

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

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

ITA No.2012/Bang/2024
Assessment Year: 2017-18

Sri Chinnayellappa Chandrashekar No.90/10, Gangamma Temple Road W Extension, Hoskote Bangalore 562 114 Karnataka PAN NO : ACOPC7205K	Vs.	ITO Ward-4(2)(4) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Ms. Sunaina Bhatia, A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	27.11.2024
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 14.8.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1067652358(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 following grounds of appeal.

- 1. The orders of the authorities below in so far as levying penalty U/s 271B of the act against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The order imposing penalty u/s.271B of the Income-tax Act, 1961 is bad in law in as much as, the appellant has not committed any default of the nature referred to in Section 271B to warrant the levy of penalty and therefore, the penalty levied requires to be cancelled.*

3. *Without prejudice to the above, the learned A.O. is not justified in imposing penalty u/s.271B of the Act, under the facts and in the circumstances of the appellant's case. He failed to appreciate that the appellant was prevented by reasonable cause from obtaining and furnishing the Audit Report u/s.44AB within time and the delay in obtaining and furnishing the Audit Report was not out of willful default or neglect on the part of the appellant and consequently, the penalty levied deserves to be cancelled.*
4. *Without prejudice to the above, the penalty levied is excessive and liable to be reduced substantially.*
5. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”*

2. At the outset, the ld. AR of the assessee submitted that there is a short delay of 8 days in filing the appeal before this Tribunal. On perusal of the record, we find that the assessee has filed an affidavit dated 14/11/2024 sworn before the Notary Public stating the reason for delay in filing the appeal, which is reproduced below:

INDIA NON JUDICIAL	
Government of Karnataka	
e-Stamp	
Rs. 100	
Certificate No.	: IN-KA49574014405035W
Certificate Issued Date	: 18-Oct-2024 12:24 PM
Account Reference	: NONACC (FI)/ kaocr#108/ MALLESHWARAM/ KA-GN
Unique Doc. Reference	: SUBIN-KAKAQRSFL0832307942257173W
Purchased by	: CHINNAYELLAPPA CHANDRASHEKAR
Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: CHINNAYELLAPPA CHANDRASHEKAR
Second Party	: CHINNAYELLAPPA CHANDRASHEKAR
Stamp Duty Paid By	: CHINNAYELLAPPA CHANDRASHEKAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE "C" BENCH, BANGALORE

SRI CHINNAYELLAPPA CHANDRASHEKAR, No. 90/10, GANGAMMA TEMPLE ROAD, W EXTENSION, HOSKOTE, BANGALORE - 562 114.	... APPELLANT
ASSESSMENT YEAR	... 2017 - 18
APPEAL AGAINST THE ORDER U/s	... 271B of the Act
IN THE MATTER OF ITA NO.	... 2012/Bang/2024

Statutory Alert:
The authenticity of this Stamp certificate should be verified at www.chicestamp.gov or using CHICESTAMP MOBILE App of Stock Holding Corporation of India.
The discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.

AFFIDAVIT FOR CONDONATION OF DELAY IN FILING THE APPEAL

I, CHINNAYELLAPPA CHANDRASHEKAR, son of Sri Chinnayellappa, aged about 52 years, residing at HOSKOTE, being conversant with the facts of the case do hereby solemnly affirm and say on oath as under:-

1. That, being aggrieved by the impugned order passed by the learned Commissioner of Income-tax[Appeals], National Faceless Appeal Centre, Delhi, dated 14/08/2024, I ought to have filed the second appeal before the Hon'ble Tribunal on or before 13/10/2024.
2. That, the appeal against the said appellate order passed by the learned Commissioner of Income-tax[Appeals] came to be instituted before the Hon'ble Income-tax Appellate Tribunal, Bangalore Bench, Bangalore on 21/10/2024 and thus, there is a delay of 8 days in filing the appeal. The reasons for the delay in filing the appeal are explained hereinafter.
3. That, my appeal came to be disposed of by the learned Commissioner of Income-tax[Appeals], National Faceless Appeal Centre, Delhi after 22/07/2024 being the cut-off date for availing the benefits under the VSV Act, 2024 and since the appeal was pending on the cut-off date, I wished to avail the benefit of the scheme considering that the penalty imposed was only a sum of Rs. 1,32,456/- and only 25% of the said penalty was payable under the Scheme.
4. That, I was awaiting the notification of the VSV Scheme, 2024 by the Central Government, which came to be notified on 01/10/2024 and thereafter, the CBDT has also issued a Circular No. 12 of 2024 dated 15/10/2024 containing certain FAQ's for guidance of the assessees.
5. That, vide answer to Question No. 8 of the FAQ's, the CBDT has opined that the benefits of the VSV Scheme cannot be availed in cases where the appeal was pending as on 22/07/2024 but disposed off thereafter, before making the declaration under the scheme.
6. That, under the said circumstances, I approached my authorized representative Mr. V. Srinivasan, Advocate seeking his advice on the further course of action to be taken and I was advised to file an appeal against the order of the CIT [A] in Appeal No. NFAC/2016-17/10308945 dated 14/08/2024 immediately by seeking condonation of delay in filing the appeal.
7. That, accordingly the appeal papers were prepared and the appeal before the Hon'ble Income-tax Appellate Tribunal, Bangalore Bench, Bangalore was filed without any further delay.



A handwritten signature in black ink, appearing to be 'Sri Chinnayellappa Chandrashekar', written over a horizontal line.

8. That, the delay of 8 days in filing the appeal before the Hon'ble Tribunal is due to reasonable cause and on account of the fact that I was pursuing a bonafide alternate remedy and hence, the delay was due to reasons beyond my control and neither intentional, willful nor deliberate and was occasioned for the reasons stated above.

9. That, it is, therefore, prayed that the delay of 8 days in filing the appeal may kindly be condoned and the appeal may kindly be admitted and disposed off on merits for the advancement of substantial cause of Justice.

WHATEVER STATED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED THIS THE 14th DAY OF NOVEMBER, 2024; AT BANGALORE.



DEPONENT

SWORN TO BEFORE ME



SWORN TO BEFORE ME
Chitra
B. CHITRA, B.A.L., LL.B.
ADVOCATE & NOTARY PUBLIC
GOVT. OF INDIA
5/1, 1st Floor, 3rd Cross
Cherappa Reddy Layout, Banaswadi
BANGALORE - 560 038

Govt. of Karnataka
has discontinued the
use of notarial stamps w.e.f. 1-4-2008

2.1 Accordingly, the ld. A.R. for the assessee prayed that delay was due to reasons beyond the control of the assessee and neither intentional, willful nor deliberate on the part of assessee and prayed to condone the delay and admit the appeal for adjudication.

3. The ld. DR on the one hand though opposed for the condonation of delay but could not controvert the submissions made therein.

4. We have heard the rival submissions and perused the materials available on record. In our opinion, it cannot be said that assessee is very callous in its approach in filing the appeal before us.

4.1 At this juncture, it is appropriate to mention the judgment of the Apex Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late

(2) Refusing to condone delay can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

(6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

4.2 Being so, when substantial justice and technical consideration are pitted against each other, the cause of substantial

justice deserve to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay. Moreover, no counter-affidavit was filed by the Revenue denying the allegation made by the assessee. It is not the case of the Revenue that the belated appeal was filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. Therefore, in our opinion, this is a fit case to condone the short delay of 8 days in filing the appeal before this Tribunal. Accordingly, the delay is condoned and the appeal is admitted for adjudication.

5. Now coming to the brief facts of the case are that the assessee is an individual who derives Income from Business and other Sources. For the year under appeal, the assessee had filed his return of income on 30/03/2019 reporting a taxable income of Rs.13,56,930/-. Thereafter, the assessee's case was selected for scrutiny through CASS and in course of the assessment proceedings, the assessee furnished all the details and particulars as called for by the AO. After verification of the details submitted by the assessee, the assessment proceedings were concluded by passing the order u/s. 143[3] of the Act, dated 09/12/2019, **accepting the returned income** amounting to Rs.13,56,930/-. Further during the course of the assessment proceedings it was observed by the AO that during the F.Y. 2016-17 relevant to Assessment year 2017-18 the assessee has a turnover of Rs. 2,64,91,145/- from its business, as such he has to get his accounts audited as per provisions contained in section 44AB of the Act on or before 30.09.2017 (Extended upto 31.10.2017) and upload the tax audit report on e-filing portal on or before that date. However, the assessee got his accounts audited only on 30.03.2019 & hence the AO initiated the penalty proceedings on

or before completion of the Assessment proceedings U/s 271B for not filing the audit report within the due date.

5.1 Thereafter, the ITO, Ward-4(2)(4), Bangalore issued a show cause notice u/s. 271B of the Act, dated 13/12/2019 calling upon the assessee to show cause as to why penalty u/s.271B of the Act should not be levied in as much as the assessee had not obtained and furnished the Audit Report from the Accountant within the due date. In response to the aforesaid show cause notice, the assessee by his letter dated 23/01/2021 addressed to the AO, submitted as under:-

"I am in receipt of the aforesaid notice received only on 23/01/2021 calling upon me to show cause as to why penalty should not be levied u/s.271B of the Act and to appear before your Honour on 20/01/2021, and in this connection, I beg to submit the following for your Honour's kind consideration and gracious favourable orders of dropping the penalty proceedings initiated to levy penalty u/s.271B of the Act as under:-

1.For the above assessment year 2017 - 18, I had filed.my return of income on 30/03/2019 declaring an income of Rs. 13,56, 930/-. Along with the said return, I had also filed a Tax Audit Report dated 30/03/2019. Thus, there was a delay in furnishing the report of an Accountant u/s.44AB of the Act.

2. It is submitted that I did not have any taxable income for several assessment years and hence I had not filed any returns of income for the earlier years. For the first time my income exceeded the maximum amount of chargeable to tax and the return was required to be filed. Therefore, there was a delay in identifying a Chartered Accountant for carrying out the Audit and ultimately I had obtained the Audit Report dated 30/03/2019. Unfortunately I was not aware that the Audit report was required to be filed 30/09/2017 [extended date 31/10/2017] and hence there was a delay in filing the same. Considering that this year is the first year of Audit UIs 44AB of the Act and considering my ignorance of the statutory provisions, I request your Honour to take a lenient view in the matter and drop the proceedings initiated u/s 271B of the Act for the advancement of substantial cause of Justice".

5.2 After the aforesaid reply was filed by the assessee before the jurisdictional A.O., as contended the assessee did not receive any other notice by email. Instead, the assessee received the impugned order from the NFAC after consideration of the above submissions made by him. In the impugned order, the NFAC has imposed penalty of **Rs.1,32,456/-** holding that the ignorance of the law can never be an excuse to avoid legal penal action. The court presumes that every person is aware of the law and hence cannot claim ignorance. It has been held that the assessee is not permitted to plead ignorance as a defense to escape the rigors of the law, if it so, it is very easy for any person to put forward ignorance as a defense.

6. Aggrieved by the order of penalty dated 24/08/2021 passed u/s 271B of the Act, by the AO/NFAC, Delhi, the assessee preferred an appeal before the ld. CIT(A)/NFAC. The Ld. CIT(A)/NFAC dismissed the appeal of the assessee holding that the assessee has made same submission and the reply submitted cannot be considered logical for the purpose of 'reasonable cause'. It is clear that there is no technicality involved in the reason stated by the assessee. Further, the ld. CIT(A) concluded that a person who is unaware of the law may not escape liability for violating that law merely by being unaware of its content and also hold that the case of the assessee does not come under the purview of the reasonable cause as provided in section 273B of the Act.

6.1 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 containing 38 pages consisting of the documents/records filed/available before the lower Authorities.

7. Before us, ld. A.R. of the assessee vehemently submitted that as this is the first year of the audit, the assessee was under the honest and bonafide belief that there is no due date for filing the

audit report separately and the same can be filed along with the return of Income. The assessee had also not filed any returns of income for the earlier years as the income was way below the maximum amount not chargeable to tax. Further there was a delay in identifying a Chartered Accountant for carrying out the Audit & finally obtained the audit report on 30/03/2019. He submitted that the delay was due to reasonable cause as this year is the first year of Audit U/s 44AB of the Act and the delay in filing the audit report was not intentional, willful or deliberate and was occasioned due to circumstances beyond the control of the assessee. Further AR of the assessee submitted that the NFAC ought to have refrained from imposing the penalty as there is no canon that ignorance of law cannot be a valid excuse for complying with the statutory provisions and requested to allow this appeal filed before us for the advancement of substantial cause of Justice.

7. The Id. 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.

8. We have heard the rival submissions and perused the materials available on record. Before proceeding further, we may take note of the provisions 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.]”.

9. 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.

10. 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.

11. 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. It means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do. 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.

12. 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 this was the first year of the audit and the assessee had also not filed any returns of income for the earlier years as the income was way below the maximum amount not chargeable to tax, the assessee was not aware that the audit report was required to be filed on or before due dates. Further there was a delay in identifying a Chartered Accountant for carrying out the Audit & finally obtained the audit report on 30/03/2019. The main crux for the delay was that the assessee was on an honest & bonafide belief that there is no due date for filing the audit report

separately and the same can be filed along with the return of Income within the time prescribed u/s 139(4) of the Act.

12.1 We have also perused the Assessment record and found that 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. The AO has also observed that the case is audited u/s 44AB of the Act. The AO after considering the audit report, bank statements, cash books submitted by the assessee in support of his business had concluded the assessment proceedings by accepting the returned income of Rs. 13,56,930/- . This Tribunal have also taken a consistent view that when the tax audit report was made available to AO before completion of the assessment proceedings, then for technical venial breach without any malafide intention, penalty cannot be levied u/s 271B of the Act.

12.2 Further there is nothing contrary that has been brought on record by the Ld. DR at the time of the hearing. We are of the opinion that the assessee has only committed a technical breach without any loss to the exchequer of the Government.

12.3 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 vitiate 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.