

Court No. - 32

1. Case :- INCOME TAX APPEAL No. - 140 of 2000

Petitioner :- The Commissioner Of Income Tax, Meerut & Another

Respondent :- M/S Shivalik Medicare (P) Ltd. Ghaziabad

Petitioner Counsel :- A.N.Mahajan,C.S.C.

Respondent Counsel :- A. Bansal,Amit Shukla,S.K.Garg

2. Case :- INCOME TAX APPEAL No. - 143 of 2000

Petitioner :- The Commissioner Of Income Tax, Meerut & Another

Respondent :- M/S Shivalik Medicare (P) Ltd.

Petitioner Counsel :- A.N.Mahajan,C.S.C.,S.Chopra

Respondent Counsel :- Amit Shukla,S.K. Garg

3. Case :- INCOME TAX APPEAL No. - 149 of 2000

Petitioner :- Commissioner Of Income Tax, Meerut & Another

Respondent :- M/S Shivalik Medicare (Pvt.) Ltd. Patel Nagar,Ghaziabad

Petitioner Counsel :- A.N.Mahajan,S.C.,C.S.C.,S. Chopra

Respondent Counsel :- Amit Shukla,S.K. Garg

Hon'ble Prakash Krishna,J.

Hon'ble Ram Surat Ram (Maurya),J.

These three appeals have been filed under section 260A of the Income Tax Act against a common judgment and order dated 17th of August, 1999 passed by the Income Tax Appellate Tribunal in Income Tax Appeal No.2558 (Del) of 1995, Income Tax Appeal No.2559 (Del) of 1995, and Income Tax Appeal No.2560 (Del) of 1995. These appeals relate to the Assessment Years 1989-90, 1991-92 and 1992-93 arising out of penalty proceedings under section 271-B of the Income-tax Act.

The assessee is a private limited company. Its accounting period has ended on 31st of March, 1989, 31st of March, 1991 and 31st of March, 1992 respectively. Indisputably, the assessee was required to file an audit report as required under section 44AB of the Income Tax Act along with its return of income. The assessee did file the audit report along with the income tax return within the statutory period of time but the audit report was unsigned and unverified. The Assessing Officer accepted the return but initiated

the penalty proceedings under section 271-B of the Act on the ground that the audit report is no audit report being unsigned and unverified. In response to the notice, the assessee filed a certificate issued by its auditor as also signed audit report. However, penalty was imposed by the Assessing Officer and the matter was carried unsuccessfully in appeal. But in second appeal before the Income Tax Appellate Tribunal the appeals filed by the assessee having been allowed, the present appeals have been preferred by the department.

In the memo of appeals the following questions of law have been raised:-

1. Whether on the facts and in the circumstances of the case, the Ld. ITAT was legally correct in holding that the A.O. could have given opportunity to the assessee to correct the error as per requirement of the proviso (BB) to sec. 139(9) of the I.T. Act, whereas assessee filed audit report with the return unsigned and unverified by the C.A. and whether A.O. can call for concerned C.A. u/s 139(9) to sign and verify the audit report?

2. Whether, on the facts and in the circumstances of the case, the Ld. ITAT was legally justified in cancelling the penalty u/s 271 B of Rs.100,000/- whereas an audit report which is not signed and verified by the Chartered Accountant cannot be considered a valid report in view of Sec. 44 AB?"

Heard Sri Shambhu Chopra, learned counsel for the appellant and Sri Ashish Bansal holding brief of Sri S.K. Garg, Advocate for the respondents.

Learned counsel for the department submits that in view of the fact that along with return, unverified and unsigned auditor's report was filed, the auditor's report was liable to be ignored and as such, the assessee's return was incomplete in the sense that it was not accompanied along with an audit report. The learned counsel for the respondents, on the other hand, refutes the above contention of the appellant.

Considered the respective submissions of learned counsel for the parties and perused the record. The facts are not much in dispute. The only defect which could be pointed out by the department is that the auditor's report was unsigned and unverified. The said defect indisputably has been removed by filing the certificate of auditor and also the signed report. In our view, it was a matter of slip of pen for filing unsigned auditor's report. It has been found as

a fact that there is no difference in between the unsigned report of the auditor and the signed report of the auditor. The filing of unsigned report of auditor was merely an irregularity which was curable and it has been cured also. In addition to above, we find that under section 139 (9), Assessing Officer has been given power to ask the assessee to remove the defect in the return of income. The Assessing Officer should have been given an opportunity to the assessee by invoking the section 139(9) of the Act intimating the defect of unsigned auditor's report to the assessee which he failed to do so. The said power has been given for certain purposes and meaning. To meet out such situations as exist in the case on hand, this power has been given on the Assessing Authority which should have been exercised in the interest of Revenue to collect the revenue.

Moreover, the present proceedings arises out of penalty proceedings and return of income having been accepted by the Assessing Officer, there was absolutely no reason for levying the penalty under section 271B of the Act.

Viewed as above, we find no merit in the appeal and hold that the Income Tax Appellate Tribunal was legally justified in cancelling the penalty under section 271B of the Act. The Assessing Officer was not correct in not asking the assessee to remove the defects by invoking section 139(9) of the Act.

In the result, all the three appeals are dismissed. But no order as to costs.

(R.S.Ram (Maurya), J.) (Prakash Krishna, J.)

Order Date :- 1.4.2013

LBY