

आयकर अपीलीय अधीकरण, न्यायपीठ – “ सी ”, कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “C”, KOLKATA

[(समक्ष) श्री एन.एस.सैनी, लेखा सदस्य, एवं श्री महावीर सिंह, न्यायीक सदस्य]
[Before Hon'ble Sri N.S.Saini AM & Hon'ble Sri Mahavir Singh, JM]

आयकर अपील संख्या /ITA No.692/Kol/2012

निर्धारण वर्ष /Assessment Year : 2006-07

(अपीलार्थी/APELLANT)	-वनाम-	(प्रत्यर्थी/RESPONDENT)
Sagar Dutta Kolkata (PAN:ADMPD 1949 E)	-versus-	D.C.I.T., Circle-54, Kolkata

अपीलार्थी की ओर से/ For the Appellant:

प्रत्यर्थी की ओर से/For the Respondent:

Shri Avra Mazumdar

Shri Dilip Kr.Rakshit,
Sr.DR

सुनवाई की तारीख/Date of Hearing : 02.05.2013

घोषणा की तारीख/Date of Pronouncement : 03.05.2013.

आदेश/ORDER

Per Shri N.S.Saini, AM

This is an appeal filed by the assessee against the order of Id. CIT(A)-XXXVI, Kolkata confirming the levy of penalty u/s 271B of the IT Act imposed by the AO.

2. The brief facts of the case are that the AO observed from the return of income filed by the assessee that the assessee's income included income from salary from Price Water House of which he was a partner. Since income by way of salary or remuneration from a firm was to be assessed under the head profit and gains from business from profession in terms of section 28(v) of the Income tax Act and the receipts from the profession of the assessee was Rs.74,16,000/- i.e. exceeding Rs.10 lakhs, the assessee was required to get his accounts audited within the specified time and furnish the audit report before the specified date under the provision of section 44AB of the Act. Since the assessee failed to do so the AO imposed levying of penalty of Rs.37,080/- by invoking the provision of section 271B of the Act.

2.1. Being aggrieved against this order of the AO the assessee filed appeal before the ld. CIT(A), who confirmed the order of the AO by following the order of the Kolkata 'A' Bench of the Tribunal in the case of Amal Ganguli vs DCIT, Kolkata for A.Yr. 2003-04 passed on 20.02.2009 in ITA NO.2135/Kol/2008.

3. The ld. AR of the assessee fairly conceded that the issue was covered against the assessee and in favour of the Revenue by the order of the Tribunal in the case of Amal Ganguli vs DCIT (supra).

4. After considering the submissions of both the parties, we find that in the instant case penalty of Rs.37,080/- was imposed u/s 271B of the Act by the AO as the assessee failed to file audit report u/s 44AB of the Act along with the return of income. It is not in dispute that the assessee received salary from M/s. Price Waterhouse which is a partnership firm and that the same was assessed to tax under the head profit and gains from business or profession. The total receipts from profession of the assessee was Rs.74,16,000/- which was exceeding Rs.10 lakhs and therefore in view of the provision of section 44AB the assessee was required to get his audit report u/s 44AB of the Act and file the same along with the return of income within the due date prescribed u/s 139(1) of the Act. The assessee failed to do so. Therefore, the assessee was liable to levying of penalty u/s 271B of the Act @0.5% on total professional receipts of the assessee. We find that in the similar facts and circumstances of the case the Kolkata 'A' Bench of the Tribunal in the case of Amal Ganguli vs DCIT (supra) has confirmed the levy of penalty by observing as under :-

"6. We have carefully considered the submissions of the ld. Representatives of the parties and the orders of the authorities below. We have also considered the provisions of section 44AB of the Act. There is no dispute to the fact that the assessee is a Chartered Accountant and is engaged in the profession. However, the assessee is a partner in the firm "Price Waterhouse" which is a firm of Chartered Accountants. We are of the considered view that the assessee is carrying on the profession of Chartered Accountant though not individual but as a partner. The assessee has received income by way of salary, allowance, commission and interest on capital from the firm. During the course of hearing, the ld. A.R. in reply to a query from the Bench admitted that the assessee is holding a certificate of practice to carry on the profession. Therefore, the assessee has received the above amount from the firm as a partner and he is a partner only because he is engaged in the business of Chartered Accountants and is eligible to carry on the profession of Chartered Accountant. Thus we are of the considered view

that the assessee has received the said amount as a professional fee as a partner from the firm. There is no dispute to the fact that the amount received by the assessee by way of salary, allowance, commission, interest from the firm is assessable under section 28(v) of the Act under the head "profits and gains of business or profession". Since the receipt of the assessee is more than Rs.10 lakhs, in the previous year relevant to the assessment year under consideration, we are of the considered view that the assessee is required to get his accounts audited as per section 44AB of the Act and to enclose a copy of the said report in the prescribed form before the specified date. The assessee has admittedly not got his accounts audited under section 44AB of the Act. Therefore, we hold that the ld. CIT(A) has rightly confirmed the action of the AO to impose penalty under section 271B of the Act of Rs.58,719/-. Hence, we uphold the order of the ld. CIT(A) and reject the grounds of appeal taken by the assessee."

4.1. We therefore do not find any good and justifiable reasons to interfere with the order of the ld. CIT(A). It is confirmed and the grounds of appeal of the assessee are dismissed.

5 . In the result the appeal of the assessee is dismissed.

Order pronounced in the court on 03.05.2013.

Sd/-

[श्री.महावीर सिंह, न्यायीक सदस्य]

[Mahavir Singh]

Judicial Member

Sd/-

[श्री एन.एस.सैनी, लेखा सदस्य]

[N.S.Saini]

Accountant Member

(तारीख) Date: 03.05.2013.

R.G.(P.S.)

आदेश की प्रतिलिपि अग्रेषित:-

Copy of the order forwarded to:

1. Sagar Dutta, C/o Price Waterhouse, Plot-Y/14, Block-EP, Sector-v, Salt Lake City, Kolkata-700091.
2. D.C.I.T., Circle-54, Kolkata.
3. CIT Kolkata
4. CIT(A)-XXXVI, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,

Deputy /Asst. Registrar, ITAT, Kolkata Benches

