

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.619/PUN/2024
निर्धारण वर्ष / Assessment Year: 2017-18

Sharadchandra Dattatray Mulik, Dattaashila Agencies, Gargoti Road, At Post Uttur, Tal. Ajra, Kolhapur- 416220. PAN : AGHPM1855G	Vs.	ITO, Kolhapur. Ward-1(3),
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri Sourabh Nayak
Date of hearing : 26.06.2024
Date of pronouncement : 20.09.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 27.12.2023 passed by LD CIT(A)/NFAC for the assessment year 2017-18.

2. The appellant has raised the following grounds of appeal :-

“On the facts and in the circumstances of the case and in law the Learned Assessing Officer erred in levying the penalty u/s 271B a sum of Rs.1,50,000 without appreciating the reasonable circumstances under which appellant was not able to get his account audited, as the appointed CA has discontinued the audit without an intimation and not issued the tax audit report, under such circumstances your appellant prays for deletion of penalty.

Your appellant craves for to add, alter, amend, modify, delete all above or any grounds of appeal before or during the course of hearing in the interest of natural justice.”

3. The facts of the case, in brief, are that the assessee is an individual engaged in the business of dealership of Ultra Tech Cement and also in supply of cement on wholesale & retail basis. As per information available with the Department that the assessee has not filed his return of income for the A.Y.2017-18 and also made cash deposits during the demonetization period i.e. 08-11-2016 to 31-12-2016 into bank accounts, the Assessing Officer issued a notice u/s 142(1) of the IT Act dated 12-03-2018 calling for the assessee to file the return of income for the A.Y.2017-18. In response to the same, the assessee e-filed his return of income along with Tax Audit Report u/s 44AB of the IT Act on 27-06-2019. Since the return of income filed was beyond the time allowed u/s 142(1) therefore, the same was treated as non-est return of income by the Assessing Officer and the assessment was completed u/s 144(1)(b) r.w.s. 142(1) of the IT Act vide order dated 15.10.2019. It is noticed that, in the instant case for the assessment year under consideration, the assessee filed its Audit Report u/s 44AB of the Act on 27-06-2019 i.e. beyond the

due date which was extended by the CBDT u/s 119 of the Act, i.e. 07-11-2017. Hence, penalty proceedings u/s 271B of the Act were initiated for failing to furnish/submit the Audit Report as per provisions of section 44AB of the IT Act on or before the due date as prescribed u/s 139(1) of the IT Act and Show Cause Notice (SCN) u/s 271B dated 15-10-2019 was issued requiring the assessee to submit his objections for proposed levy of penalty u/s 271B of the IT Act on or before 23-10-2019. Since there was no response from the assessee to this notice, the Assessing Officer levied penalty of Rs.1,50,000/- u/s 271B of the IT Act.

4. Being aggrieved with above action of the Assessing Officer, an appeal was preferred before the ld. CIT(A)/NFAC, who vide impugned order dated 27-12-2023 confirmed the penalty u/s 271B of the IT Act as imposed by the Assessing Officer.

5. Being aggrieved with the decision of the ld. CIT(A)/NFAC, the appellant is in appeal before this Tribunal.

6. The ld. AR submitted before us that the assessee was prevented by reasonable and genuine cause for not getting his accounts audited in time. It was submitted by the assessee that the assessee is doing retail trading in cement - Ultra Tech. It is located

at post Uttur, Taluka Ajara District Kolhapur Maharashtra, which is in hilly area and at fag end of Maharashtra State. The assessee is low literate and doing business as self employment with no much facilities and knowledge at his disposal. He has been getting his books of accounts audited regularly since last preceding years. Considering the size of business and the profitability involved, it was not possible for him to appoint an accountant on regular basis. Therefore, he has entrusted the entire work of filing the returns under MVAT Act and Income Tax Act to his Chartered Accountant Shri. RS Patil. Chartered Accountant who deputed a part time accountant to maintain the books on regular basis. Accordingly, the part time accountant was maintaining the books on regular basis. For the year under consideration, all the record such as purchase bills, sale bills, bank statements and statement of Ultratech cement and expense vouchers were provided to him for preparing the books of accounts and deriving Financial Statements- P & L Account and Balance Sheet. His accounting work was carried on by the accountant smoothly. However, one fine morning, he informed that he is unable to complete the accounting work. The assessee persuaded him to continue the job and agreed

for the salary demanded by him. Thus, the assessee was waiting for the completion of accounts. Assessee felt need for the record of FY 2016-17 for settlement of account of Ultratech in connection with the rate differences and incentive. However, the accountant was not responding to his calls and was avoiding to return the record. This matter was brought to the notice of CA Shri. RS Patil, who promised the assessee of taking care of the situation. However, the assessee lost many months in following up this matter. After making several efforts and many visits to the place of accountant, the assessee got the record. At the time of handing over the record, the accountant informed that the books for FY 2016-17 were still under finalisation. This was a shock to the assessee. Thereafter, he approached CA RS Patil and brought to his notice the lapse of the accountant. The assessee held CA RS Patil as responsible for the situation of non-completion of accounts despite of wastage of many months. Amidst this, there was quarrel between assessee and CA RS Patil. Due to the quarrel, CA RS Patil denied to conduct the tax audit and informed that the due date for filing the tax audit report is already over and hence there is no point in conducting the audit. The assessee not being convinced

with the opinion of CA R S Patil, approached another CA from Kolhapur for conducting the Tax Audit. Thereafter, he lost some time in finding new Chartered Accountant for doing the work. Finally he approached CA Manoj Adake through known person and apprised him, the background of delay in conducting tax audit. CA Shri. Manoj Adake accepted the assignment and completed the tax audit report which came to be filed on 27.06.2019. Thus, the delay caused is mainly due to the lapse on the part of part time accountant and also the Chartered Accountant. The assessee was helpless in the above circumstances and therefore he could not get the books of accounts audited and file the audit report within due date. Unfortunately lot of time consumed in the process of search of accountant which resulted in issue of notice from the department. Under the above circumstances, the audit work and return filing got delayed, therefore, the assessee requested before the Bench to delete the penalty imposed u/s 271B of the IT Act.

7. On the other hand, ld. DR relied on the orders passed by the subordinate authorities and requested to confirm the same.

8. We have heard the ld. Counsels from both the sides and perused the material available on record. The issue in the present

appeal relates to the imposition of penalty u/s 271B of the IT Act for failure of the assessee to get accounts audited in respect of the previous year relevant to the assessment year under consideration as required u/s 44AB of the IT Act and furnished to the Assessing Officer before specified due date i.e. due date for filing the return of income. However, admittedly, in the present case, it is the case of the appellant that the tax audit report was filed belatedly along with return of income though the tax audit report was not obtained before the specified date. It is the contention of the assessee that the delay in getting the accounts audited is mainly due to the lapse on the part of the part time accountant and also the chartered accountant. The assessee being low literate & residing in hilly area at the fag end of Maharashtra state & fully dependent on the part time accountant provided by the chartered accountant did not have any option but to search for another accountant & also new chartered accountant. Furthermore the earlier accountant did not return the record timely which also caused the delay in getting the books of account completed & thereafter audited. We find force in the arguments of the assessee that under the above peculiar circumstances the assessee was prevented by reasonable & genuine

cause for not getting the books of accounts completed & audited in time. The submission of the assessee that the accountant who was doing accounting work, income tax return filing work and providing complete details before Chartered Accountant for the purposes of audit, suddenly left the job without prior intimation to the assessee and, therefore, the assessee was under mistaken belief that his books of accounts are being regularly written and all other formalities are getting completed in the time frame as per the Act. But, the fact was that from next financial year the Goods & Services Tax (GST) Act was introduced i.e. from July, 2017 and being a new provision, the accountant was unable to understand the new provisions of the GST, left the job without informing the assessee and also without writing the books of accounts for financial year 2016-17 relevant to the assessment year 2017-18. Due to the unavailability of accountant, the books of accounts could not be completed for a long period as no accountant accepted the pending account work and in search of a new accountant most of the time got wasted but as soon as a new accountant was provided by Chartered Accountant, Shri Manoj Adake, the books of accounts got completed and audit u/s 44AB of the IT Act also

completed. Therefore, considering the totality of the facts we are of the considered opinion that the assessee was prevented by sufficient & reasonable cause for not getting the books of accounts audited in time. In this regard, we rely on the decision passed by a coordinate bench of this Tribunal in the case of APL (INDIA) (P) LTD vs. JCIT, ITA No.4796/MUM/2012 order dated 25/10/2013, wherein, the penalty u/s 271B of the IT Act was deleted in identical situation by observing as under :-

“3. We have heard both parties and their contentions have carefully been considered. According to section 273B, no penalty shall be imposable on the person or the assessee, as the case may be for any failure which interalia include the defaults mentioned in section 271B, if he proves that there was reasonable cause for the said failure. A plain reading of section 273B makes it clear that the same is a procedural law with regard to the question of imposition of penalty under different sections which include section 271B. Section 271B maintains imposition of penalty on the failure but, by reason of rule of evidence provided under section 273B, such imposition of penalty is dependent on the proof that there was no reasonable cause for the failure. Omission of the particular phrase from the substantive law and incorporation thereof in the procedural law bears the legislative intent to make the provision of section 271B coercive instead of penal. The amendment was intended to remove the scope of any confusion with regard to the characteristics and nature of the proceedings under section 271B. The word "may" employed under section 271B though may be interpreted as discretionary yet that discretion is limited within the convenience of section 273B providing the A.Y.08-09 procedure thereof. The word "may" has been used only to accommodate the procedural law enabling the assessee to prove that there was a reasonable cause for the failure. Unless it is proved that there was reasonable cause for the failure there is no escape from the imposition of penalty. Section 271B does not leave any discretion at the hands of the authority except as provided in section 273B. It is only when reasonable cause for the failure is proved, the penalty can

be avoided. Therefore, the liability in the form of penalty can be imposed simply on the default if it is not explained by proving reasonable cause for the default. There can not be any proposition conceived of to the extent that if there was a substantive compliance or if there was no absolute default then penalty can not be imposed. But the statute has used the expression "may" employed in 271B which can not be treated to be mandatory. It has left a discretion that the taxing authority in given facts and circumstances may not impose penalty if they are satisfied that there was sufficient ground for not imposing penalty. But it depends on the facts of each case and having regard to the materials placed before it or where the finding is such that it can conceive of two alternate meaning, then the meaning beneficial to the assessee has to be accepted. Reference in this regard can be made to the decision of the Hon'ble Calcutta High Court in the case of CIT vs. Capital Electronics (261 ITR 4).

3.1 If the facts of the present case are examined in the light of law laid down in the aforementioned decision then even according to facts and circumstances of this case there is material on record according to which it can be said that the Assessee was prevented by sufficient cause for non-compliance with the provisions of section 44AB. The reason given in the present case for non-compliance with the statutory provisions of section 44AB is late completion of statutory audit by the auditors which was completed on 21.04.2009. After completion of the said statutory audit, within a reasonable time i.e. within a period of little more than 2 A.Y.08-09 months, the assessee obtained tax audit report on 25/06/2009 and return was e-filed on 03.09.2009. Without completing statutory audit, the Assessee could not have obtained tax audit report, which constitutes reasonable cause. This plea was raised by the assessee even before the AO and AO has not doubted such contention of the assessee. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Punjab State Leather Development Corporation Ltd. (171 CTR 451) has held that delay in completion of statutory audit was reasonable cause for non-compliance with section 44AB and it was held that the Tribunal was right in cancelling penalty levied under section 271B.

4. In view of our discussion, we are of the opinion that CIT(A) was not right in upholding the levy of penalty under section 271B. Penalty is directed to be deleted.

5. Appeal by the assessee is allowed."

9. Therefore, respectfully following the above decision passed in the case of APL (INDIA) (P) LTD vs. JCIT (supra), we direct

the Assessing Officer to delete the penalty of Rs.1,50,000/- levied u/s 271B of the IT Act. Thus, the ground of appeal filed by the assessee is allowed.

10. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 20th day of September, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th September, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.