

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1357/Bang/2024
Assessment Year: 2017-18

Shrishaila Mallikarjun Traders IOC Dealer, Navalgund Road Nargund Karnataka 582 207 PAN NO : ACIFS2444J	Vs.	ITO Ward-1 Gadag
APPELLANT		RESPONDENT

Appellant by	:	Sri Anil Kumar H., A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	19.11.2024
Date of Pronouncement	:	29.11.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of Id CIT(A)/NFAC dated 14.6.2024 vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1065669451(1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the AY 2017-18.

2. The assessee has raised the following grounds of appeal.

- 1. The order passed by the ld. CIT(A), is illegal, baseless and opposed to the facts. The assessee has not been properly heard inspite of specific request being made to provide a personal hearing by virtual mode.*
- 2. The ld. CIT(A) erred in confirming the penalty of Rs.1,50,000/- levied u/s 271B of the Income Tax Act, 1961.*
- 3. The CIT(A) failed to appreciate that the appellant had a reasonable cause for the delay in uploading the audit report due to the illness of the partner in charge and the departure of the accountant, which were beyond the control of the appellant.*

4. *The CIT(A) has not considered the fact that the appellant had duly filed the hard copy of the return along with the audited financial statements on 3.10.2018, which should be considered as compliance with the provisions of section 44AB.*
5. *The CIT(A) erred in not considering the judicial pronouncements, including the case of SLV Housing Development Corporation Vs. ACIT where it was held that the levy of penalty u/ 271B is discretionary and not mandatory.*
6. *The CIT(A) failed to consider that the appellant has been regularly complying with the audit requirements in subsequent years and the delay in the assessment year 2017-18 was due to genuine and unavoidable circumstances.*
7. *The CIT(A) has not provided adequate justification and reasoning for uploading the penalty, thus violating the principles of natural justice.*

3. The brief facts of the case are that assessee is a partnership firm carrying on business of Petroleum Products like Petrol, Diesel, Lubricants, Tyres and Tubes. The assessee is also a dealer of Indian Oil Corporation Ltd. As per the information received from the ITO Ward-2(1), Hubballi which pertains to cash deposits during the demonetization period i.e. during FY 2016-17 amounting to Rs.4,31,84,135/- and accordingly the assessment proceedings were reopened u/s 148 of the Act. Thereafter, considering the return of Income filed by the assessee in pursuance to notice u/s 148 of the Act declaring total income of Rs.1,57,170/-, the returned income was accepted by ld. AO considering the facts of the case, nature of business and other available details. Further, the penalty proceedings for non-filing of return of income u/s 271F of the Act and penalty proceedings u/s 271B of the Act for not auditing the books of accounts as per the provisions of section 44AB of the Act is also initiated on or before the completion of the assessment proceedings.

3.1. During the course of the assessment proceedings, the AO from the return of income filed by the assessee in response to notice

u/s 148 of the Act, observed that the assessee has declared gross sales of Rs.7,80,73,989/- and therefore in the opinion of AO having the turnover of Rs.7,80,73,989/- the assessee ought to have got the books of accounts audited and filed the audit report as required u/s 44AB of the Act. During the assessment proceedings, the AO found that the assessee has not got its books of accounts audited and failed to file audit report electronically and therefore, penalty proceedings u/s 274 r.w.s. 271B of the Act was initiated by issuance of notice dated 23.3.2022. During the course of penalty proceedings, the assessee submitted that the firm could not submit the audited financial statement, audit report u/s 44AB of the Act and also the return of income in time because of the fact that main partner who looks after the business got married during the previous year 2016-17 and after the marriage he suffered from infection of unknown origin and was admitted to hospital. Further, the assessee submitted that the accountant also left the job and hence, could not get the accounts audited from the CA and also could not file the return in time. It is submitted that except for AY 2017-18, the firm has been filing the audit report and the return of income in time. Further, the assessee also submitted that they have filed the hard copy of the audit report for AY 2017-18, before the income tax officer during 2018 only and also paid the self-assessment tax during April, 2018 and September, 2018. The return of income and also the audit report in hard copy were filed before the income tax officer ward-1, Gadag well before the department could issue notice u/s 148 of the Act. Therefore, the assessee submitted that this is a case where audit was not done in time due to the genuine & bonafide reasons and there is no loss of revenue for the Government as the due taxes have been paid in April, 2018 only and accordingly prayed to drop the penalty proceedings u/s 271B of the Act. But after examining the above submissions, the AO held that it is a fit case for levy of penalty u/s

271B of the Act and accordingly levied the penalty of Rs.1,50,000/- under the provisions of section 271B of the Act.

3.2 Aggrieved by the order of penalty passed u/s 271B of the Act, by the ITO, Ward-1, Gadag, the assessee preferred an appeal before the ld. CIT(A)/NFAC. The Ld. CIT(A)/NFAC dismissed the appeal of the assessee in the absence of any substantiation or any documentary evidence filed in support of grounds of appeal. Further, the ld. CIT(A) concluded that the assessee has no evidence or explanation to offer in respect of late filing of audit report without any reasonable cause and accordingly hold that AO has rightly levied the penalty u/s 271B of the Act.

3.3. Aggrieved by the order of the ld. CIT(A), the assessee has filed the present appeal before this Tribunal. The assessee has filed paper books in 2 volumes containing 71 pages along with the Memo for furnishing the additional evidences by way of affidavits.

4. Before going into the merits of the case, first we take the additional evidences filed before us. On going through the memo for furnishing additional evidences, we find that one of the reasons adduced by the assessee before the authorities below was that the accountant had left the job in the month of September, 2017, which led to delay in submission of audit report for AY 2017-18. The ld. CIT(A) has dismissed the appeal on the ground that no evidence was furnished in support of the grounds of appeal without specifically calling for any evidence in support of the averments made in the written submission filed on 23.1.2023 before the ld. CIT(A). Therefore, the assessee filed the memo for admission of the additional evidence which were not filed before the authorities below. It was submitted that these additional evidences are neither available at the time of assessment nor at the time of proceedings before first appellate authority. Since the first appellate authority has dismissed the appeal on the ground that no evidence was furnished, therefore, assessee has no remedy but to file these

additional evidences before this Tribunal. Before us, the assessee has filed an affidavit of the partner in charge of the business stating that the accountant Mr. P.K. Gani had suddenly left his employment in September, 2017. The deponent was also sick during this period and was also advised rest which resulted in the inability of the assessee to file audit report within the extended due date i.e. 7th November, 2017 marked as Annexure-1. Further, the assessee has also submitted the second additional evidence in support of the partner's affidavit Mr. P.K. Gani, accountant who has also sworn an affidavit stating that he had left employment in September, 2017 and joined in September, 2018 after a higher remuneration was assured to him, marked as Annexure-2. For ease of reference and convenience the affidavit marked as Annexures 1 & 2 are reproduced herein below:

ANNEXURE - 1

INDIA NON JUDICIAL
Government of Karnataka

Rs. 100

e-Stamp

Certificate No.	: IN-KA07296447182425W
Certificate Issued Date	: 05-Sep-2024 12:34 PM
Account Reference	: NONACC (FI)/ kacrsf108/ NARAGUND/ KA-GD
Unique Doc. Reference	: SUBIN-KAKACRSFL0864484399343167W
Purchased by	: SANGANAGOUDA C PATIL
Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SANGANAGOUDA C PATIL
Second Party	: INCOME TAX DEPARTMENT
Stamp Duty Paid By	: SANGANAGOUDA C PATIL
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

सत्यमेव जयते

NO. OF CORRECTIONS Please write or type below this line

NOTARY.

AFFIDAVIT

I, Mr. Sanganagouda Patil, son of Chandragouda Patil, aged about 37 years, residing at Hubli-sollapur Road, Nargund, Partner of **Shrishaillamallikarjun Traders**, a partnership firm dealing in petroleum products of Indian Oil Corporation situated at Nargund, Karnataka, do hereby solemnly affirm and state as follows:

Statutory Alert:
1. The authenticity of this Stamp certificate should be verified at 'www.stamplitestamp.com' or using e-Stamp Mobile App of Stock Holding
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.
4. In case of any discrepancy, please inform the Competent Authority.

1. **That** Shrishailmallikarjun Traders is a partnership firm engaged in the business of petroleum products, primarily dealing with the Indian Oil Corporation, and is situated at Nargund, Karnataka.
2. **That** for the Assessment Year 2017-18, the firm was required to get its accounts audited under Section 44AB of the Income Tax Act, 1961, and to file the audit report within the due date as prescribed by the law i.e., 31/10/2017, (which was extended to November 7th, 2017.)
3. **That** during September 2017, the accountant, Mr. Prabhu Kadappa Gani, who was responsible for maintaining the accounts of the firm, abruptly left his employment without finalizing the accounts. This unexpected departure left the firm without a qualified person to manage the accounts, and I, being unfamiliar with the accounting software and procedures, faced significant difficulties in finding a replacement promptly.
4. **That** during the relevant period of September 2017, I, Mr. Sanganagouda Patil, also being the partner responsible for overseeing Accounts and Finance, was also not in good health and was advised rest by my physician. As a result, I was unable to attend to the firm's accounting and financial matters.
5. **That** despite earnest efforts to appoint a new accountant, I was unable to do so within the required timeframe. Accordingly, it was not possible to complete the accounts of the firm, submit the same to audit and obtain the audit report before the due date viz. November 7th, 2017.
6. **That** the delay in getting the accounts audited and filing the same was purely due to the unforeseen circumstances mentioned above, and there was no intention of non-compliance on the part of the firm. The Firm has filed the audit report and also the return of income within due dates earlier to AY 2017-18 and also from 2018-19 onwards Never there has been any delay in the same.
7. **That** I make this affidavit in good faith, with the belief that the facts stated above are true and correct to the best of my knowledge and belief.


DEPONENT

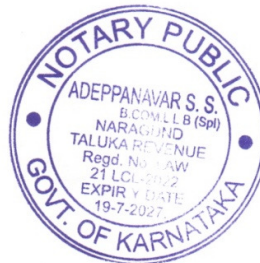
VERIFICATION

I, **Mr. Sanganagouda Patil**, the above-named deponent, do hereby verify that the contents of this affidavit are true and correct to the best of my knowledge and belief, and nothing material has been concealed or misstated therein.

Verified at Nargund, on this 5th day of September, 2024.


DEPONENT

NO. OF CORRECTIONS
Nil B
NOTARY.



SWORN BEFORE ME

NOTARY

ANNEXURE-2



सत्यमेव जयते

INDIA NON JUDICIAL

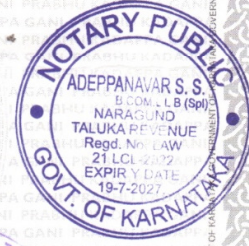
Government of Karnataka

Rs. 100

e-Stamp

Certificate No. : IN-KA07298725357380W
Certificate Issued Date : 05-Sep-2024 12:34 PM
Account Reference : NONACC (FI)/ kacrsf108/ NARAGUND/ KA-GD
Unique Doc. Reference : SUBIN-KAKACRSFL0864488595531879W
Purchased by : PRABHU KADAPPA GANI
Description of Document : Article 4 Affidavit
Property Description : AFFIDAVIT
Consideration Price (Rs.) : 0
(Zero)
First Party : PRABHU KADAPPA GANI
Second Party : INCOME TAX DEPARTMENT
Stamp Duty Paid By : PRABHU KADAPPA GANI
Stamp Duty Amount (Rs.) : 100
(One Hundred only)

सत्यमेव जयते



NO. OF CORRECTIONS

Please write or type below this line

Nil
NOTARY.

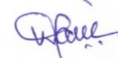
AFFIDAVIT

I, Mr. Prabhu Kadappa Gani, son of Kadappa Gani, aged about 72 years, residing at Nargund ,
do hereby solemnly affirm and state as follows:

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shclestamp.com' or using e-Stamp Mobile App of Stock Holding.
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

1. That I was employed as an accountant at **Shrishailmallikarjun Traders**, a partnership firm dealing in petroleum products of Indian Oil Corporation situated at Nargund, Karnataka.
2. That during my employment at **Shrishailmallikarjun Traders**, I was responsible for maintaining and finalizing the accounts of the firm.
3. That during September 2017, I decided to leave my job at **Shrishailmallikarjun Traders** due to dissatisfaction with the salary being offered, which I considered meager and insufficient to meet my financial needs. Despite discussions and negotiations with the partner, **Mr. Sanganaagouda Patil**, for an increase in salary, I was not satisfied with the terms proposed, and consequently, I chose to resign from my position.
4. That at the time of my resignation in September 2017, the accounts of the firm had not been finalized for the year ending 31-03-2017, and on my departure, to the best of my knowledge, the firm was without an employee capable of completing the necessary financial records and audit preparations.
5. That **Mr. Sanganaagouda Patil** contacted me again in September 2018, and requested that I rejoin the firm, offering a revised and reasonable salary. Taking into consideration the revised offer and the request from **Mr. Sanganaagouda Patil**, I agreed to rejoin **Shrishailmallikarjun Traders**.
6. That upon rejoining the firm, I promptly completed the finalization of the accounts for the year ended 31-3-2017, and these accounts were subsequently audited by the appointed Chartered Accountants in compliance with the relevant statutory requirements.
7. That I make this affidavit in good faith, with the belief that the facts stated above are true and correct to the best of my knowledge and belief.


DEPONENT

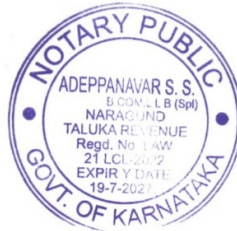
VERIFICATION

I, **Mr. Prabhu Kadappa Gani**, the above-named deponent, do hereby verify that the contents of this affidavit are true and correct to the best of my knowledge and belief, and nothing material has been concealed or misstated therein.

Verified at Nargund, on this 5th day of September, 2024.


DEPONENT

NO. OF CORRECTIONS
Nil
NOTARY.



SWORN BEFORE ME

NOTARY

4.1 On going through the above, we are of considered opinion that the action of the assessee is bonafide as the assessee could not produce these evidences by way of an affidavit before the authorities below and the Id. CIT(A) has dismissed the appeal on the sole ground of non-submission of any evidence in support of the

grounds of appeal. We find that these are not the new facts submitted by the assessee by way of an affidavit in the guise of additional evidences. What is narrated in the affidavits are the submissions already made before the lower authorities with regard to the reasonable cause for failure in submitting the audit report on or before the extended due date. Being so, in our considered view in the given facts and circumstances of the case, it is appropriate to admit these additional evidences for adjudication in the interest of justice. Accordingly, these additional evidences are admitted for the purpose of adjudication.

4.2 Before us, ld. A.R. of the assessee vehemently submitted that there is a reasonable cause in not filing the audit report for AY 2017-18 as the accountant had left the job in September, 2017 and the Managing partner was also sick after his marriage. The accountant rejoined in September, 2018 only after a higher remuneration was assured to him. Therefore, as per provisions contained in section 273B of the Act, the penalty may not be levied as there exist a reasonable cause for failure.

4.3 The ld. D.R. on the other hand supported the orders of the authorities below and submitted that as there is a clear violation of section 271B of the Act to furnish the audit report as required u/s 44AB of the Act, the penalty levied may be sustained.

5. We have heard the rival submissions and perused the materials available on record. Before proceeding further, it is appropriate to take note of section 44AB, 271B and 273B of the Act for the purpose of this case, which reads as follows:

44AB. Audit of accounts of certain persons carrying on business or profession.

Every person,—

*(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year [***];*

[Provided that in the case of a person whose—

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment, this clause shall have effect as if for the words "one crore rupees", the words "[ten] crore rupees" had been substituted:]

[Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash; or]

(b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,]

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:

Provided [further] that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later:

Provided [also] that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

Explanation.—For the purposes of this section,—

(i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;

(ii)"specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means [date one month prior to] the due date for furnishing the return of income under sub-section (1) of section 139.

271B. [Failure to get accounts audited. [Inserted by Act 21 of 1984, Section 30 (w.e.f. 1.4.1985).]

- If any person fails [* *][Omitted by Act 46 of 1986, Section 21 (w.e.f. 10.9.1986).] to get his accounts audited in respect of any previous year or years relevant to an assessment year or [furnish a report of such audit as required under section 44-AB] [Substituted by Act 22 of 1995, Section 48, for certain words (w.e.f. 1.7.1995).], the [Assessing Officer] [Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).] may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent. of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred thousand rupees, whichever is less.*

273B. [Penalty not to be imposed in certain cases.

- Notwithstanding anything contained in the provisions of [clause (b) of sub-section (1) of] [section 271, section 271-A] [Substituted by Act 4 of 1988, Section 114, for " section 270, clause (a) or Clause (b) of sub-Section (1) of section 271, section 271-A, section 271-B, sub-Section (2) of section 272-A, sub-Section (1) of section 272-AA, sub-Section (1) of section 272-B" (w.e.f. 1.4.1989).], section 271-AA] [Inserted by Act 14 of 2001, Section 94 (w.e.f. 1.4.2002).], section 271 B,] [Inserted by Act 46 of 1986, Section 26 (w.e.f. 10.9.1986).][section 271-BA] [Inserted by Act 14 of 2001, Section 94 (w.e.f. 1.4.2002).], section 271-BB,] [Inserted by Act 12 of 1990, Section 50 (w.r.e.f. 1.4.1990).] [section 271-C, section 271-CA] [Substituted by Act 21 of 2006, Section 55, for " section 271-C" (w.e.f. 1.4.2007).], section 271-D, section 271-E,] [Inserted by Act 46 of 1986, Section 26 (w.e.f. 10.9.1986).][section 271-F,] [Substituted by Act 26 of 1997, Section 55, for " section 271-F" (w.r.e.f. 1.4.1997).][section 271-FA,] [Substituted by Act 18 of 2005, Section 61, for " Section 271-FA" (w.e.f. 1.4.2006).] [section 271FAB, section 271FB, section 271G, section 271GA] [Substituted 'section 271-FB, section 271-G' by Finance Act, 2015 (No. 20 of 2015), dated 14.5.2015.], clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272-A, sub-section (1) of section 272-AA or] [Inserted by Act 46 of 1986, Section 26 (w.e.f. 10.9.1986).][section 272-B or] [Inserted by Act 20 of 2002, Section 106 (w.e.f. 1.6.2002).] [sub-section (1) or sub-section (1-A) of] [Substituted by Act 21 of 2006, Section 55, for " sub-section (1) of section 272-BB" (w.e.f. 1.6.2006).][section 272-BB] [Substituted by Act 20 of 2002, Section 106, for " section 272-BB or" (w.e.f. 1.6.2002).][or sub-section (1) of section 272-BBB or] [Substituted by Act 21 of 2006, Section 55, for " sub-section (1) of section 272-BB" (w.e.f. 1.6.2006).] [clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.]”.

6. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances.

7. Section 273B starts with the non obstante clause and provides that notwithstanding anything contained in several provisions enumerated therein including section 271B, no penalty shall be imposable on the person or the assessee, as the case may be, for failure referred to in the said provisions, if he proves that there was reasonable cause for the said failure. A clause beginning with 'notwithstanding anything' is sometimes appended to a section in the beginning with a view to give the enacting part of the section in case of conflict, an overriding effect over the provision or Act mentioned in the non obstante clause. A non obstante clause may be used as a legislative device to modify the ambit of the provision or law mentioned in the non obstante clause, or to override it in specified circumstances. The true effect of the non obstante clause is that in spite of the provision or the Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment. Therefore, in order to bring in application of section 271B in the backdrop of section 273B, absence of reasonable cause, existence of which has to be established by the assessee, is the sine qua non.

8. Levy of penalty under section 271B is not automatic. Before levying penalty, the concerned officer is required to find out that even if there was any failure referred to in the concerned provision, the same was without a reasonable cause. The initial burden is on the assessee to show that there existed reasonable cause which was the reason for the failure referred to in the concerned provision. Thereafter the officer dealing with the matter has to consider whether the explanation offered by the assessee or the person, as the case may be, as regards the reason for failure, was on account of reasonable cause. 'Reasonable cause' as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. It can be described as a probable cause. The cause shown has to be considered and only if it is found to be frivolous, without substance or foundation, the prescribed consequences will follow.

9. Taking into cumulative effect of the explanations offered by the assessee and from a reading of the relevant provisions of Section 271B read with Section 44AB of the Act, we are of the considered opinion that assessee demonstrated that there was a reasonable cause for the said failure as per the provisions contained in section 273B of the Act. From the conduct, behavior and attitude of the assessee, it is clear that as soon as the accountant joined in September, 2018, after a higher remuneration was offered to him, the audit report and the return of income were immediately filed manually. Further, before us, the accountant Mr. Prabhu Kaddappa Gani submitted an affidavit by way of additional evidence stating that he was responsible for maintaining and finalizing accounts of the firm and during September, 2017, he decided to leave his job due to the dis-satisfaction with the salary being offered and consequently he chooses to resign from his position. Further he

stated that at the time of resignation, the accounts of the firm had not been finalized during the year ending 31.3.2017. Further, he confirmed to have rejoined again in September, 2018 after the request of the Managing Partner offering a revised and reasonable salary. Upon rejoining the firm, he completed the finalization of accounts and these accounts were subsequently audited by the CA in compliance with the relevant statutory requirement. Further, the Managing Partner Mr. Sangana Gouda Patil has also filed an affidavit stating that firm was required to get its accounts audited u/s 44AB of the Act and to file the audit report within the extended due date as on 7th November, 2017. The accountant who was responsible for maintaining accounts of the firm abruptly left his employment without finalizing the accounts. This unexpected departure left the firm without a qualified person to manage the accounts and he being unfamiliar with the accounting software and procedure, faced significant difficulties in finding a replacement promptly. There is nothing contrary that has been brought on record by the Ld. DR at the time of the hearing. Further, the assessee has only committed a technical breach without any loss to the exchequer of the Government as there was no addition made by the Ld.AO during the assessment proceeding.

10. Above being the position, the ld. CIT(A)/NFAC's non-consideration of the plea raised by the assessee about the existence of reasonable cause vitiates the order. On that score, we find the order passed by the ld. CIT(A)/NFAC to be non-maintainable and accordingly we annul the order of the authority below and cancel the penalty levied u/s 271B of the Act.

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

Order pronounced in the open court on 29th Nov, 2024

**Sd/-
(Waseem Ahmed)
Accountant Member**

**Sd/-
(Keshav Dubey)
Judicial Member**

Bangalore,
Dated 29th Nov, 2024.
VG/SPS

Copy to:

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

By order

**Asst. Registrar,
ITAT, Bangalore.**