IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : VIRTUAL HEARING

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER

ITA No. 360/Coch/2023
Assessment Year: 2015-16

Jimmy George, Builders Merchant, MC Road, Thellakom P.O, Kottayam. **PAN – AGAPG 4989 L**	Vs.	The Income Tax Officer, Circle & TPS, Kottayam
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Smt. Girly Albert, Sr. DR

Date of hearing	:	10.09.2024
Date of Pronouncement	:	15.10.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 18/03/2023 in DIN No. ITBA/NFAC/S/250/2022-23/1050933909(1) for the assessment year 2015-16.

2. The only issue raised by the assessee is that the ld. CIT(A) erred in confirming the penalty levied by the AO u/s 271B of the Act on account of non-furnishing the tax audit report within the due date.

3. In the present case, the assessee was required to file the Income Tax return along with the audit report u/s 44AB of the Act on or before 30/09/2015 but the same has been filed belatedly dated 29/03/2016. Therefore, the AO was of the view that there is violation of the provisions of sec. 271B of the Act and accordingly, he levied the penalty of Rs.1,50,000/- on the assessee. On appeal, the ld. CIT(A) confirmed the order of the AO.

4. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

5. The ld. AR before us fairly admitted that there was a delay in filing the audit report but the reason for the delay was unavoidable in as much as the assessee was undergoing for Ayurveda treatment. Furthermore, the audit report was furnished much before the completion of the assessment, which was made on 30/06/2017 u/s 143(3) of the Act. As per the ld. AR, there cannot be any penalty u/s 271B of the Act if the audit report is furnished before the completion of the assessment. The ld. AR in support of his contention relied on the order of Cochin Tribunal in the case of Shri T.T Kuruvilla in ITA No. 504/Coch/2018 for the assessment year 2012-13.

6. On the other hand, the ld. DR vehemently supported the orders of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. It is a fact on record that the assessee has furnished the audit report much before the completion of

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the assessment as evident from the order passed u/s 143(3) of the Act. The relevant extract is reproduced as under:

"However, the assessee filed the audit report and return of income for the relevant assessment year 2015-16 on 29.03.2016. The assessment u/s 143(3) was completed on 30.06.2017."

7.1 In similar facts and circumstances, we note that the Tribunal in the case of Shri TT Kuruvilla cited Supra held as under:

"7. We have heard the rival submissions and perused the record. In this case, the assessee was required to get his books of account audited and filed along with the return of income u/s. 44AB with the due date of 30/09/2012 for the assessment year 2012-13. However, the audit report was furnished only on 25/01/2014. The contention of the Ld. AR was that there was a delay in filing the return of income for the earlier assessment years 2010-11 and 2011-12 without which the return for the assessment year 2012-13 could not be filed. Since the assessee had to carry forward the balance from earlier years to the subsequent years, it was not possible to get the books of account audited for the assessment year 2012-13 which is a reasonable cause as prescribed u/s. 273B of the I.T. Act. The Ld. AR relied on the following judgments in support of his contentions:

i) CIT vs. Malayalam Plantations Ltd. (1976) (103 ITR 835) (Ker.)
ii) ACIT vs. Amar Chand Raj Kumar (2004) (89 ITD 96)(ITAT, Chandigarh)
iii) Prem Prakash Senapati vs. ITO (ITA No.459&185/CTK/2017 dated 17/04/2oi8))(ITAT, Cuttack).

7.1 From the material available on record, we are of the view that the assessee got his books of accounts audited on 25/01/2014 which was made available o the Assessing Officer and no prejudice has been caused to the Revenue. Now the short question that arises is whether in this scenario, penalty u/s. 271B of the Act can be levied or not. In our considered opinion, the assessee had only I.T.A. No.542/Coch/2018 committed technical venial breach which created any loss to the exchequer as the audit report was available to the Assessing Officer before the completion of the assessment proceedings. The Madras High Court in the case of CIT vs. A.N. Arunachalam (208 ITR 481) in the context of filing of audit report for claiming deduction u/s. 8oJ of the Act, observed that once audit report has been made available before the Ld. Assessing Officer before the completion of assessment proceedings, the assessee should be granted deduction u/s. 8oJ of the Act. We observe that this judgment was rendered in the context of adjudication of quantum of deduction claimed by , the assessee. Hence, the said analogy can very well be drawn and used in the penalty proceedings;' like that of the assessee. To sum up, we hold that the assessee had committed only technical venial breach for which he cannot be penalized. In view of the above, we are inclined to delete the penalty made by the assessee u/s. 271B of the Act."

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7.2 Respectfully following the same, we set aside the finding of the ld. CIT(A) and direct the AO to delete the penalty-imposed u/s 271B of the Act. Hence, the ground of appeal of the assessee is hereby allowed.

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

Order pronounced in court on 15th day of October, 2024

Sd/-	Sd/-
(SOUNDARARAJAN K)	**(WASEEM AHMED)**
Judicial Member	Accountant Member

Bangalore
Dated, 15th October, 2024

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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