

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'A' BENCH, LUCKNOW**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.633/LKW/2024
A.Y. 2018-19

G.S. Express Private Ltd., C-877 Mahanagar, Lucknow	vs.	The D. Commissioner of Income Tax, P.K. Complex, Ram Mohan Rai Marg, Lucknow
PAN: AACCG5655J		
(Appellant)		(Respondent)

Assessee by:	Sh. Shubham Rastogi, C.A.
Revenue by:	Sh. Amit Kumar, DR
Date of hearing:	29.07.2025
Date of pronouncement:	28.08.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the order of the Id. CIT(A)-3, Lucknow under section 250 of the Income Tax Act, 1961, dismissing the appeal of the assessee against the orders of the Id. AO, imposing a penalty under section 271B on 29.03.2022. The grounds of appeal are as under: -

“1-That the Ld. C.I.T. (A)-3, Lucknow erred on facts and in law in not considering that the Show Cause Notice u/s 271B of 1. T. Act dated 31.12.2019, did not specify that whether the Penalty is for failure to get accounts audited or failure to furnish the Report and thus non striking of irrelevant clause renders the Penalty Notice invalid as also the consequential penalty order as illegal and liable to be quashed.

WITHOUT PREJUDICE TO ABOVE

2-That the Ld. C.I.T. (A) erred on facts and in law in confirming penalty of Rs. 1,50,000/- u/s 271B of 1. T. Act, without appreciating that there was a reasonable cause for delay in Audit and obtaining Report u/s 44AB of IT Act as due to search and seizure on 01.02.2018 the entire records were seized by Investigation Wing.

3-That the Ld. C.I.T. (A) did not appreciate that books of accounts and related records were seized by investigation wing and only after obtaining Copy of seized documents

preparation of the books of accounts and Audit was conducted, therefore, the delay in submitting the report u/s 44AB of IT Act was beyond control of the Assessee. Thus there was a reasonable cause of the same.

4 That the return filed u/s 139 of 1. T. Act along with audit report u/s 44AB of 1. T. Act has been accepted and assessment made accordingly. It cannot be held that there is contravention of provision of section 271B of 1. T. Act.

5-The penalty imposed is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by him.”

2. The facts of the case are, that a Search and Seizure operation under section 132 of the Income Tax Act, 1961 was carried out on the business and residential premises of the G.S. Group on 1.02.2018. Several documents were seized during the course of the search. Subsequent to the search, the assessee was asked to file a return of income by 31.10.2018, but it filed its return belatedly on 4.02.2019, admitting a total income of Rs.8,13,59,950/-. The Tax Audit Report was also uploaded on 28.01.2019, i.e. after the due date of uploading the report under section 44AB of the Act. Therefore, penalty proceedings were initiated under section 271B of the Act. In response to the penalty notice, it was submitted by the assessee that the tax audit for the aforementioned assessment year 2018-19 could not be completed in time because, in the case of the assessee company, a search action was taken by the Department under section 132 of the Act on 1.02.2018 and as a result of the search, substantial number of documents in the form of registers, hard disks, including electronic data and Day Books were seized by the Department. In the search proceedings, various registers of the sites, where day to day payments are incorporated, were seized and furthermore one of the employees of the company who used to maintain these Day Books, got a fracture in his hand, was hospitalized and could not attend office for several months. For these reasons, the Tax Audit Report could not be prepared on time. The Id. AO considered these submissions of the assessee but was not convinced by them. He held that as per the provisions contained in section 44AB, the assessee is required to get his accounts of each year audited before the specified date and furnished the audit report

by that date. He observed that the assessee had not made compliance of section 44AB of the Income Tax Act, despite having a turnover in excess of Rs.1 Crores. Furthermore, the Audit Report had not been filed within the specified date for the year under consideration. In view of this failure, the ld. AO held that the assessee was liable to pay penalty under section 271B of the Act and he imposed a penalty of Rs.1,50,000/- in the said case after taking the approval of the Addl CIT.

3. Aggrieved by this imposition of penalty, the assessee went in appeal before the ld. CIT(A). Before the ld. CIT(A), it was reiterated that the ld. AO did not appreciate the fact that the books of accounts and the related records were seized by the Investigation Wing and only after obtaining copy of seized documents, preparation of books of accounts and audit was conducted. Therefore, there was a delay in submitting the report under section 44AB, which was beyond the control of the assessee. It was further submitted that the return filed under section 139, based on the Audit Report under section 44AB had been accepted and therefore, it was evident that the Audit Report that had been prepared and filed, was accurate. In the circumstances, the levy of penalty was unjustified. Furthermore, it was argued that the penalty suffered from a technical flaw. The penalty under section 271B could be imposed on two separate defaults, that is, the failure to get the accounts audited for any previous year, or the failure to furnish a report of such audit before the specified date. However, the ld. AO, in the penalty notice, had failed to strike off the irrelevant clause and in the absence of non-striking of irrelevant clause in the notice, the assessee was prevented from a chance to show against the charges considered in the notice. Therefore, it amounted to non-application of mind by the ld. AO and diffidence on the part of the ld. AO, as there was no clear and crystalized charged being conveyed to the assessee under section 271B. The assessee argued that the ld. AO was bound to come to a conclusion during the course of assessment, as to whether there was a failure to furnish a report or a failure to get the accounts audited. Since the ld. AO had failed to come to this

conclusion, the notice that was issued was bad in law in terms of the judgment of the Hon'ble Supreme Court in the case of Ashok Pai 292 ITR 11 (SC), wherein the Hon'ble Court had held that, '*concealment of income and furnishing of inaccurate particulars of income carried different connotations*'. It was further argued that the Hon'ble Gujarat High Court in the case of Manu Engineering Works 122 ITR 306 and Hon'ble Delhi High Court in the case of CIT vs. Virgo Marketing Pvt. Ltd. 171 taxman 156 had held that the levy of penalty has to be clear as to the limb for which it is levied and the permission being unclear, penalty was not sustainable. It was further argued that this matter had been considered in the case of SSA Emerald Meadows which had also been affirmed by the Hon'ble Supreme Court in 73 taxman.com 248. Therefore, it was held that since the notice under which penalty had been initiated was invalid, the penalty could not be levied against the assessee. The assessee placed reliance on the following case laws in support of his arguments.

- i. North Eastern Construction vs. ITO, Ward-1(2), Dibrugarh (2020) 117 taxman.com 321 (Guahati-Trib)
- ii. CIT vs. SSA Emerald Meadows (2016) 73 taxman.com 248 SC
- iii. M/s Sitaram Computech Pvt. Ltd. vs. ACIT in ITA No.656/LKW/2018 dated 16.07.2019
- iv. Sh. Suraj vs. DCIT, Central Circle-1 in ITA No.331/LKW/2019 dated 26.06.2020

The assessee reiterated the facts leading to the delay in the conduct of audit and furnishing of the Audit Report before the Id. CIT(A).

4. The Id. CIT(A) after considering the submissions of the assessee held that the notice under section 271B was issued on 31.12.2019 i.e. after the date of filing the Audit Report and thus there was no ambiguity that the penalty was levied for a delay in the filing of the Audit Report. On the issue of the reasonable cause, the Id. CIT(A)

held that the search was conducted on 1.02.2018 while the specified date for the filing of the Audit Report for the year under consideration was 31.10.2018. Thus, there was sufficient time available to the assessee to have obtained copies of the said seized register, to finalize the Audit Report and as regards the medical condition of Sh. Amit Mishra, the Accountant, no evidence had been furnished to substantiate the claims. Therefore, the Id. CIT(A) held that the levy of the penalty was justified and she accordingly dismissed the appeal of the assessee.

5. The assessee is aggrieved with this dismissal of its appeal and has accordingly come in appeal before us. Sh. Shubham Rastogi, C.A. (hereinafter referred to as the Id. AR) appeared before us and argued the case. Once again, the arguments that were furnished before the Id. CIT(A) with regard to the ambiguity in the notice were raised before us and it was argued that in view of various orders of the Courts which were contained in the written submission filed by the assessee, the penalty was not sustainable in respect of a notice in which the charges were not made clear. With regard to the merits of the case, it was submitted that the Tax Audit Report for the assessment year 2018-19 could not be completed in time as in the case of the assessee company, the search action was done by the Department on 1.02.2018 and various documents were seized. After obtaining the documents from the Department but owing to voluminous data in the seized documents, comprising of 30 LPs having more than a thousand pages and 32 site registers running into thousands of pages of various sites and also including various digital data on the four hard disks that had been seized, it was difficult for the assessee to compile all the loose papers and registers in order to compute the surrendered income of the assessee. Further, one of the employees of the company Sh. Amit Mishra, who use to maintain these Day Books got injured (fracture in hand) and could not attend office from several months. He also suffered a brain stroke and copies of his medical certificates were attached. It was further submitted that in the said seized Day Books / registers and loose papers, wherein day to day

expenses of sites had been recorded, there were various expenditures that were liable to be disallowed on account of violation of section 40A(3), 40(a)(i), 269SS and therefore, it was difficult to merge the data of all the sites in order to arrive at the final position, as a result of the search action, in due course of time. It was submitted that the delay was unintentional and beyond the control of the assessee and therefore the delay in filing Tax Audit Report was required to be condoned. It was submitted that this Tax Audit Report was before the Id. AO during the course of assessment proceedings and therefore, the default was a mere technical default as it was not a case where there was any handicap to the Id. AO on this account. Furthermore, it was submitted that the said returns that had been filed on the basis of the Tax Audit Report had been accepted by the Id. AO, showing that the Audit exercise was a thorough and genuine exercise. It was, therefore, submitted that on both technical grounds as well as on the merits, the penalty deserves to be deleted.

6. On the other hand, Sh. Amit Kumar, Id. DR (hereinafter referred to as the Id. DR) submitted that, in fact, the assessee was in default both for not completing the audit before the specified date under section 44AB and also for the late filing of the Audit Report. Therefore, the case laws cited by him could not come to his rescue because in the instant case, there could not be any ambiguity in the mind of the assessee that he was liable to be visited with penalty on account of both defaults. It was, therefore, submitted that his reliance on case laws, which discussed the difference between concealment of income and furnishing of inaccurate particulars of income was totally misplaced in a situation where he was guilty of committing both the defaults as envisaged under section 271B i.e. failure to get the accounts audited on time and also failure to upload the Audit Report on time. On the merits of the case, the Id. DR submitted that the Id. CIT(A) had already recorded a finding that there was a gap of nearly eight months between the date of search and the due date of the filing of

the Audit Report. Therefore, the excuse that the search contributed to the delay in the filing of the Audit Report was not justified and the penalty deserved to be confirmed.

7. We have duly considered the facts and circumstances of the case. On the issue of the technical defect in the penalty notice vitiating the proceedings, we note that the assessee has itself admitted that it could not complete the audit before the specified date and that it could not furnish the said report by the due date. As such therefore, it appears that the assessee is guilty of both the defaults that are envisaged in section 271B and in such circumstances, the Id. AO could have levied the penalty against him for any of the defaults listed in the section. Since, the assessee had both failed to get his accounts audited on time and also failed to file the Audit Report on time, there could be no ambiguity in the minds of the assessee that he was required to reply to both charges, before he could escape the rigours of the penalty. Therefore, the case laws cited by the assessee, would not help his case in the given facts and circumstances of his case. Ground no. 1 of the assessee's appeal is therefore, dismissed.

8. Ground nos. 2 and 3 relate to the reasonable cause for the delay in audit and furnishing the Audit Report. Here, we observe that the assessee has placed reliance on the judgments of the Pune Bench of ITAT in the case of Dr. Murugesh Shantveerya Hiremath vs. DCIT, Central, (225) 170 taxman.com 118 (Pune-Trib) where the assessee was unable to get his accounts audited on or before the due date prescribed under section 139(1), due to the fact that his documents had been impounded during a survey and there was a lapse on the part of the Chartered Accountant, who had stopped his practice. The Hon'ble ITAT had held that it constituted a reasonable cause for the delay in finalization of the audit and the submission of the Audit Report. The assessee has also placed reliance upon the decision of the ITAT in the case of North Eastern Construction vs. ITO, Ward-1(2), Dibrugarh (supra), where the assessee's explanation that the Accountant of the assessee suddenly left office / service without properly handing over books caused the delay in completing the Audit Report, was

accepted as a reasonable cause for the delay in furnishing the Audit Report and thus no penalty could be levied. It is observed that in the instant case, a search operation was conducted upon the assessee on 1.02.2018. This would have led to large scale disruption in that, his books of accounts, various papers and also computer hard disks were seized and in the possession of the Department. As the assessee has pointed out several of these loose papers also contained expenditures which were liable to be disallowed and these had subsequently to be incorporated into the books of accounts. Therefore, it was only after the assessee had obtained copies of the seized material from the Income Tax Department, that he could have drawn up the fresh books of accounts that were required to be drawn up after accounting for the surrenders made by him and consequently it was only subsequently that these books could be audited. The ld. CIT(A) has pointed out that there was a large time gap and therefore, the delay cannot be justified. However, this fails to account for the disruption in the normal circumstances that would be caused by the search and the seizure of books, papers etc., which could only be reconciled after the assessee received copies and studied the implications thereof. Since the due date of audit is fixed taking into account the difficulties faced by a normal assessee in the regular course of things, any event that substantially interferes with the regular course of events leading up to the audit has to be taken into consideration for determining whether there was a reasonable cause for the delay in finalization of the audit or not and if such an event has the potential to contribute to the delay in finalization of audit and the furnishing of the Audit Report, then it must be held to be a reasonable cause for such delay before levying a penalty on the assessee. Since the ld. AO and the ld. CIT(A) have not taken this into account, the penalty levied by the ld. AO and sustained by the ld. CIT(A) without considering the difficulties and disruption faced by the assessee on account of the search is held to be unsustainable. Accordingly, the penalty is deleted and ground nos. 2 and 3 of the appeal are allowed. Ground no.4 relates to the fact that the said Audit Report, which form the basis of the return has been found to be accurate because the return has been

accepted and hence it cannot be held that there is contravention of the provisions of section 271B. In this regard, it is observed that the accuracy of an Audit Report is not a criterion to oust the jurisdiction of the ld. AO in levying a penalty under section 271B and therefore, this ground of appeal is dismissed. Ground no. 5 is general and nothing has been placed by the assessee in support of the same. It is, therefore, held to be not pressed and dismissed as such.

9. In the result, the appeal is held to be partly allowed.

Order pronounced on 28.08.2025 in the open Court.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

DATED:28/08/2025

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

By order
Sr. P.S.