors and had incurred huge losses\and result in our failing to meet the obligations to our workers, suppliers etc and major portion of our time was spent in litigations, running after funds to procure inputs for the plant, without which, all our activities would cease, we were unable to concentrate in filing of audit report u/s.44AB of the Act. Hence, requested to drop the penalty proceedings initiated u/s.274 rws 271 B of the* Act."

The Assessing Officer noted that the assessee has not filed audit report u/s.44AB of the Act, though the assessee's total turnover was amounting to Rs.10,05,74,574/- during the financial year 2016-17 relevant to the assessment year 2017-18. As per the provisions of section 44AB of the Act, every person carrying on business shall, if its gross receipts in business exceeds Rs.1 crore in any previous year, is liable to get his accounts audited by an Accountant and should furnish such report in the prescribed form duly signed and verified before due date of filing of return of income. In this case, due date for filing of return of income was 31.10.2017. As no audit report was filed, the Assessing Officer levied penalty of Rs.1.5 lakhs i.e., minimum penalty imposable u/s.271B of the Act. Aggrieved, the assessee preferred an appeal before the CIT(A).

4. The CIT(A) confirmed the action of the Assessing Officer, after considering the submissions of the assessee by observing in para 6.1 & 6.2 as under:-

> *"6.2 Ground no. 2,3,4,5 and 6 of the appeal being interlinked are taken up together. These grounds of appeal related to levying penalty of Rs. 1,50,000/- u/s 271 B of the Act. I have gone the written submission and penalty order carefully. As the fact, the appellant did not file the audit report u/s 44AB of the Act, though the appellant had sale consideration of Rs. 10,05,74,574/- during the A.Y. 2017-18. The appellant submitted that due to continuous losses, frequent disruptions of production and facing other legal matters, it was unable to concentrate in filing of audit report u/s 44AB of the Income Tax Act, 1961. Further, the appellant substantiated the assertion, track record of submission of Tax Audit Report before and after this assessment year. This appeal relates to A.Y. 2017-18 and it doesn't matter with other assessment year. As the appellant company it should be aware with filing audit report in time and it is the responsibility of the appellant company that audit report should be filed in time every year. However, the appellant failed to do so during this A.Y. and in my view the reason of delay in filing given by the appellant is not reasonable cause u/s 273B of the Act. Hence, the penalty of Rs. 1,50,000/- imposed by the AO is confirmed and these grounds of appeal are dismissed."*

Aggrieved, the assessee is further appeal before us.

5. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the learned counsel for the assessee only contended that the assessee is a law abiding citizen and he has filed audit report in all the years i.e, from assessment years 2014-15 to 2022-23, except this assessment year 2017-18. The another argument of the assessee was that it has spent lot of money in attending litigation cases called by long default running

after funds to procure inputs for the company plant without which company operations would have come to standstill and due to these reasons the assessee missed out filing of audit report u/s.44AB within the due date of filing of such return.

6. The learned DR opposed for deletion of penalty, because no reasonable and sufficient cause was adduced by the assessee. He argued that the reason stated goes against the assessee for the reason that the assessee for all the assessment years from 2014-15 to 2022-23, filed audit report in time. But, in this assessment year 2017-18 only, the assessee has not filed the audit report and no plausible reason was adduced.

7. Heard rival contentions and gone through records of this case. First of all, the assessee has not furnished any evidence to show that the assessee was attending to litigations and he was long defaulter running after the funds to procure company inputs. Secondly, the assessee knows the legal provisions for filing of audit report which is evident from the fact that for all the years he has filed audit report from the assessment years from 2014-15 to 2022-23 except AY 2017-18. It means that he did not want to get his audit completed or he knowingly he has not filed audit report for the relevant

assessment year. However, the learned counsel for the assessee relied on co-ordinate decision in the case of Shri Ramunaicker Raja Vs. ACIT in ITA No.603/chny/2022 dated 15.02.2023, wherein the Tribunal following another co-ordinate Bench decision in the case of M/s. Balaji Logistics Vs. ACIT in ITA No.2248/Chny/2019 dated 07.09.2022 deleted the penalty, wherein the Tribunal observed in para 6.1 & 6.2 as under:-

> *"6.1 Similar issue on an identical fact was subject matter in appeal before this Tribunal in the case of Balaji Logistics v. ACIT in I.T.A. No. 2248/Chny/2019 dated 07.09.2022 for the assessment year 2015-16, wherein, the Tribunal has observed as under:*
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> > *"6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is an admitted fact that although the assessee has filed Tax Audit Report in Form 3CB as required u/s.44AB of the Act, beyond due date specified u/s.139(1) of the Act, but such Tax Audit Report was made available to the AO before completion of assessment proceedings u/s.143(3) of the Act, on 22.11.2017. It is evident from the fact that the assessee has obtained Tax Audit Report from an Accountant on 28.03.2016 and furnished before the AO during the course of assessment proceedings. Therefore, we are of the considered view that when the Tax Audit Report was made available to the AO before completion of assessment proceedings, then for venial technical breach without any mala fide intention, penalty cannot be levied u/s.271B of the Act. Further, a similar issue has been considered by the co-ordinate Bench of the Tribunal in the case of M/s. T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), where on identical set of facts, penalty levied u/s.271B of the Act, has been deleted. The relevant findings of the Tribunal are as under:*
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> > > *"…7. We have heard both the parties and perused the materials available on record and gone through the orders of the authorities below. The assessee supposed to have been filed audit report as required u/s.44AB of the Act, on or before 31.10.2015. However, such audit report has been filed on 05.03.2016, which is before the date of*

completion of assessment proceedings u/s.143(3) of the Act. In other words, although the assessee has filed tax audit report beyond the stipulated period, but such tax audit report was made available to the AO before he completes assessment proceedings. The assessee has given reasons for delay in filing tax audit report. As per which, the audit of accounts of society done by the Dept. of Cooperative Audit, could not be completed on or before 31.10.2015 and said delay was not in the hands of the assessee. Therefore, there is a reasonable cause for not filing the tax audit report within prescribed time limit ad thus, penalty cannot be levied. We find merits in the submission of the assessee for the simple reason that non-filing of audit report within the due date is a venial technical breach without any mala fide intention on the part of the assessee. Because, completion of audit of books of accounts of the society is under the control of Dept. of Cooperative Audit and thus, unless the Dept. of Cooperative Audit completes audit, the assessee cannot file return of income along with tax audit report. Therefore, we are of the considered view that reasons given by the assessee for not filing tax audit report prescribed u/s.44AB of the Act, is neither intention nor any mala fide intention, but it is venial technical breach and for this reason, penalty u/s.271B of the Act, cannot be levied. This principle is supported by the decision of the Hon'ble jurisdictional High Court in the case of P.Senthil Kumar v. PCIT reported in 416 ITR 336, where an identical issue had been considered by the Court and held that for venial technical breach without any mala fide intention, penalty cannot be levied. The ITAT Cochin Bench in ITA No.411/Cochin/2018 vide order dated 05.02.2019 had held that once audit report has been made available before the AO, when the assessment proceedings were completed, then, there is no reason for levy of penalty.

8. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that reasons given by the assessee for not filing tax audit report within due date comes under reasonable cause as provided u/s.271B of the Act, and thus, the AO is erred in levying penalty u/s.271B of the Act. Hence, we direct the AO to delete penalty levied u/s.271B of Act."….

7. In this view of the matter and by following the decision of the co-ordinate Bench of the Tribunal in the case of M/s.T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), we direct the AO to delete penalty levied u/s.271B of the Act.

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

6.2 Respectfully following the above decision of the Coordinate Benches of the Tribunal in the case of Balaji Logistics v. ACIT (supra) for the assessment year 2015-16, we are of the considered opinion that it is not a fit case for the levy of penalty under section 271B of the Act and accordingly, the penalty levied stands deleted."

8. In that case, before ITAT., Chennai Benches audit of accounts of assessee society was not done by the Department of Co-operative Audit and hence, the matter was considered as reasonable by the Tribunal. But, in the present case, no such fact is available on record. Since, there is no reasonable or sufficient cause shown by the assessee for not complying with the legal provisions of section 44AB of the Act, we confirm the penalty and dismiss the appeal of the assessee.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 11th July, 2024 at Chennai.

Sd/-	Sd/-
(एस.आर. रघुनाथा)	**(महावीर सिंह)**
(S.R. RAGHUNATHA)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 11th July, 2024

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आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Madurai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF.