

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : VIRTUAL HEARING**

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

ITA No. 280/Coch/2023
Assessment Years : 2015-16

GC Vidyadevi, Thuruthel Marine Fuels, Kuzhithura P.O, Karunagappaly, Kollam – 690 542. PAN – AMUPV 6583 D	Vs.	The Income Tax Officer, Ward – 5, Alappuzha Range, Alappuzha.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Divya Ravindran, Adv
Revenue by	:	Smt. Girly Albert, Snr. DR

Date of hearing	:	11.09.2024
Date of Pronouncement	:	15.10.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 21/02/2023 in DIN No. ITBA/NFAC/S/250/2022-23/1049961207(1) for the assessment year 2015-16.

2. The only issue raised by the assessee is that the Id. 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 stipulated time.

3. In the present case, the assessee could not file the audit report within the time specified under the Act, therefore, the penalty was levied by the AO u/s 271B of the Act, which subsequently came to be confirmed by the Id. CIT(A).

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

5. The Id. AR before us contended that the audit report was filed by the assessee before the completion of the assessment u/s 143(3) of the Act. Therefore, penalty u/s 271B cannot be imposed.

6. On the other hand, the Id. 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. Admittedly, the audit report should have been furnished by the assessee on or before 30/09/2015, which was filed on 14/03/2016 with the delay. But the undisputed fact is that the assessment was completed u/s 143(3) of the Act vide order dated June 2017. As such, it is important to note that the audit report was furnished by the assessee during the course of assessment proceedings. Therefore, we are of the view that penalty u/s 271B of the Act cannot be imposed in the given facts and circumstances. In holding so, we draw support and guidance from Cochin Tribunal in the case of Shri T.T Kuruvilla in ITA No. 504/Coch/2018 for the assessment year 2012-13, wherein it is 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 17/04/2018)(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 to 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. 80J 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. 80J 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."

7.1 Respectfully following the same, we set aside the finding of the Id. 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/-

(SUNDARARAJAN K)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 15th October, 2024

/ vms /

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