

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.344/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2016-2017)

Saroj Kumar Sahoo, Kuakhia, Rasulpur, Jajpur, Odisha	Vs	DCIT, Cuttack
PAN No. :ACTPS 8529 H		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Chitta Ranjan Sahoo, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr.DR
सुनवाई की तारीख / Date of Hearing	:	14/10/2024
घोषणा की तारीख/ Date of Pronouncement	:	14/10/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 15.07.2024, passed in DIN & Order No.ITBA/NFAC/S/250/2024-25/1066716205(1) for the assessment year 2016-2017, on the following grounds of appeal :-

1. *That the learned A.O. should not have imposed penalty of Rs.1,50,000.00 as the Assessee had sufficient cause of non filling and could not upload the return in due time. Ignoring the explanation of the Assessee, the Ld.AO passed the order in a hurried manner which is not justified in the eye of law.*
2. *That the impugned order of penalty U/S.271B OF THE ACT is illegal and not justified under the facts and circumstances of the case and is without the authority of law, as such, the same is liable to be quashed in the interest of justice.*
3. *That the impugned imposition of penalty under section 271B of the Act is not justified and is not sustainable in the eye of law.*
4. *For that, the Assessee craves leave of your Honour to urge other grounds of appeal, if any, at the time of hearing.*

3. The only issue involved in this appeal is in regard to levy of penalty of Rs.1,50,000/- u/s.271B of the Act on account of not getting the accounts audited within the stipulated time period.

4. Brief facts of the case are that the assessee is a dealer in vehicles and is having agency of Hero Moto Corp. The turnover of the assessee in the year was at Rs.13,99,75,418/-, however, since the assessee's turnover is exceed the mandatory limited of audit u/s.44AB of the Act, therefore, he is required to e-file the audit report as prescribed u/s.44AB of the Act within the due date i.e. upto 30.09.2016. Since the assessee has uploaded the audit report in Form 3CB through e-filing portal on 31.03.2018, which is beyond the due date as prescribed u/s.139(1) of the Act, therefore, the AO initiated the penalty proceedings u/s.271B of the Act and levied the penalty of Rs.1,50,000/- for not getting the accounts audited within the due date.

5. Before us, the Id. AR of the assessee submitted that the assessee was suffering from serious illness and was under medical treatment during the period and the business of the assessee was looking after by his employees and, therefore, he could not get his accounts audited within the due date. He further submitted that the assessee was undergone two surgeries one in 2013 and other one in 2018 and due to this prolonged illness, he was not attended the office properly and this is sufficient reason for not getting his accounts audited within the stipulated period. He, therefore, prayed for deleting of the penalty so levied.

6. *Per Contra*, Id. Sr. DR supported the orders of the lower authorities and vehemently argued that assessee was able to achieve the turnover for Rs.13,99,75,418/- despite of serious illness and, therefore, the reason given is not proper and requested for upholding the penalty levied u/s.271B of the Act.

7. We have considered the rival submissions and perused the material available on record. In this case, undisputedly the audit report was filed belatedly i.e not within the stipulated time period as provided under the Act. Except stating that the assessee was seriously ill during the period, the Id. AR has not brought on record the necessary details. Further though the assessee was under the medical treatment, however, he was attaining his day-to-day business, which is evident from the volume of turnover achieved by him of more than Rs.13.99 Crores. Once the assessee is able to attend the job as he is the sole person handling and managing the business affairs, it is his duties to get his accounts audited within the stipulated time period. We find no merit in the argument of the Id. AR that due to the sickness the assessee could not get his accounts audited. Looking to these facts, we are of the view that the assessee has no reasonable explanation for not getting his accounts audited and filed within the stipulated time as provided u/s.139(1) of the Act. Accordingly, the penalty levied by the AO u/s.271B of the Act is hereby upheld.

8. In the result, appeal of the assessee is dismissed.

Order dictated and pronounced in the open court on 14/10/2024.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 14/10/2024

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Saroj Kumar Sahoo,
Kuakhia, Rasulpur,
Jajpur, Odisha
2. प्रत्यर्थी / The Respondent-
DCIT, Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack