

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.610/PUN/2022
निर्धारण वर्ष / Assessment Year : 2016-17

Sebastian Joseph, Prestige Plaza, Akurdi, Mumbai Pune Road, Akurdi- 411035. PAN : AYZPS6205Q	Vs.	ACIT, Circle-9, Pune.
Appellant		Respondent

Assessee by : None
Revenue by : Shri M. G. Jasnani
Date of hearing : 23.01.2023
Date of pronouncement : 03.02.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-11, Pune [the 'CIT(A)'] dated 30.05.2022 for the assessment year 2016-17.

2. The appellant raised the following grounds of appeal :-

"1. The learned Assessing officer Circle 9 Akurdi Pune (hereinafter called 'AO') erred in law and facts in levying and the learned CIT(A)-11 Pune (hereinafter called CIT(A)) erred in law and facts in sustaining the penalty u/s 27IB of ITA 1961 amounting to Rs. 1,50,000 for the delay in furnishing a report of such audit as required under section 44AB of the Income Tax Act, 1961.

While arriving at the above-mentioned conclusion, the lower authorities ignored

- *There was no reasonable opportunity provided to the assessee.*
- *the explanation and evidence brought on record by the assessee.*

- *the fact there was a bonafide reasonable cause for not filing the Tax Audit Report of Audited Statements within prescribed time limits as per section 44AB of ITA 1961.*
 - *that the assessee was prevented by reasonable cause to comply with the notice(s) so issued.*
 - *Returned Income had been accepted while completing the tax assessment U/s 143(3).*
2. *The appellant craves leave to add, alter, amend and delete all or any of the grounds of the appeal.”*

3. Briefly, the facts of the case are as under :-

The appellant is an individual engaged in the business of gold ornaments and jewellery carrying on business in the name and style of Kerala Fashion Jewellers. The survey operations were conducted on the business premises of the appellant u/s 133A of the Income Tax Act, 1961 ('the Act') on 06.02.2018. During the course of survey operations, the appellant had filed return of income, which was not filed within the due date specified u/s 139(1) of the Act. Accordingly, the appellant had filed the return of income on 30.03.2018 showing taxable income of Rs.32,15,380/-. Against the said return of income, the assessment was completed on 14.12.2018 accepting the returned income. The appellant filed a tax audit report as required under the provisions of section 44AB on 30.03.2018 along with the return of income. The Assessing Officer was of the opinion that the said tax audit report was required to be filled on or before 30.09.2016, but the appellant had filed tax audit report only on 30.03.2018. Accordingly, the appellant was called upon to show

cause as to why the penalty cannot be imposed vide show cause notice dated 14.12.2018. In response to the show-cause notice, no explanation was filed by the appellant. Accordingly, penalty of Rs.1,50,000/- u/s 271B was levied by the Assessing Officer vide order dated 28.06.2019.

4. Being aggrieved by the penalty order, an appeal was filed before the ld. CIT(A) contending that Assessing Officer had not granted reasonable opportunity to represent the matter before him. Further, it was submitted that the delay in submission of the tax audit report was on account of the fact that the appellant was under bona-fide believe that the tax audit report is required to be filed along with the return of income only and/or the return of income could not be filed, as the appellant had no liquidity to pay self-assessment tax. However, the ld. CIT(A) rejecting the above contentions of the appellant, confirmed the levy of penalty u/s 271B of the Act.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. When the appeal was called on, none appeared on behalf of the appellant-assessee despite due service of the notice of hearing.

7. On the other hand, ld. Sr. DR supported the orders of the authorities below levying penalty u/s 271B of the Act.

8. We heard the Id. Sr. DR and perused the material on record. The issue in the present appeal relates to the exigibility of penalty u/s 271B for failure of the assessee to get accounts audited in respect of the previous year relevant to the assessment year under consideration as required u/s 44AB and furnished to the Assessing Officer before specified due date i.e. due date for filing the return of income. It is pertinent to note that w.e.f. 01.07.1995, it obligatory on behalf of the assessee that tax audit report has to be got completed by specified date, as specified in clause (ii) of section 139(1) and tax audit report has to be furnished by such specified date. However, admittedly, in the present case, it is the case of the appellant that the tax audit report as required to be filed along with return of income though the tax audit report was obtained before the specified date. The submission of the assessee that the audit report was obtained before the specified date remains uncontroverted. The very object behind enactment of the provisions of section 44AB is only to enable the Assessing Officer to determine the correct taxable income in accordance with the provisions of the Act. The fact that the returned income was accepted by the Assessing Officer goes to show that no prejudice was caused to the Assessing Officer on account of delay in submission of tax audit report. The delay in submission of the tax audit report is mere only technical breach of

law, which, in our considered opinion, does not warrant levy of penalty u/s 271B of the Act. In the circumstances, we direct the Assessing Officer to delete the penalty of Rs.1,50,000/- levied u/s 271B of the Act.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 03rd day of February, 2023.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 03rd February, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The Pr. CIT (Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.