

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री एस एस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI S.S. VISWANETHRA RAVI, HON'BLE JUDICIAL MEMBER
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1684/Chny/2024**

निर्धारण वर्ष / Assessment Year: 2017-18

Ramalingam Karthikeya Narayanan, Deputy Commissioner of
2/30, Ponmeni Periyavar Street, v. Income Tax,
Sakthivelammal Nagar, Non-corporate Circle -2,
Arasaradi H.O Madurai South, Madurai.
Madurai – 625 016.

[PAN: ADRPN-5099-C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Ms. A. Nikitha, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Ms. Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 03.09.2024

घोषणा की तारीख/Date of Pronouncement

: 04.09.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2017-18, vide order dated 21.05.2024.

2. The assessee has raised the following grounds of appeal:

1. *The order of CIT(A) is bad in law and liable to be set aside in toto.*

2. *The CIT(A) erred in upholding the penalty levied u/s.271B of the IT Act, 1961 without appreciating the facts and circumstances of the case.*
3. *The CIT(A) having taken note of the fact that the Return of Income along with Audit Report had been filed before completion of assessment, ought to have deleted the penalty in toto.*
4. *The CIT(A) failed to appreciate the fact that there was a reasonable cause in not filing the Audit Report within the due date as contemplated under the provisions of the IT Act, 1961, ought to have deleted the penalty in toto.*
5. *The CIT(A) erred in not appreciating the settled position of law that no penalty u/s.271B can be levied if the Audit report is filed before the completion of assessment and there being a reasonable cause in not filing the Audit Report.*
6. *Any other grounds that may be adduced at the time of hearing.*

3. Brief facts relevant for levy of penalty u/s.271B of the Act, are that the assessee is an individual and had filed her return of income for AY 2017-18 on 09.02.2018, whereas, she had to file the return of income along with Tax Audit Report (hereinafter in short "TAR") on or before 07.11.2017, since the assessee's turnover for the impugned A.Y. was Rs.34,39,57,229/- and was liable to be get her accounts audited by a Chartered Accountant U/s.44AB of the Act. The AO found that the assessee had belatedly filed return of income along with the TAR only on 09.02.2018 for AY 2017-18 and therefore, having violated the provisions of Sec.44AB of the Act, he initiated penalty u/s.271B of the Act for AY 2017-18 on

02.12.2021 and thereafter, not satisfied with the reply of the assessee levied penalty of Rs.1,50,000/- for A.Y. 2017-18 by order dated 31.05.2022.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to confirm the penalty. Aggrieved, the assessee is in appeal before this Tribunal.

5. We have heard both the parties and perused the material available on record. We find that the assessee had belatedly filed the return of income along with TAR for AY 2017-18 on 09.02.2018 and the Assessment Order u/s.143(3) of the Act was passed on 03.12.2019 for AY 2017-18 by accepting the returned income as assessed Income, which means the TAR was filed well before the assessment was framed u/s.143(3) of the Act for AY 2017-18; which means, the TAR was available with the AO before the Assessment Order was framed for AY 2017-18. Thus, we find that the non-filing of the TAR before the due date i.e., 07.11.2017 (AY 2017-18) was a technical breach; and undisputedly, the assessee filed the TAR along with the return of income on 09.02.2018 for AY 2017-18 and that the assessment was framed by the AO only on 03.12.2019 for

AY 2017-18 on which date undisputedly TAR was very much available on the file of the AO. In such a scenario, the explanation of the assessee that the TAR was belatedly filed due to illness of assessee's mother who was suffering from cancer acutely for about 8 months from March 2016 and died on 10/11/2016. Hence, the assessee could not concentrate on the accounts for about one year as the assessee had to attend her mother totally till her demise and thereafter the assessee was also mentally sick due to demise of the mother. Therefore, there was no deliberate omission on the part of the assessee which on the peculiar facts of the case as explained by the assessee is found to be reasonable; and therefore, we are of the considered opinion that this is not a fit case for imposing penalty on the assessee and for such preposition, we rely on the decision of the Hon'ble Madras High Court in the case of P.Senthil Kumar v. CIT reported in (2019) 416 ITR 336 (Mad.)(HC) and also the decision of the Tribunal Cuttak Bench in the case of Sibonarayan Patro & Bros Vs. ITO [1998] 67 ITD 1 (CTK).

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

Order pronounced in the court on 04th September, 2024 at Chennai.

Sd/-

(एस एस विश्वनेत्र रवि)

(S.S. VISWANETHRA RAVI)

न्यायिक सदस्य/**Judicial Member**

Sd/-

(एस. आर. रघुनाथा)

(S. R. RAGHUNATHA)

लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 04th September, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF