

आयकर अपीलीय अधिकरण, “डी” न्यायपीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
AND
SHRI PRADIP KUMAR COUBEY, JUDICIAL MEMBER

आयकर अपील सं/ITA No.1387 & 1388/KOL/2023

(निर्धारण वर्ष / Assessment Years : 2012-2013 & 2013-2014)

Priti Somani, C/o S.N.Ghosh&Associates,Advs 2, Garstin Place, 2 nd Floor, Suite No.203, Off Hare Street, Kolkata-700001	Vs	ITO, Ward-3(1), Gangtok
PAN No. :AXDPS 0604 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Somnath Ghosh & Shri Sarnath Ghosh, Advocates
राजस्व की ओर से /Revenue by	:	Shri Sailen Samadder, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	20/03/2025
घोषणा की तारीख/Date of Pronouncement	:	22/04/2025

आदेश / ORDER

Per Rajesh Kumar, AM:

These two appeals are filed by the assessee against the separate orders, both dated 16.10.2023, passed by the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the assessment years 2012-2013 & 2013-2014.

2. The only issue involved in both the appeals is against the confirmation of penalty of Rs.1,50,000/- by the Id. CIT(A) as imposed by the Id. AO u/s.271B of the Act.

3. Since the issue in both the appeals is same, therefore, both the appeals are heard together and disposed off by this common order. For the sake of brevity and convenience, ITA No.1387/KOL/2023 (AY : 2012-2013) is taken as a lead case so far as the facts are concerned.

4. Facts in brief are that the assessee had not filed any return of income. The AO issued notice u/s.142(1) of the Act which was duly served to the assessee and the assessee in response to the notice filed her return of income on 13.06.2019 declaring total income at Rs.2,79,420/-. The AO during the assessment proceedings noted that the assessee had total credit of Rs.5,40,75,478/- in the bank account maintained with Canara Bank, Gangtok Branch, out of which Rs.4,47,00,423/- were in cash. According to the AO the assessee ought to have got her accounts audited in accordance with the provisions of Section 44AB of the Act within the due date of furnishing of return u/s.139(1) of the Act, however, the assessee has failed to furnish the audit report within the due date of filing of return u/s.139(1) of the Act and accordingly invoked the provisions of Section 271B of the Act by issuing notice u/s.271B of the Act dated 12.12.2019, which was replied by the assessee by submitting that the assessee got accounts audited on 31.03.2017 and profit as per the audited profit and loss account was shown at Rs.2,79,420/- from the turnover of Rs.5,13,42,282/-. It was also submitted that though the books of accounts were audited by the Chattered Accountant u/s.44AB of the Act but the assessee could not file

the IT return along with audit report due to the same getting delayed and barred by limitation. The assessee submitted that since the assessee is located in the State of Sikkim and was not aware of the provisions of the Act as to filing of return of income and it is only when the assessee was issued notice by the AO, the assessee got the books of accounts audited and also filed her return of income for both the years under consideration. However, the AO rejected the contention of the assessee on the ground that the turnover of the assessee exceeded Rs.1 crore and, therefore, it was the responsibility of the assessee to get her accounts audited in accordance with the provisions of Section 44AB of the Act. Accordingly, the AO levied penalty u/s.271B @0.5% of the total turnover of the assessee subject to a maximum of Rs.1,50,000/-. In the appellate proceedings, the Id. CIT(A) dismissed the appeal of the assessee by holding that the assessee has failed to demonstrate the reasonable cause for not getting the books of accounts audited and in filing the return of income as per the provisions of the Act.

5. After hearing the rival contentions of the parties and perusing the material on record issue before us is levy of penalty on the basis of invalid notice. We find that the Id. counsel of the assessee vehemently submitted before us that the penalty proceedings initiated by the AO vided notice dated 22.09.2021 u/s.274 r.w.s.271B of the Act is vague as the AO has not struck down the limb which was not applicable to the assessee's case. Ld. AR argued that notice was issued on the ground that the assessee

'has failed to get accounts audited or failed to furnish a report of such audit as required under Section 44AB of the Act'. Ld. AR in defense of his argument, relied on the decision of coordinate bench of the Tribunal in the case of North Eastern Constructions, reported in [2020] 117 taxmann.com 321 (Guwahati-Tribunal) wherein the issue has been decided in favour of the assessee. On the other hand, Id. Sr. DR relied on the orders of the authorities below.

6. After hearing the rival contentions of the parties and perusing the material on record, we note that the assessee is running a proprietary concern under the name M/s Chirag Enterprise and is situated in the state of Sikkim, India. We note that the assessee was in bonafide belief that he is not required to get her account audited and to file return of income as the income of the person with Sikkim domicile is not liable to tax u/s.10(26) of the Act. Admittedly, the assessee has not filed any return of income or got her account audited which was done after issuance of notice u/s.148 of the Act. The assessee filed return of income and got her account audited and furnished audit report before the AO. The Id. AR raised the legal issue before us that the notice issued by the AO initiating the penalty proceedings u/s.274 r.w.s.271B of the Act was vague as the AO has not mentioned the particular limb on which the penalty was proposed to be initiated. The said notice issued by the AO for both the assessment years under consideration are extracted below for the sake of convenience :-



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 3(1) GANGTOK

To,
PRITI SOMANI
Prop. Chirag Enterprise , Old Children Park,East
Sikkim
Gangtok 737101, Sikkim
India

PAN: AXDPS0604C	Assessment Year: 2012-13	Notice No.: ITBA/PNL/S/271B/2019- 20/1022196868(1)	Date : 12/12/2019
--------------------	-----------------------------	--	----------------------

Notice under section 274 read with section 271B of the Income Tax Act, 1961

Sir/ Madam,

Whereas in the course of proceedings before me for the Assessment Year 2012-13, it appears to me that **you have failed to get accounts audited or failed to furnish a report of such audit as required under section 44AB of the Income Tax Act, 1961.**

You are hereby requested to appear before me either personally or through a duly authorised representative at **03:45 PM on 06/01/2020** and show cause why an order imposing a penalty on you should not be made under section **271B** of the Income Tax Act, 1961.

If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section **271B** of the Income Tax Act, 1961.

MANMOHAN LAL
WARD 3(1) GANGTOK

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

Note: If digitally signed, the date of digital signature may be taken as date of document.
SIKKIM, WB, SIKKIM, WB, KOLKATA, West Bengal, 737101
Email: SILIGURI.ITO3.1@INCOMETAX.GOV.IN, Office Phone: 359/220-3474
* The Notice/Letter/Order No. mentioned above may be treated as DIN for the purpose of procedure for issuance of Income Tax Notice prescribed by Circular No.19/2019 dt. 14 August 2019.

Digitally signed
Signer: MANMOHAN LAL
Date: Thursday, Dec 12, 2019 8:18 PM
Location: KOLKATA, India

 <p>GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT National Faceless Assessment Centre Delhi</p> 			
<p>To, PRITI SOMANI Prop. Chirag Enterprise , Old Children Park, East Sikkim Gangtok 737101, Sikkim India</p>			
PAN: AXDPS0604C	Assessment Year: 2013-14	Date : 22/09/2021	DIN : ITBA/PNL/S/271B/2021- 22/1035789030(1)
<p>Notice for Penalty under section 274 read with section 271B of Income-tax Act, 1961</p>			
<p>Ms/Mr/M/s,</p>			
<p>Whereas in the course of proceedings before me for the Assessment Year 2013-14, it appears to me that you have failed to get accounts audited or failed to furnish a report of such audit as required under section 44AB of the Income Tax Act, 1961.</p>			
<p>2. You are required to show cause why an order imposing penalty u/s 271B of Income-tax Act, 1961 should not be passed.</p>			
<p>3. You are required to submit your reply online electronically in 'e-Proceeding' facility through your account in e-filing website (www.incometax.gov.in) by the midnight (23.59 hours) of 08/10/2021.</p>			
<p>4. In case reply is not submitted, the order shall be passed without the benefit of your explanation.</p>			
<p>Additional / Joint / Deputy / Assistant Commissioner of Income Tax Income-tax Officer, National Faceless Assessment Centre, Delhi</p>			
<p>Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in</p>			
<p>Signature Not Verified Digitally signed by Prakash</p>			

7. After perusal of the notice, we note that the notice were issued for failure to get her accounts audited or on failure to furnish a report of such audit as required u/s.44AB of the Act. Thus, the AO mentioned both the limbs which renders it invalid on the ground of being issued mechanically and therefore not sustainable. The case of the assessee is supported by

the decision of the coordinate bench of the Tribunal in the case of North Eastern Construction (supra), wherein the same issue has been decided in favour of the assessee by observing and holding as under :-

10. We have heard both the parties and perused the records. We note that the assessee had filed return of income for the AY 2015-16 on 31-03-2016 along with TAR. Thereafter, we note the department accepted the return of income filed by the assessee by issuing intimation u/s. 143(1) of the Act on 28-05-2016. After two years on 15-05-2018, the AO had issued notice u/s. 274 read with section 271B of the Act proposing to levy of penalty u/s. 271B for the following faults:

- i) failed to get accounts audited or
- ii) failed to furnish a report of such audit as required u/s.44AB of the Act

11. Thus, we note that the AO has given a show cause notice, which is per-se vague. Thus, we note that the AO by issuing penalty notice u/s. 271B has not spelt out what was the fault for which the assessee is being proceeded against for levy of penalty. Since the AO North Eastern Constructions has not struck down the irrelevant portion/fault which is not applicable in the facts and circumstances of the case, the notice reproduced (supra) is vague and therefore, bad in law as held by the Co-ordinate Bench of the Tribunal in the case of Parkinson Electrical Corprn (supra). We are of the opinion that notice proposing penalty should clearly spell out the fault/charge for which the assessee is put on notice, so that he can defend the charge properly. The issue of bad/vague penalty notice was adjudicated by the Hon'ble Karnataka High Court [though in a different context i.e notice issued u/s. 274 read with section 271(1)(c) of the Act] in the case of CIT vs. SSA's Emerald Meadows in ITA No.380 of 2015 dated 23.11.2015 wherein the Hon'ble High Court following its own decision in the case of CIT vs Manjunatha Cotton and Ginning factory (2013) 359 ITR 565 has held that if the penalty notice is vague, then the penalty order is also bad in the eyes of law. This decision of Karnataka High Court was challenged by the Revenue before the Hon'ble Apex Court, and the Hon'ble Supreme Court has dismissed the SLP. Therefore, applying the ratio-dedenti in SSA's Emerald Meadows & M/s. Parkinson (supra), we are of the view that the notice issued by AO before levying penalty u/s. 271B of the Act is bad in law.

12. Moreover, we note that the assessee had furnished the TAR belatedly on 31-03-2016 along with the return of income, which has been accepted by the department and intimation u/s. 143(1) of the Act has been issued. Pursuant to the show cause notice before imposing penalty, the assessee had explained before the AO the

cause for delay in filing the TAR. The assessee explained that delay happened due to the fact that for earlier year [i.e. AY 2014-15] the audit report could not be completed on time and could be completed only on 23-03- 2016. This happened because the accountant of the assessee, who used to handle the accounts had suddenly left the office/service in earlier year without properly handing over the books maintained by the assessee. We are of the opinion that the explanation given by the assessee cannot be held to be unreasonable. We note that in a similar case , where facts and circumstances of the case was same, the Ahmedabad Bench of this Tribunal in the case of Kamlesh R. Agarwal (HUF) has given relief to the assessee by holding that delay in getting accounts of the earlier year can be reasonable ground as stipulated u/s. 273B of the North Eastern Constructions Act. Therefore, we find that there was reasonable cause for not filing the TAR within due date. Moreover, we also note that there has been several mistakes which has crept in the impugned penalty order of the AO, which shows total non- application of mind of necessary facts by the AO. Therefore, from any angle as discussed supra, the penalty levied u/s. 271B cannot be sustained, so it needs to be deleted and we direct the AO to do so.

13. In the result, the appeal of assessee is allowed.

8. Considering the facts of the case in the light of the above decision, we are inclined to set aside the order of the Id. CIT(A) and direct the AO to delete the penalty imposed u/s.271B of the Act as the same is based on the invalid notice issued by the AO.

9. Since, the issue involved in ITA No.1387/KOL/2023 is similar to the appeal of the assessee in ITA No.1388/KOL/2023 wherein similar notice has been issued by the AO for imposing penalty u/s.271B of the Act, which we have already held invalid and consequently quashed the assessment. Therefore, the decision made in the appeal of the assessee for A.Y.2012-2013 shall apply *mutatis mutandis* to this appeal of the assessee for A.Y.2013-2014 also. Accordingly, both the appeals of the assessee are allowed.

10. In the result, both appeals of the assessee are allowed.

Order pronounced in the open court on 22/04/2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
लेखा सदस्य/ ACCOUNTANT MEMBER

कोलकाता Kolkata; दिनांक Dated 22/04/2025

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

Income Tax Appellate Tribunal, Kolkata