

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' A' BENCH : CHENNAI

**श्री चंद्र पूजारी, लेखा सदस्य एवं श्री
जी. पवन कुमार न्यायिक सदस्य के समक्ष**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G.PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.1916/Mds./2016

निर्धारण वर्ष /Assessment year :2013-14

Smt.R.Kalavathy,
M/s.Ramesh & Ramachandran,
Chartered Accountants,
New No.39, Old No.29/3,
Viswanathapuram Main Road,
Kodambakkam,
Chennai 600 024.

[PAN AEOPK 8652 G]

(अपीलार्थी/Appellant)

Vs. Income Tax Officer,
Non-Corporate Ward 5(1),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.Y.Sridhar,C.A
प्रत्यर्थी की ओर से /Respondent by : Mr.Shiva Srinivas, JCIT D.R

सुनवाई की तारीख/Date of Hearing : 07-09-2016
घोषणा की तारीख /Date of Pronouncement : 21-09-2016

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-5,Chennai dated 13.04.2016 pertaining to assessment year 2013-14.

2. The main grievance of the assessee in this appeal is that Ld.CIT(A) erred in confirming the levy of penalty u/s.271B of the Act at ₹1,50,000/-.

3. The facts of the case are that the assessee had filed her return of income admitting an income of ₹9,18,181/- and in Profit and Loss Account, assessee admitted a turnover of ₹2,64,69,127/-, which required the assessee to comply with the provisions 44AB of the Act.

3.1. As per the guidelines/instruction F.No.225/117/2013 ITA.II Dated 26.9.2013 which is reproduced as follows CBDT in exercise of power under sec 119(2)(a) of the I.T. Act, 1961 read with Sec 139 and Rule 12, has decided to relax the requirement of furnishing the Report of Audit electronically as prescribed under the proviso to sub-rule (2) of Rule 12 of the IT rules for the Assessment Year 2013—14 as under:-

(c) The assessees, who are presently finding it difficult to upload the prescribed Report of Audit (as referred to above) in the system electronically may also furnish the same manually before the jurisdictional Assessing Officer within the prescribed due date.

(d) The said Report of Audit should however be furnished electronically on or before 31.10.2013.

Further vide circular/instruction/direction issued by CBDT in No. F.No.225/117//2013/ITA1I Dated-24,10.2013 the CBDT had instructed vide order under Section 119 of the Income Tax Act, 1961, in exercise of powers conferred under section 119 of the Income-tax Act, 1961, the Central Board Direct Taxes, in continuation to order u/s 119 dated 26.09.2013 F.No.225/117/2013/ITA.11, hereby directs that in cases where the 'due

date' of furnishing reports of audit and corresponding income-tax return was 30th September, 2013 such reports of audit and returns of income shall be deemed to have been furnished within the 'due date' prescribed under section 139 of the Income Tax Act 1961.

It is seen from the material available on records that the assessee had not furnished or filed the audit Report prescribed u/s 44AB of the ITAct 1961 before the Assessing Officer as per the guideline mentioned above. Hence Penalty u/s 271B was Initiated by issue of Notice u/s 2718 dated 28/8/2014 which was duly served on the assessee.

The case was posted for hearing and the assessee replied through letter dated 9.9,2014 & 27/12/2014 wherein she had stated which is reproduced as under:

"I could not file the 3CB 3CD electronically due to technical difficulty, i.e., I could not add the name of the Chartered Accountant. I have submitted the Audit Report in form 3CB,3CD (Manual Print) along with P&L A/c., Balance Sheet, proof for Income Tax submission vide acknowledgement No. 82481865125013 dated 25/10/2013, with ITO ward XI(1) on 28/10/2013."

The submissions filed by the assessee are perused and it is seen that the assessee herself stated and also seen from the copy of the 3CD Report which was audited and signed on 25/10/2013. It is very clear that the assessee's accounts are not audited well within the due date specified in the Act and therefore the assessee not complied with the provisions of section 44A8 of the I.T. Act 1961. There is no denial of the fact that the assessee has not only obtained the audit report well beyond the 'specified date" but

has also filed the return of income only on 25/10/2013. Moreover, on receipt of the penalty notice the assessee filed the audit report electronically only on 17/10/2014. Thus it is very clear that the assessee neither audited the accounts within the due date nor filed the Return of Income and also the assessee had not filed the audit report electronically in time allowed by the Board, From the facts it is clear that assessee had violated the provision of section 44AB and is liable to be proceed under section 271B of the Act 1961. Hence, the AO imposed the penalty u/s.271B of the Act on the assessee @ 0.5% of the turnover of ₹2,64,69,127/-, the minimum works out to ₹1,32,346/-. Against this, the assessee carried the appeal before Ld.CIT(A). On appeal, the Ld.CIT(A) confirmed the levy of penalty u/s.271B of the Act. Aggrieved, the assessee is in appeal before us.

4. At the time of hearing, Id.A.R primarily objected that the penalty order was not signed by the ITO, Non-corporate Ward-5(1),Chennai, who has passed the order.

5. We have heard both the parties and carefully gone through the penalty order dated 11.02.2015 issued by ITO, Chennai. Admitted in this, the order was not signed by ITO. In the absence of signed order of penalty, we have to hold that the penalty order is invalid. We are also of the view that provisions of the section 292B cannot come to rescue of the Revenue. In our opinion, no return of income, assessment, notice, summons or other proceedings furnished or made or issued or taken in pursuance of any of the provisions of the Act

shall be invalid or shall be deemed to be invalid. Merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceedings if such return of income, assessment, notice, summons or other proceedings is in substance and effect in conformity with or according to the intent and purpose of this Act. Provisions of the section 271B of the Act contemplates that AO shall pass an order of penalty in writing. Requirement of signature of AO is therefore legal requirement. The omission to sign the penalty order cannot be explained by relying on the provisions of the section 292B of the Act. But, the notice of demand signed by the office of AO without the existence of a duly signed order of penalty by the AO, in our view, cannot said to be an omission, which was ought to be covered by the provisions of the section 292B of the Act. If such a course is permitted to be followed than that it would amount to delegation of powers conferred on the AO by the Act. Delegation of powers of the AO u/s.143(3) of the Act is not the intent and purpose of the Act. The unsigned order of penalty cannot said to be in substance and effect in conformity with or according to the intent and purpose of the Act. Since the penalty order is not signed by the assessing authority, in our opinion, is bad in law, cannot stand on its leg. Accordingly, placing reliance on the judgement of Supreme Court in the case of Kalyankumar Ray Vs. CIT reported in [1991] 191 ITR

634 (SC), we are inclined to hold that the penalty order is invalid and bad in law. Since we have quashed the penalty order itself, we are refrained from going to other grounds of appeal raised by the assessee.

6. In the result, the appeal of the assessee is allowed.

Order pronounced on 21st September, 2016, at Chennai.

Sd/-

(जी. पवन कुमार)

(G.PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 21st September, 2016

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |