

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Inturi Rama Rao, Accountant Member

ITA No. 521/Coch/2023
(Assessment Year: 2017-18)

Meenthackal Abdul Khader Shajahan 8/469, Meenthackal House Kunnatheri Thaikkattukara Choornikkara, Aluva 683106 [PAN: BCZPS0663M]	vs.	Income Tax Officer Aluva
(Appellant)		(Respondent)

Appellant by:	----- None -----
Respondent by:	Smt. Leena Lal, Sr. D.R.

Date of Hearing:	21.10.2024
Date of Pronouncement:	30.10.2024

ORDER

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 28.02.2023 for Assessment Year (AY) 2017-18.

2. At the outset, I find the appeal is time barred by limitation by 74 days before the Tribunal. The assessee filed a petition praying for condonation of delay on the ground that the assessee is a heart patient and has undergone angioplasty in 2006 and again in 2018. The assessee is also suffering from other ailments. A medical certificate dated 28.06.2023 is produced as proof. The assessee prayed to condone the delay of 74 days.

3. Having gone through the averments made in the condonation petition filed by the assessee and in the absence of any contrary material to disbelieve the contention put forth by the assessee, I am of the considered opinion that it is a fit case to condone the delay of 74 days in filing the appeal and proceed for adjudication of the appeal on merits.

4. Brief facts of the case are that the assessee is an individual carrying on business. The return of income for AY 2017-18 was filed on 17.10.2019 declaring total income of R. 1,74,420/-. The assessee submitted the report prescribed u/s. 44B of the Income Tax Act, 1961 (the Act) on 17.10.2019, i.e. beyond the due date prescribed. The AO noticed that the gross receipts of business of the assessee was Rs.3,30,03,087/- which is above one crore, in which case it is mandatory to submit the audit report u/s. 44B of the Act on or before 31.10.2017. Since the assessee filed the prescribed audit report on 17.10.2019, the AO initiated penalty proceedings by issuing show cause notice on 20.10.2019. In response to the show cause notice the assessee filed detailed submission vide letter dated 07.11.2019 which is extracted by the AO vide para 3 of the penalty order. The AO without adverting to the explanation filed by the assessee had proceeded with levy of penalty of Rs. 1,50,000/- u/s. 271B of the Act vide order dated 15.01.2022.

5. Being aggrieved an appeal was filed before the CIT(A) who confirmed the penalty u/s. 271B of the Act by holding that there is no evidence on record to prove that audit was delayed because of the Chartered Accountant.

6. Being aggrieved, the assessee is in appeal before the Tribunal. When the appeal was called on nobody attended, despite due service of notice of hearing. Therefore after hearing the learned Sr. DR I proceeded to dispose off the appeal as under.

7. The solitary issue that arises for my consideration is whether there is reasonable cause for the belated submissions of the prescribed audit report. U/s. 44AB of the Act. In response to the show cause notice issued u/s. 271B of r.w.s. 274 of the Act, the assessee filed detailed explanation regarding the circumstances in which the prescribed audit report u/s. 44AB came to be submitted belatedly, which is extracted by the AO vide para 3 of the penalty order. The AO, without advertent to the explanation offered by the assessee, merely preceded with levy of penalty. Even on appeal before the CIT(A), the CIT(A) confirmed the levy of penalty for want of proof in support of the explanation offered by the assessee. In absence of any material on record doubting the veracity of the explanation of the assessee, it is not open to the statutory authority like AO to impose penalty. From the perusal of the penalty order it would reveal that the AO had not doubted the veracity of the explanation offered by the assessee. The AO had merely stated that the explanation is unacceptable, without giving any reason, whatsoever. The CIT(A) travelling beyond the reasoning of the AO confirmed the penalty. Thus the orders of the lower authorities suffers from vice of arbitrariness. Therefore on the facts of the orders of the lower authorities are restored with a direction the AO to delete the penalty of Rs. 1,50,000/- levied u/s. 271B of the Act.

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

Order pronounced in the open court on 30th October, 2024

Sd/-
(Inturi Rama Rao)
Accountant Member

Cochin, Dated: 30th October, 2024

n.p.