

आयकर अपीलिय अधिकरण "जी" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

श्री डि. करुनाकर राव, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 6238/Mum/2012

(Assessment year :2008-09)

Ghevarchand Ghamandiram Jain, C/o. D H Save & Associates, 307 Churchgate Chambers, Sir Vithaldas Thakarsi Road, Mumbai -400 020 स्थयी लेखा सं.: PAN: AABPJ 6664 L	Vs	Income Tax Officer -15(2)(4), Mumbai
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri H D Save
Respondent by	:	Shri S T Bidari

सुनवाई की तारीख /Date of Hearing : 14-07-2015

घोषणा की तारीख /Date of Pronouncement : 15-10-2015

आदेश
ORDER

अमित शुक्ला, न्या. स.:

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against impugned order dated 03.07.2012 passed by CIT(A)-27, Mumbai in relation to the penalty proceedings u/s 271B for the assessment year 2008-09.

2. The assessee is aggrieved by levy of penalty of Rs. 1 lakh under section 271B for delay in filing of Audit Report u/s 44AB, which was though obtained within time on 30.09.2009, but, was filed along with the return of income on 19.12.2009. The revenue's case is that some should have been filed on 30.09.2009 along with the return u/s 139(1).

3. The brief facts are that the assessee was required to obtain and submit a Tax Audit Report u/s 44AB on or before the due date of filing of return of income, as its turnover was more than 34 crores. The assessee had filed his return of income on 19.12.2009 along with the Audit Report, though it was duly signed and obtained on 30.09.2009. In response to the show cause notice before the AO, the assessee submitted that since he was out of town and had gone to his native place, therefore the return of income could not be filed in time and hence there was delay in filing of the Audit Report, even though it was obtained in time. Moreover, Audit report was duly available before the AO during the assessment proceedings, therefore, no penalty should be levied. However, the AO levied the penalty on the ground that there was clear cut default within the meaning of statutory provisions. Again before the CIT(A), assessee pleaded for reasonable cause within section 271B on the ground that he had gone to his native place for some urgent work, therefore, return of income could not be filed in time. The Ld. CIT(A), however, rejected the assessee's contention and held that, there was no convincing delay of 2 months and 19 days in filing of Audit report and assessee has violated the provisions of section 44AB of the Income Tax Act, and accordingly, he confirmed the penalty levied.

4. Before us, the Ld. Counsel pointed out that from the assessment year 2008-09, CBDT has introduced annexure-less returns of income vide Circular 3 of 2008 dated 12.03.2008 and Circular No. 6 of 2008 dated 18.07.2008. These Board Circulars clearly mention that provision of section 139(9) has been omitted and instead provision of section 139C and section 139D have been introduced to facilitate annexure less returns. The return was to be filed through Electronic Mode and it was clarified that the Assessing Officer /I.T. Officials receiving the returns of income should be de-attached all the documents including Audit report while accepting such returns. In support of his contention, he filed

the copy of Circular No. 3 of 2008 and also Circular No. 6 of 2008. Thus, he submitted that when Audit Report itself was not to be annexed with the return of income, therefore, there is no question of levy of section 271B from assessment year 2008-09, that it was not filed along with the return of income.

5. On the other hand, Ld. DR strongly relied upon the order of the CIT(A).

6. We have heard the rival contention and also perused the relevant finding given in the impugned orders. By Finance Act, 2007 with retrospective effect from 01.06.2006, section 139C and 139D was introduced wherein, CBDT was authorized to dispensed with furnishing of documents, etc. with return of income and the Board was authorized to make rules for filing of return in electronic form. The relevant Circular of the Board explaining this provision reads as under :-

“A new section 139D has also been inserted so as to provide that the Board may make rules providing for the class or classes of persons who shall be required to furnish the return of income in electronic form; the form and the manner in which the return of income in electronic form may be furnished; the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return of income in electronic form but have to be produced before the Assessing Officer on demand; the computer resource or the electronic record to which the return of income in electronic form may be transmitted”.

Thus, when the statutory provision as well as the CBDT has laid down that no document should be attached along with the return of income, then non-filing of Audit Report along with the return of income on due date cannot be held to be mandatory

requirement. Now, Audit Report has to be produced before the AO on demand. Here in this case, the assessee has produced Audit Report before the AO during the course of the assessment proceedings, therefore there is no default of the assessee. Accordingly, assessee is not liable for penalty u/s 271B for non-furnishing of Audit Report on the due date. Thus, the penalty levied by the AO and confirmed by the CIT (A) stands deleted,

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

Order pronounced in the open court on 15th October, 2015.

Sd/-

(डि. करुणाकर राव)
लेखा सदस्य
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-

(अमित शुक्ला)
न्याईक सदस्य
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 15th October, 2015

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT(A) -26, Mumbai.
 - 4) The CIT -15, Mumbai.
 - 5) विभागीय प्रतिनिधि "जी", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "G" Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हान व.नि.स

*Chavan, Sr.PS