

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND  
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2573/CHNY/2024

निर्धारण वर्ष/Assessment Year: 2016-17

**Shri Mohideen Saib Ibrahim,**

55/1B, Prop.: Sheik Meera Agencies,  
Kalathiamman Koil Street,  
Thakkolam,  
Arakonnam,  
Vellore - 631 151.

**The Income Tax Officer,**

Vs. Ward - 3,  
Vellore.

**PAN: AAAP1 4873M**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri S.P. Chidambaram, Advocate  
: Ms. Anitha, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 12.12.2024

घोषणा की तारीख/Date of Pronouncement

: 16.12.2024

**आदेश /O R D E R**

**PER GEORGE GEORGE K, VICE PRESIDENT:**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 09.10.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2016-17.

2. There is a delay of 304 days in filing this appeal before the Tribunal. The assessee has filed a petition for condonation of delay along with affidavit stating therein the reasons for belated filing of this appeal. The reason stated in the affidavit for belated filing of this appeal is as under:-

*4. I state that I have filed written submissions through my consultant before the CIT(A) on 31.01.2023 and after that no hearing was posted. I state that I had heart related issues and I was admitted to SIMS Hospital on 29.08.2023 to 01.09.2023 and Coronary Angiogram was done during this period. Subsequently, I was admitted to SIMS Hospital on 07.09.2023 to 11.09.2023, during this period stent was placed. Post this medical procedure, I was under complete rest for two months (i.e. September, 2023 and October, 2023). I understand that during this period the CIT(A), NFAC has passed the impugned order on 09.10.2023 after a gap of about 9 months of filing written submissions and uploaded the same in the portal. I was not aware that I should check the portal regularly. Accordingly, I was not aware about the impugned order being passed on 09.10.2023. Later, physical recovery notice dated 27.09.2024 was issued. Only after receipt of recovery notice, I realized that appellate order has been passed in my case. Immediately, I approached my consultant and I am now filing the appeal on 07.10.2024.”*

On perusal of the reasons, we are of the view that no laches can be attributed to the assessee as there is sufficient cause for belated filing of this appeal. Hence, we condone the delay and proceed to dispose off the appeal on merits.

3. The grounds raised read as under:-

*“1. That the order of the CIT(A) is contrary to law, facts and circumstances of the case.*

*2. That the CIT(A) erred in confirming the levy of penalty under section 271B of the Act for not electronically uploading the audit report before the due date for filing return of income.*

*3. The CIT(A) failed to appreciate that audit was completed and uploaded by CA on 14.10.2016 and the same approved appellant electronically on 18.03.2017.*

*4. The CIT(A) failed to appreciate that the Income tax return was filed within the statutory time limit but due to clerical/technical mistake the audit report could not be approved on time.*

*5. The CIT(A) ought not to have confirmed the levy of penalty for technical breach.*

*6. The Appellant craves leave to adduce additional grounds at the time of hearing.”*

4. Brief facts of the case are as follows:-

The assessee is an individual. He is a wholesale dealer in pesticides and fertilizers in the name and style of M/s. Shaik Meera Agencies. For the assessment year 2016-17, the return of income was filed on 17.10.2016 declaring total income of Rs.8,93,830/-. The scrutiny assessment u/s.147 r.w.s. 144B of the Act was completed on 30.03.2022, assessing total income at Rs.43,92,500/- .

5. During the course of assessment proceedings, it was noticed that the assessee was liable to furnish the tax audit report u/s.44AB of the Act for the assessment year 2016-17 on or before

17.10.2016 (extended due date). It was seen that assessee had uploaded the tax audit report in Form 3CB online only on 18.03.2017. Therefore, penalty u/s.271B of the Act was imposed amounting to Rs.1,50,000/- (being the maximum penalty u/s.271B of the Act).

6. Aggrieved by the imposition of penalty, assessee filed appeal before the First Appellate Authority. The CIT(A) confirmed the imposition of penalty and dismissed the appeal of the assessee. The CIT(A) held that the contention of the assessee that delay in filing the audit report u/s.44AB of the Act was due to technical glitches in uploading it online, was without any credible supporting evidence. The relevant finding of the CIT(A) reads as under:-

*“5.3 The appellant has attributed the delay in filing of the audit report u/s 44AB to a technical fault in uploading the online form at the end of the CA. However no credible evidence in support of his contention has been filed by the appellant. Hence, the plea of the appellant the delay was due to technical fault is rejected.*

*5.4 During the present appellant proceedings, through the aforesaid written submissions, the appellant has relied upon several decided case laws in order to assert that no penalty u/s 271B of the Act is leviable if the failure is bonafide and due to technical fault. In the pertaining facts of the case, these case laws do not support the appellant since the appellant has failed to established that the failure was bonafide.*

*6. In the pertaining facts and circumstances of the case in hand, and in view of the afore-discussed exposition of law applicable, the judgements cited by the appellant for the case in hand are all distinguishable because*

*they are rendered on different factual matrix. The Assessing Officer has clearly laid out the case of the failure on the part of the appellant to get his books of accounts audited.*

*7. Therefore, it has to be held that the appellant has failed miserably to make out a case against the levy of penalty u/s 271B of the Act and, thus, I find no infirmity in the order of the A.O. passed u/s 271B of the Act. The levy of penalty of Rs.1,50,000/- u/s 271B is, accordingly, confirmed. Consequently, the grounds of appeal raised by the appellant are dismissed.”*

7. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The Id.AR submitted that audit report was prepared well within the extended due date (audit report in Form No.3CB was prepared and signed by the chartered accountant on 14.10.2016) and the delay had taken place only in uploading the same. The Id.AR placed on record copy of the audit report in Form 3CB and submitted in such circumstances, the imposition of penalty is bad in law. In this context, the Id.AR relied on the Chennai Bench order of the Tribunal in the case of Shri S. Mangilal vs. ACIT in ITA No.949/CHNY/2023 (order dated 28.11.2023). Further, the Id.AR submitted the audit report was available during the course of assessment proceedings and the same was taken note by the AO while completing the reassessment proceedings. Therefore, it was submitted that it is only venial technical breach without any mala fide intention and penalty cannot be imposed u/s.271B of the Act. In this context, the Id.AR relied on

the order of the Chennai Bench of the Tribunal in the case of T P D 101 Uthangarai Milk-Producers Co-operative Society Ltd., vs. ITO in ITA No.152/CHNY/2021 (order dated 29.06.2022).

8. The Id.DR supported the order of the AO and the CIT(A).

9. We have heard rival submissions and perused the material on record. The extended due date for filing audit report for assessment year 2016-17 was 17.10.2016. The return of income was filed within the due date i.e., 17.10.2016. However, the assessee had uploaded the tax audit report dated 14.10.2016 only on 18.03.2017. Therefore, the impugned penalty was imposed u/s.271B of the Act. The undisputed fact that is available on record is the assessee had got the accounts audited before the impugned extended date i.e., 17.10.2016 and there was only a delay in uploading the same. In such circumstances, we are of the opinion that it is not a fit case for imposition of penalty. On identical facts, the Chennai Bench of the Tribunal in the case of S.Mangilal vs. ACIT (*supra*) had deleted the penalty by observing as under:-

*“4. The undisputed fact that emerges is that the extended due date for filing Tax Audit Report for this year was 07-11-2017. The assessee has got the accounts audited before that date. There is delay only uploading of the same. Therefore, in our considered opinion, this is not a fit case for levy of*

*impugned penalty. The cited decision of Tribunal is on the same lines. By deleting the impugned penalty, we allow the appeal.”*

10. In light of the Co-ordinate Bench order of the Tribunal in the case of Mangilal vs. ACIT (*supra*), we delete the penalty imposed u/s.271B of the Act. It is ordered accordingly.

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

Order pronounced in the open court on 16<sup>th</sup> December, 2024 at Chennai.

Sd/-  
(जगदीश)

**(JAGADISH)**

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 16<sup>th</sup> December, 2024

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

Sd/-  
(जॉर्ज जॉर्ज के)

**(GEORGE GEORGE K)**

उपाध्यक्ष /VICE PRESIDENT