

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री अरूण खोडपिया, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri Arun Khodpia, Accountant Member

आयकर अपील सं./I.T.A. Nos.49, 50, 51 & 52/Chny/2023
निर्धारण वर्ष/Assessment Years: 2013-14, 2014-15, 2015-16 & 2016-17

Vellakovil Primary Agricultural
Cooperative Bank Limited,
Muthur Road, Vellakovil, Tirupur,
Tamil Nadu 638 111.

Vs. The Income Tax Officer,
Ward 1(4), Tirupur.

[PAN:AAATV8760C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Ms. A. Vijayalakshmi, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 21.06.2023
घोषणा की तारीख /Date of Pronouncement : 23.06.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

These four appeals filed by the assessee are directed against separate but identical orders of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 23.11.2022 relevant to the assessment years 2013-14, 2014-15, 2015-16 and 2016-17 passed under section 271B of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that as per the information available,

the assessee had made cash deposits into its bank account during the assessment year 2013-14 and the assessee has not filed the return of income. The case was reopened and notice under section 148 of the Act was issued and served on 27.03.2021 for AY 2013-14, 2014-15, 2015-16 and 2016-17. In compliance to the notice under section 148 of the Act, the assessee was required to file his ITR within 30 days from receipt of the said notice. However, the assessee filed its returns of income on 23.09.2021, 17.08.2021 and 22.09.2021 for AY 2013-14, 2014-15 & 2015-16 and 2016-17 respectively which are beyond 30 days from receipt of the said notice. After following due procedures, the assessment was completed under section 143(3) r.w.s. 147 r.w.s. 144B of the Act dated 24.03.2022 for AY 2013-14, 2014-15 & 2015-16 and dated 28.03.2022 for AY 2016-17 respectively by assessing the income of the assessee at ₹.NIL.

3. Subsequently, penalty proceedings have been initiated under section 271B of the Act for delayed filing of audit report under section 44AB of the Act. Since the turnover of the assessee for the assessment years 2013-14, 2014-15, 2015-16 & 2016-17 were ₹.2,79,71,854/-, ₹.3,06,02,197/-, ₹.2,79,08,712/- and ₹.2,74,40,477/- respectively, the assessee was required to get their accounts audited

and liable to file the tax audit report as required under section 44AB of the Act before the due date prescribed under section 139(1) of the Act. As the assessee has not filed the tax audit report within due date, the Assessing Officer initiated penalty proceedings under section 271B of the Act levied penalty of ₹.1,39,859/-, ₹.1,50,000/-, ₹.1,39,543/- and ₹.1,37,202/- for the assessment years 2013-14, 2014-15, 2015-16 & 2016-17 respectively under section 271B of the Act. On appeal, the Id. CIT(A) confirmed the penalty levied under section 271B of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal for all assessment year under consideration. The Id. Counsel for the assessee has submitted that the case of the assessee was reopened and notice under section 148 of the Act was issued on 27.03.2021 for AY 2013-14, 2014-15, 2015-16 and 2016-17 and due to Covid pandemic lock down and income tax portal was under maintenance, the assessee was unable to file the return of income along with tax audit report under section 44AB of the Act within the due date as mentioned in the notice under section 148 of the Act. It was further submission that the audit report under section 44AB of the Act were furnished during the course of assessment proceedings, which was also considered by the Assessing Officer before concluding the assessment

and thus, prayed for deleting the penalty levied under section 271B of the Act for all the assessment years under appeal.

5. On the other hand, the Id. DR supported the orders of authorities below.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the penalty order, the Assessing Officer had noted that the turnover of the assessee for the assessment years 2013-14, 2014-15, 2015-16 & 2016-17 were ₹.2,79,71,854/-, ₹.3,06,02,197/-, ₹.2,79,08,712/- and ₹.2,74,40,477/- respectively, the assessee was required to get their accounts audited and liable to file the tax audit report as required under section 44AB of the Act before the due date prescribed under section 139(1) of the Act. Since the assessee has not filed the tax audit report under section 44AB of the Act before the due date, the Assessing Officer levied penalty under section 271B of the Act, which was confirmed by the Id. CIT(A). Before us, it was submitted that the assessee was unable to file the ROI along with tax audit report within the date stipulated in the notice under section 148 of the Act due to Covid pandemic lock down and income tax portal was under maintenance, and the assessee has filed the tax audit report under section 44AB of the Act during the course of assessment

proceedings, which was also considered by the Assessing Officer before concluding the assessment. Thus, we are of the considered opinion that when the Tax Audit Report was made available to the Assessing Officer before completion of assessment proceedings, then for venial technical breach without any mala fide intention of the assessee, the penalty cannot be levied under section 271B of the Act.

6.1 Similar issue on an identical fact was subject matter in appeal before this Tribunal in the case of Balaji Logistics v. ACIT in I.T.A. No. 2248/Chny/2019 dated 07.09.2022 for the assessment year 2015-16, wherein, the Tribunal has observed as under:

“6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is an admitted fact that although the assessee has filed Tax Audit Report in Form 3CB as required u/s.44AB of the Act, beyond due date specified u/s.139(1) of the Act, but such Tax Audit Report was made available to the AO before completion of assessment proceedings u/s.143(3) of the Act, on 22.11.2017. It is evident from the fact that the assessee has obtained Tax Audit Report from an Accountant on 28.03.2016 and furnished before the AO during the course of assessment proceedings. Therefore, we are of the considered view that when the Tax Audit Report was made available to the AO before completion of assessment proceedings, then for venial technical breach without any mala fide intention, penalty cannot be levied u/s.271B of the Act. Further, a similar issue has been considered by the co-ordinate Bench of the Tribunal in the case of M/s. T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), where on identical set of facts, penalty levied u/s.271B of the Act, has been deleted. The relevant findings of the Tribunal are as under:

“...7. We have heard both the parties and perused the materials available on record and gone through the orders of the authorities below. The assessee supposed to have been filed audit report as required u/s.44AB of the Act, on or before 31.10.2015. However, such audit report has been filed on 05.03.2016, which is before the date of completion of assessment proceedings u/s.143(3) of the Act. In other

words, although the assessee has filed tax audit report beyond the stipulated period, but such tax audit report was made available to the AO before he completes assessment proceedings. The assessee has given reasons for delay in filing tax audit report. As per which, the audit of accounts of society done by the Dept. of Cooperative Audit, could not be completed on or before 31.10.2015 and said delay was not in the hands of the assessee. Therefore, there is a reasonable cause for not filing the tax audit report within prescribed time limit and thus, penalty cannot be levied. We find merits in the submission of the assessee for the simple reason that non-filing of audit report within the due date is a venial technical breach without any mala fide intention on the part of the assessee. Because, completion of audit of books of accounts of the society is under the control of Dept. of Cooperative Audit and thus, unless the Dept. of Cooperative Audit completes audit, the assessee cannot file return of income along with tax audit report. Therefore, we are of the considered view that reasons given by the assessee for not filing tax audit report prescribed u/s.44AB of the Act, is neither intention nor any mala fide intention, but it is venial technical breach and for this reason, penalty u/s.271B of the Act, cannot be levied. This principle is supported by the decision of the Hon'ble jurisdictional High Court in the case of P.Senthil Kumar v. PCIT reported in 416 ITR 336, where an identical issue had been considered by the Court and held that for venial technical breach without any mala fide intention, penalty cannot be levied. The ITAT Cochin Bench in ITA No.411/Cochin/2018 vide order dated 05.02.2019 had held that once audit report has been made available before the AO, when the assessment proceedings were completed, then, there is no reason for levy of penalty.

8. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that reasons given by the assessee for not filing tax audit report within due date comes under reasonable cause as provided u/s.271B of the Act, and thus, the AO is erred in levying penalty u/s.271B of the Act. Hence, we direct the AO to delete penalty levied u/s.271B of Act."

7. In this view of the matter and by following the decision of the coordinate Bench of the Tribunal in the case of M/s.T P D 101 Uthangarai Milk Producers Co-operative Society Ltd.(supra), we direct the AO to delete penalty levied u/s.271B of the Act.

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

6.2 Respectfully following the above decision of the Coordinate Benches of the Tribunal in the case of Balaji Logistics v. ACIT (supra) for

the assessment year 2015-16, we are of the considered opinion that it is not a fit case for levy of penalty under section 271B of the Act and accordingly, the penalty levied under section 271B of the Act stands deleted for the assessment years 2013-14, 2014-15, 2015-16 and 2016-17.

7. In the result, all the appeals filed by the assessee are allowed.

Order pronounced on 23rd June, 2023 at Chennai.

Sd/-
(ARUN KHODPIA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 23.06.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.