

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.245/Nag./2024
(Assessment Year : 2017-18)

Jyoti Nitin Chaporkar
Farash Stop Jawal, Vimal Nagar
Varsha Colony Road, Rukhmini Nagar
Amrawati 444 606 PAN – ADKPC6034B

..... Appellant

v/s

Income Tax Officer
Ward-1, Amravati

..... Respondent

Assessee by : Shri Bhavesh Moryani
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 28/11/2024

Date of Order – 06/12/2024

ORDER

PER K.M. ROY, A.M.

This appeal by the assessee is against the impugned order dated 27/02/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18.

2. The assessee has raised following grounds:-

"1. The Ex-parte penalty order U/s. 271B passed is illegal, invalid and bad in law.

2. On the facts and circumstances of the case the learned Commissioner of Income Tax Appeal, National Faceless Appeal Centre, Delhi erred in not considering the assessee has not received any notice for hearing and without giving opportunity to being heard on the basis of natural justice, the Ex-parte penalty order passed is illegal, invalid and bad in law.

3. *On the facts and circumstances of the case the learned Commissioner of Income Tax Appeal, National Faceless Appeal Centre, Delhi erred in not considering the assessee has not received any notice from assessing officer hence the assessee unable to file any reply, the assessee is suffering from critical problem of Cancer and various other medical problem, therefore imposed penalty U/s. 271B and confirmed the penalty by passing ex-parte penalty order is unjustified, unwarranted and excessive.*

4. *On the facts and circumstances of the case the learned Commissioner of Income Tax Appeal, National Faceless Appeal Centre, Delhi erred in not accepting that assessee was under reasonable cause of bonafide belief that due to acute medical problem and without giving any sufficient opportunity to rebut the evidence imposed penalty U/s. 271B of Rs. 1,50,000/- is unjustified, unwarranted and excessive.*

5. *On the facts and circumstances of the case the learned Commissioner of Income Tax Appeal, National Faceless Appeal Centre, Delhi erred in not accepting the fact that the learned assessing officer while passing order U/s. 143(3) dated 26/08/2022 has not stated anything about penalty U/s. 271B, therefore penalty confirmed and ex-party penalty order passed is illegal, invalid and bad in law.*

6. *On the facts and circumstances of the case the learned Commissioner of Income Tax Appeal, National Faceless Appeal Centre, Delhi erred in not accepting that the appeal against the original order U/s. 143(3) was pending before the Commissioner of Income Tax Appeal, National Faceless Appeal Centre, Delhi and without considering the same imposition of penalty U/s. 271B is illegal, invalid and bad in law;*

7. *The appellant craves leave to amend or alter any ground or grounds of appeal or raise any ground or grounds at the time of hearing of the appeal."*

3. In this case, the assessee is an individual filed her return of income on 31/03/2018, declaring total income at ₹ 3,24,780, which includes income derived under the head Income from Business and Income From Other Sources. The assessee was doing the business of daily needs and specifically milk business. The assessee is authorised dealer of Dinshaw's Dairy Foods Pvt. Ltd. During the year, the assessee deposited amount of ₹ 10,26,380, in its bank account during the demonetization period out of which the assessee was having cash balance of ₹ 2,92,146, as on 08/11/2016, and the assessee has deposited ₹ 7,34,234, bank notes, as same were out of sale made by the assessee during the previous year relevant to the assessment year 2017-

2018. The Government of India has allowed essential commodities to accept demonetized currency and the business of the assessee comes under the head "Essential Commodities". The assessee has accepted the old currency which was banned by the Government of India on 08/11/2016, since the business of the assessee came under the head of exemption notification dated 08/11/2016 provided by the Government. The Assessing Officer has not accepted the contention of the assessee and made addition of ₹ 7,34,234, as unexplained investment under section 69 of the Act for ₹ 5,870, on account of purchase difference and made addition under section 69C of the Act by passing order under section 143(3) of the Act. The assessee has already filed appeal challenging the impugned order passed by the learned CIT(A).

4. Meanwhile, by issuing order dated 26/08/2022, the Assessing Officer levied penalty under section 271B of the Act the, wherein the observations made by the Assessing Officer are reproduced below:–

"2. As per the case records, turnover of assessee for the year under consideration is Rs.6,52,56,344/-, whereas assessee has filed Audit Report on 31.03.2018. The specified date as per sec 44AB for filing Audit Report for the year under consideration was 31.10.2017 which was extended to 07.11.2017. Thus, the assessee violated the provisions of sec. 44AB of the Act and hence is liable for levy of penalty u/s. 271B of the I.T. Act, 1961.

3. Accordingly, penalty notice u/s. 271B of the I.T. Act was issued to the assessee on 10.02.2022. The assessee was required to furnish the reply by 25.02.2022. However, no reply was furnished by the assessee by the given date. Meanwhile, the case was transferred to NaFAC for completion of proceedings u/s. 271B of the Act. Subsequently, show cause notice u/s. 271B of the Act was issued to the assessee on 18.02.2022 by NaFAC, requiring the assessee to furnish the reply by 23.02.2022. Again no response was received from assessee by the given date. Further, the case was received on transfer from NaFAC on 11.07.2022 for completion of pending penalty proceedings. Again, notice u/s. 271B of the Act was issued to the assessee on 15.07.2022. But, again the assessee not responded to the notice issued. This clearly proves that the assessee has no explanation, whatsoever, to offer in this matter.

4. From the facts discussed above, it is clear that the provisions of section 44AB have not been complied with by the assessee, thereby attracting penalty u/s 271B of the Act.

5. As has been mentioned in above paras, in view of the provisions of sec. 271B of the Income Tax Act, 1961, the assessee was provided with reasonable opportunity to prove whether there was reasonable cause for the said failure; whereas, the assessee has not shown reasonable cause for the failure to comply with the provisions of sec. 44AB. In view of the above, I am satisfied that the assessee has failed to comply with the provisions of sec. 44AB of the Income Tax Act, 1961; whereby he has been found liable for levy of penalty u/s 271B provided under the Income Tax Act, 1961 for such failure on the part of assessee. I am also satisfied that the assessee has not been able to prove that there was reasonable cause for the said failure. Therefore, I hold that the penalty u/s 271B of the Income Tax Act, 1961 is attracted in this case. The leviable penalty in this case is calculated as one-half percent of the total turnover at Rs.6,52,56,344/- or Rs. 1,50,000/- whichever is lower.

6. In view of all the facts discussed above, a penalty of Rs. 1,50,000/- (One lakh fifty thousand rupees only) under section 271B of the Income Tax Act, 1961, is leviable in this case. Accordingly, a penalty of Rs. 1,50,000/- (One lakh fifty thousand rupees only) is levied against the assessee u/s. 271B of the I.T. Act, 1961. This order is passed with the prior approval of the Joint CIT, Amravati Range, Amravati vide ITBA/PNL/S/992/2022-23/1044895137(1) dated 24/08/2022."

5. The appeal before the learned CIT(A) was dismissed due to non-submission of any response albeit substantial opportunities were given. The facts of the case were summarised orally by Shri Bhavesh Moryani, the learned Counsel appearing for the assessee.

6. While going through the order passed by the learned CIT(A) and the Assessing Officer, we are of the view that the learned CIT(A) ought to have set aside the entire matter to the file of the Assessing Officer for re-adjudication, but since the facts lie in a narrow compass, we have decided to adjudicate the issue on merit. The point of determination is whether levy of penalty is justified. It is apparent from Tax Audit Report dated 31/03/2018, as per Clause 40, that this is the first year of business, because the turnover reported is nil for earlier year i.e., financial year 2015-16. Naturally, the

assessee being a lady may not be well conversant about the legal issue. Moreover, it is not a case of non-filing of appeal rather it is a case of delayed filing. The Assessing Officer has lost sight of the provisions of section 273B of the Act. Consequently, we are of the opinion that the penalty levied by the Assessing Officer and confirmed by the learned CIT(A) is not sustainable and hence liable to be quashed. Accordingly, we quash the impugned penalty levied under section 273B of the Act as discussed above. All the grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 06/12/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 06/12/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur