

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD “A” BENCH: HYDERABAD

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.759/Hyd./2024
Assessment Year 2014-2015

Sanghi Textiles Private Limited, Hyderabad. PIN – 500 082. PAN AADCS0837P	vs.	The Income Tax Officer, Ward-3(1), Hyderabad. Telangana.
(Appellant)		(Respondent)

For Assessee :	CA P Murali Mohan Rao
For Revenue :	Shri Srinath Sadanala, Sr. AR

Date of Hearing :	21.04.2025
Date of Pronouncement :	24.04.2025

ORDER

PER MANJUNATHA G. :

This appeal has been filed by the appellant-company against the order dated 29.06.2024 of the learned CIT(A)-National Faceless Appeal Centre [in short the “NFAC”] Delhi, relating to the assessment year 2014-2015.

2. Brief facts of the case are that the appellant-company is engaged in the business of job work for textiles

processing activities like Dyeing, Bleaching, Printing and Finishing of woven fabric. The assessment in the case of the appellant-company was completed vide order dated 30.03.2022 passed under section 147 r.w.s 144 read with section 144B of the Income Tax Act 1961 [in short “the Act”]. During the course of assessment proceedings, the Assessing Officer noted that the appellant-company had receipts under section 194C at Rs.3,20,42,152/- during the year under consideration. But appellant-company had failed to disclose above income and not filed it’s return of income and also not furnished any documentary evidence in respect contractual receipts. Therefore, the Assessing Officer estimated the net profit @ 8% on total gross receipts of Rs.3,20,42,152/- which comes to Rs.25,63,372/- and added to the income of assessee for the impugned assessment year 2014-2015. The Assessing Officer also added an amount of Rs.92,069/- under section 194A under the Head “Other Income”. As per the information available on record, the appellant-company made investment in time deposits at Rs.19,54,348/- during F.Y. 2012-13. Since the

assessee failed to explain the source of cash received during the year under consideration, the Assessing Officer treated the whole amount of Rs.19,54,348/- as unexplained investment and was added to income of assessee under section 69B of the Income Tax Act, 1961. Further, the appellant-company was unable to justify the expenses claimed and accordingly, 20% of the expenses claimed i.e. Rs.4,72,79,447/-were disallowed i.e. Rs.94,55,889/- and added to the returned income of the appellant-company. Thus, the Assessing Officer determined the total income of the appellant-company at Rs.1,40,65,678/- under section 147 r.w.s 144 of the Act.

2.1. The Assessing Officer further noted that the appellant-company has not furnished tax audit report in Form-3CD as required u/sec.44AB of the Act within the stipulated due date. Therefore, the Assessing Officer initiated penalty proceedings u/sec.271B of the Act by issuing show-cause notices u/sec.271B r.w.s.274 of the Act dated 30.03.2022, 10.09.2022 and 10.09.2022. In response, the appellant-company has filed it's submissions. Being not

satisfied with the explanations furnished by the appellant-company, the Assessing Officer levied penalty of Rs.1,50,000/- u/sec.271B of the Act on the gross receipts of Rs.3,40,88,569/- @ 0.5% i.e., Rs.1,70,442/- or at a maximum of Rs.1,50,000/-.

3. On being aggrieved by the penalty order passed by the Assessing Officer u/sec.271B of the Act, the appellant-company carried the matter in appeal before the learned CIT(A). The learned CIT(A) after considering the submissions of the appellant-company, upheld the penalty order of the Assessing Officer passed u/sec.271B of the Act, in absence of any cogent reasons for not getting its books of accounts audited as per the provisions of sec.44AB of the Act.

4. Aggrieved by the order of the learned CIT(A), the appellant-company is now in appeal before the Tribunal in sustaining the penalty order dated 21.09.2022 passed by the Assessing Officer u/sec.271B of the Act.

5. CA P. Murali Mohan Rao, Learned Counsel for the Assessee, submitted that, the Assessing Officer has levied penalty u/s 271B of the I.T. Act, 1961 at maximum of Rs.1.50,000/- due to delay on the part of the assessee to file the tax audit report in Form-3CD along with return of income. The Learned AR of the assessee submitted that, the assessee could not file the tax audit report on or before the due date of filing the return of income as it's Accountant was left at the time when books of accounts were to be audited. However, the appellant-company has obtained it's audit report in Form-3CD on 26.09.2014 much before the completion of the assessment order dated 30.03.2022. Thus, he submitted that when the audit report was filed before framing of the assessment order by the Assessing Officer, then the levy of penalty u/s 271B is not justified. He further submitted that filing the audit report is only a procedural requirement and once the assessee has filed the same before the completion of the assessment, then no penalty action ought to have been taken against the appellant-company. In support of his submissions, the

Learned Counsel for the Assessee relied upon the following decisions :

- i. ITAT Hyderabad Benches in the case of Suryavathi Gandiboina vs. ACIT in ITA No.31/Hyd/2023.
- ii. ITAT Chennai Benches in the case of Virudhunagar District Cooperative Consumers vs. Income Tax Officer in ITA No. 1065/Chny/2019.

5.1. Learned Counsel for the Assessee accordingly pleaded that the penalty sustained by the learned CIT(A) should be deleted.

6. Shri Srinath Sadanala, learned Sr. AR, DR on the other hand, submitted that the appellant-company has not explained any satisfactory reason before the Assessing Officer as well as before the learned CIT(A) for delay in filing the audit report. Therefore, the authorities below levied the penalty u/sec.271B of the Act which is in accordance with the provisions of the Income Tax Act and as such, the same may please be confirmed in the interest of justice.

7. We have heard both the parties, perused the material on record and the orders of the authorities below.

There is no dispute with regard to the fact that, the assessee did not file the audit report in Form-3CD along with the return of income, but the same was claimed to have been filed on 26.09.2014 much before the completion of the assessment order dated 30.03.2022. The assessee further claimed that if the relevant tax audit report in Form-3CD is made available to the Assessing Officer on or before he completes the assessment, then, it is a sufficient compliance and there is no question of levying penalty u/sec.271B of the Act. We find that various Courts and Tribunals have taken a consistent view that filing of tax audit report on or before the due date of filing of return of income is although mandatory in nature, but, if such tax audit report is made available to the Assessing Officer before he completes the assessment for the relevant assessment year and further, if the assessee explains the reasons for the delay in filing of the tax audit report to the satisfaction of the Assessing Officer, then, there is no reason for levy of penalty u/sec.271B of the Act. In the present case, the assessee claims that it has obtained relevant tax audit report in Form

3CD on 26.09.2014. However, could not filed before the Assessing Officer, but, the same has been filed before the learned CIT(A). The assessee has filed one un-signed copy of Form-3CA and Form-3CD reports before the Tribunal. Further, we are not sure whether such Form-3CA/Form-3CD reports are filed before the learned CIT(A) or not. Therefore, to ascertain the correctness of claim of the assessee that it has obtained relevant tax audit report on 26.09.2014 and also the same has been filed before the learned CIT(A), we set-aside the issue to the file of Assessing Officer. Thus, we set-aside the order of the learned CIT(A) and restore the matter back to the file of Assessing Officer for fresh adjudication. The Assessing Officer is directed to verify the claim of the assessee in light of any evidences that may be filed by the assessee including the Form-3CA/Form-3CD reports and also proof of such reports before the learned CIT(A) and take appropriate decision as per law. Accordingly, the grounds of appeal of the assessee are allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 24.04.2025

Sd/-
[VIJAY PAL RAO]
VICE PRESIDENT

Sd/-
[MANJUNATHA G]
ACCOUNTANT MEMBER

Hyderabad, Dated 24th April, 2025

VBP

Copy to

1.	Sanghi Textiles Private Limited, Hyderabad. C/o. P. Murali & Co. Chartered Accountants, 6-3-655/1/3, Somajiguda, Hyderabad - 500 082.
2.	The Income Tax Officer, Ward-3(1), Hyderabad. Telangana.
3.	The Pr. CIT (Central), Hyderabad.
4.	The DR ITAT "A" Bench, Hyderabad.
5.	Guard File.

//By Order//

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