

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No. 256/Viz/2024
(निर्धारण वर्ष / Assessment Year:2016-17)

Sree Siva Chaitanya Agro
Industries,
3-81, Toorpu Peta, Polamuru,
Anaparthi Mandal, East Godavari
District, Andhra Pradesh.
PAN: ACSFS5787Q

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

Vs. The Income Tax Officer,
Ward-1,
Kakinada.

(प्रत्यर्थी/ Respondent)

Sri M. Gangaraju Sarma, AR

Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 09/09/2024

: 13/09/2024

O R D E R

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)-NFAC"] in DIN & Order No. ITBA/NFAC/S/250/2024-25/1063938077(1), dated 05/04/2024 arising out of the order passed U/s. 271B of the Income Tax Act, 1961 ["the Act"] for the AY 2016-17.

2. At the outset, it is noticed that there is a delay of 14 days in filing this appeal before the Tribunal. With respect to belated filing of the appeal, the assessee filed petition for condonation of delay along with the affidavit and the relevant paras of the affidavit is extracted herein below for reference:

“.....

.....

Our auditor Sri M. Gangaraju Sarma, Advocate prepared the appeal papers and sent to our firm for want of signatures. We have signed those papers and handed over to their office staff on 30th May, 2024 to file the appeal. On 31st May, 2024 the staff members in our auditor's office left the service by his own reasons. The said appeal papers were not traced where it was kept by the staff member in the auditor's office. Our auditor put every effort to trace those papers but were not found. Again, on 6th June, 2024 our auditor sent another set of appeal papers to our firm and instructed me to hand over the same immediately and personally after got it signed as the time for filing the appeal has been elapsed. Accordingly, our Managing Partner signed on those papers and handed over to the Auditor personally on 9th June, 2024 and requested him to file the appeal.

Hence the assessee submits your honour that the delay in filing the appeal is neither deliberate nor wilful; but due to the misplacement of the papers in the office of our auditor and therefore it was a bonafide mistake.

The said papers were delivered to the office on 15/06/2024 and were received by the scrutiny personnel. The receipt date 15/6/2024 being Saturday, the 16/6/2024 being Sunday and 17/6/2024 being Bakrid, a public holiday, all the three days are continuous holidays the papers got receipt stamp in the office on 18/06/2024 that total delay goes to 14 days.

.....”

3. On perusal of the explanation given by the assessee with respect to filing of the appeal before the Tribunal beyond the prescribed time limit, we find that the assessee was prevented by

a reasonable and sufficient cause to file the appeal within the stipulated time. Therefore, we hereby condone the delay of 14 days in filing the appeal of the assessee before the Tribunal and proceed to adjudicate the appeal on merits.

4. Briefly stated the facts of the case are that the assessee is a partnership firm, e-filed its return of income for the AY 2016-17 on 31/03/2017 by declaring a total income of Rs. NIL. Later on the case was selected for scrutiny under CASS under limited category for the reason "cash deposit for demonetization period". During the course of assessment proceedings, statutory notices were issued to the assessee and accordingly the assessee made submissions before the Ld. AO from time to time. After verification of the information filed by the assessee, the Ld. AO completed the assessment U/s. 143(3) of the Act on 15/12/2018. Further, the Ld. AO also initiated penalty proceedings U/s. 271B of the Act and issued show cause notice U/s. 274 r.w.s 271B of the Act on 27/10/2020 for late filing of the audit report for the AY 2016-17. Further, the Ld. AO also observed that as per the ITR filed by the assessee for the AY 2016-17, the assessee firm has declared its turnover for the AY under consideration at Rs. 2.06 Crs. In view of the above, the Ld. AO also observed that the

assessee was required to get its account audited as per the provisions of section 44AB of the Act and to furnish the report on or before 17/10/2016. However, the assessee failed to submit its audit report before the extended due date as mentioned above and hence the Ld. AO observed that the assessee is liable for penalty U/s. 271B of the Act and issued a show cause notices dated 07/09/2021 and 31/12/2021. In response, the assessee filed its reply dated 23/01/2022. However, the Ld. AO did not consider the submissions of the assessee and levied the penalty of Rs. 1,00,315/- ie., one-half percent of the total sales / turnover / gross receipts of Rs. 2,00,63,000/- as declared in the assessee's return for the AY 2016-17. Thus, the Ld. AO passed the penalty order U/s. 271B of the Act dated 02/02/2022. Aggrieved by the order of the Ld. AO-NaFAC, Delhi, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

5. On appeal, the assessee made various submissions along with the explanation for delay in filing the audit report. However, the Ld. CIT(A)-NFAC did not consider the submissions of the assessee and dismissed the assessee's appeal. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The Ld.CIT(a) erred in sustaining penalty of Rs. 1,00,315/- U/s. 271B of the Act alleged violation of section 44AB of the Act without assigning proper reason and justification.*
2. *The AO as well as the Commissioner of Appeals erred in appreciating that the assessee was prevented by sufficient cause that the assessee could not upload the tax audit report in Income Tax Portal within the specified date due to the misunderstanding between the partners even though the books of account were audited within the stipulated period.*
3. *The Ld. CIT(A) ought to have considered that it is a decided fact that non-filing of Audit Report on or before the due date, is a technical breach and admittedly, when such Tax Audit Report has been filed before the AO in scrutiny proceedings, the question of levying of penalty under section 271B of the Act does not arise.*

The Ld. CIT(A) ignored the fact that though there are so many precedents and settled case laws decided in favour of the appellant, he simply rejected by stating that they were on specific facts on those cases.

4. *That the appellant craves leave to amend or modify the Grounds of appeal or add any new ground(s) as may be relevant and deem fit and be allowed to lead additional evidence in accordance with law, if required before the disposal of appeal.”*

6. At the outset, the Learned Authorized Representative [“Ld. AR”] submitted that the assessee firm filed the Tax Audit Report much prior to passing of the Assessing Order. However, the Ld. AO as well as the Ld. CIT(A) did not consider this fact and levied the penalty for late filing of the Tax Audit Report. The Ld. AR further argued that the assessee started its business first time in the AY 2016-17 therefore the partners of the assessee-firm are not fully aware of the time limit prescribed for submission of the Tax Audit Report under the Income Tax Act, 1961. Therefore,

there was a delay in filing the Audit Report. The Ld. AR also submitted that as mentioned in section 44AB of the Act, the books of accounts were audited by the Accountant but the Tax Audit Report was filed with a delay. Further, the Ld. AR also relied on various decisions of the Tribunal and also the judgment of the Hon'ble Madras High Court in the case of P. Senthil Kumar vs. Pr. CIT [2019] 416 ITR 336 (Mad.) in support of his contention that since the assessee has filed the Tax Audit Report much prior to passing of the Assessment Order, penalty U/s. 271B of the Act cannot be levied. The Ld. AR pleaded to delete the penalty levied U/s. 271B of the Act.

7. On the other hand, the Ld. Departmental Representative ["Ld. DR"] heavily relied on the orders of the Ld. Revenue Authorities and argued in support of their decision. The Ld. DR further submitted that when the Statute is provided for due date for filing certain reports, including Tax Audit Report, the assessee ought to have complied with the provisions and file the Audit Report on or before the due date. Therefore, the Ld. AO has rightly levied the penalty U/s. 271B of the Act since the assessee has not filed the Audit Report as required under section 44AB of

the Act, on or before the due date prescribed. The Ld. DR pleaded to sustain the penalty levied in the case of the assessee.

8. We have heard both the sides and perused the orders of the Ld. Revenue Authorities and also the material available on record. From the record placed before the Bench, it clearly indicates that the assessee has conducted the Tax Audit as required U/s. 44AB of the Act on 25/09/2016 but has filed the Audit Report as prescribed U/s. 44AB before the Ld. AO on 31/03/2017 ie., much before the Ld. AO completed the assessment U/s. 143(3) of the Act, dated 15/12/2018. Therefore, now the issue to be considered is in the light of the delay in filing the Audit Report as required under the Act. It is a well settled principle of law by the Hon'ble Madras High Court in the case of P. Senthil Kumar vs. Pr. CIT [2019] 416 ITR 336 (Mad.) wherein the Hon'ble Madras High Court by considering the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd vs. State of Orissa [1972] 83 ITR 26 (SC) held that *non-filing of Audit Report on or before the due date, is a technical breach and admittedly, when such Tax Audit Report has been filed before the assessment was passed by the Assessing Officer, the question of levy of penalty U/s. 271B of the Act, does not arise.* In the

instant case, there is no dispute that the assessee has filed the Tax Audit Report beyond the due date prescribed under the Act, but such Audit Report was filed much before the date of passing of the Assessment Order by the Ld. AO. Considering all the facts and circumstances of the case and respectfully following the ratio laid down by the Hon'ble Madras High Court in the case of P. Senthil Kumar vs. Pr. CIT (supra), we are of the considered view that the penalty levied U/s. 271B of the Act by the Ld. AO for belated filing of the Tax Audit Report is unsustainable in law. Accordingly, we direct the Ld. AO to delete the addition made U/s. 271B of the Act. It is ordered accordingly.

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

Pronounced in the open Court on 13th September, 2024.

Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER
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Dated :13/09/2024
OKK - SPS

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Sree Siva Chaitanya Agro Industries, C/o. m. Gangaraju Sarma, Advocate, 20243, Srinagar Colony, Near ILTD Flyover, Anaparthi-533342, East Godavari District, Andhra Pradesh – 533342.

2. राजस्व/The Revenue – The Income Tax Officer, Ward-1, 3rd Floor, Deepthi Towers, Main Road, Kakinada, East Godavari, Andhra Pradesh-533001.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam