

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE  
BEFORE SHRI JOGINDER SINGH, J.M. AND SHRI R.C.SHARMA, A.M.  
PAN NO. : AHMPS8568A  
I.T.A.No. 617/Ind/2012  
A.Y. : 2007-08**

Navbharat Powerloom ITO,  
Cooperative Society Burhanpur  
Limited,  
Burhanpur vs

Appellant Respondent

Appellant by : Shri Pankaj Shah and Shri G.J.  
Shah, C.A.s.

Respondent by : Shri R. A. Verma, Sr. DR

Date of Hearing : 21.03.2013

Date of : 10.04.2013

pronouncement

**ORDER**

**PER R. C. SHARMA, A.M.**

This is an appeal filed by the assessee against the order of CIT(A) dated 1.11.2012, for the assessment year 2007-08, in the matter of imposition of penalty u/s 271B of the Income-tax Act, 1961.

2. Rival contentions have been heard and records perused. Facts in brief are that the assessee is a co-operative

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society, engaged in manufacture of powerloom cloth. The assessment was framed u/s 143(3) on 14.12.2009 at income of Rs. 1,39,820/- as against Rs. 23,528/- declared. During the course of assessment proceedings, the Assessing Officer noticed that due date of filing return for the assessee society was 31.10.2007, which was extended up to 02.11.2007. The turnover of the assessee exceeded Rs. 40 lakhs and therefore, the assessee was under obligation to get its account audited. Being audited case, the assessee was also required either to file its return of income within the due date i.e. 02.11.2007 or file copy of audit report before Assessing Officer. The Assessing Officer found that the assessee has not filed audit report alongwith its return which was electronically filed on 13.12.2007, accordingly, he levied penalty u/s 271B and the same was confirmed by the ld.CIT(A).

3. Against the above order of CIT(A), the assessee is in further appeal before us.

4. We have considered the rival submissions and have gone through the orders of the authorities below and also deliberated on the case laws cited by the ld. Authorized

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Representative in the context of factual matrix of the case as well as decisions cited before the lower authorities. From the record, we found that the assessee is a cooperative society. During the year under consideration, the assessee got its books of account audited on 10.10.2007, which was much before the due date of filing the return, which was 2.11.2007. Return of income was filed electronically on 14.11.2007. However, there is no dispute that audit report was obtained on 10.10.2007, which bears the date as 10.10.2007 duly signed by the Chairman of the assessee society. Even in the e-return filed, the date of tax report was mentioned as 10.10.2007. Before the lower authorities, an affidavit was also filed stating the fact that audit report was obtained from the auditor on 10.10.2007.

5. It was argued by the ld. Authorized Representative that penalty cannot be levied for reasons different from the reasons on which it was initiated and for this purpose reliance was placed on the decision of Gujarat High Court in the case of E.M. Shah & Co., 238 ITR 415. Our attention was drawn to the order of the Assessing Officer's page no.2 wherein reason

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for imposition of penalty was given to the effect that audit report was not filed alongwith the return of income, whereas the Assessing Officer has imposed the penalty by giving reason that the assessee has not filed its return of income within the due date and as such has not complied with the provisions of Section 44AB. The ld. Authorized Representative further contended that CBDT's circular no. 5/2007 dated 26.7.2007, has expressly prohibited to file the tax audit report either before or after due date, however, the Assessing Officer levied penalty u/s 271B for new reason by assuming "it is deemed that accounts have been audited by the due date."

6. We found that assessee's case is squarely covered by the decision of Mumbai Bench in the case of B.D. Leasing and Finance Limited, (2013) 49(II) ITCL 148, wherein it was held that penalty u/s 271B for non-filing of tax audit report cannot be levied in view of the CBDT Circular No.9/2006 dated 10.10.2006, which provided that in case of electronic filing of return, tax audit report need not to be filed alongwith return.

7. In view of the above discussion, we do not find any merit in the order passed by the lower authorities imposing

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penalty u/s 271B, when tax audit report was obtained on 10.10.2007 i.e. before the due date of filing return which was on 2.11.2007 and in view of CBDT circular No. 5/2007 dated 26.7.2007, the assessee was under bona fide belief that in case of 'e' filing of return, the tax audit report need not be filed alongwith return. The issue is also covered by the decision of B. D. Leasing and Finance Limited (supra), where return of income is filed electronically, the tax audit report need not be filed along with the return.

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

This order has been pronounced in the open court on 10<sup>th</sup> April, 2013.

**sd/-**  
**(JOGINDER SINGH)**  
**JUDICIAL MEMBER**

**sd/-**  
**(R. C. SHARMA)**  
**ACCOUNTANT MEMBER**

**Dated : 10<sup>th</sup> April, 2013.**

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