

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No.1206/Hyd/2019		
Assessment Year: 2016-17		
Sri K. Borra Reddy, D.No.2-141, Opp. Gram Panchayat Office, Chityala Village & Mandal, Nalgonda District, Telangana. PAN: AONPK 0636 H	Vs.	Income Tax Officer, Ward-1, Nalgonda.
(Appellant)		(Respondent)
Assessee by:	Sri A.V. Raghuram	
Revenue by:	Smt. K.J. Divya, DR	
Date of hearing:	27/11/2019	
Date of pronouncement:	04/12/2019	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-3, Hyderabad in appeal No. 10031/ITO-1/Nalgonda/CIT(A)-3/2018-19, dated 17/05/2019 passed U/s. 271B r.w.s 250(6) of the Act for the A.Y. 2016-17.

2. The assessee has raised four grounds in his appeal however, the crux of the issue is that the Ld. CIT(A) erred in sustaining the penalty

of Rs. 1,50,000/- levied by the Ld. A.O. invoking section 271B of the Act.

3. Brief facts of the case are that the assessee is an individual engaged in trading of fertilizers. Pursuant to survey proceedings U/s. 133A of the Act, the assessee filed his return of income for the A.Y. 2016-17 on 28/03/2017 declaring total income of Rs. 13,80,270/-. During the scrutiny proceedings, it was observed by the Ld. A.O. that the assessee has not filed the Audit Report of the assessee's firm in Form No.s 3CB and 3CD within the specified time limit ie., on or before 17/10/2016. Since there was delay in filing the Audit Report and in the absence of justifiable cogent reasons for delay, the Ld. A.O. levied penalty of Rs. 1,50,000/-invoking provisions of section 271B of the Act. Aggrieved, assessee filed an appeal before the Ld. CIT(A). On appeal, none appeared before the Ld. CIT(A) to represent the assessee's case. Therefore, the Ld. CIT(A) passed ex-parte order based on the materials available on record and sustained the penalty levied by the Ld. A.O. Aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us.

4. At the outset, Ld. AR submitted that the assessee had suffered from neurological problem since November, 2014 and therefore, he was compelled to take assistance of his Manager and accountant to look after his business activities. However, they had failed to timely coordinate with the Auditor's office and therefore, the Audit could not

be completed within the stipulated time and thus there was delay in filing the Audit Report. Further, Ld. AR submitted that subsequently the assessee filed the return of income and Audit Report U/s. 44AB of the Act for the relevant AY on 28/03/2017. However, without considering the explanation of the assessee the Ld. AO as well as the Ld. CIT(A) confirmed / sustained the penalty. The ld. AR further pleaded before us that non-filing of the Audit Report within the stipulated time was beyond his control and moreover, he has filed the same before the assessment proceeding hence a lenient view may be taken and grant relief to the assessee. Th,e Ld. DR vehemently relied on the orders of the Ld. Revenue Authorities and pleaded for confirming their orders.

5. We have heard the rival submissions and carefully perused the materials on record. On perusing the facts of the case, we find that the assessee has a reasonable cause for delay in filing the Audit Report. Moreover, he had filed the Audit Report before the assessment proceedings. Therefore, we are of the considered opinion that penal action U/s. 271B need not be initiated in the case of the assessee. Hence, taking strength from section 273B of the Act, we hereby delete the penalty levied on the assessee for Rs. 1,50,000/- invoking the provisions of section 271B of the Act. It is ordered accordingly.

6. In the result, assessee's appeal is allowed.

Pronounced in the open Court on 04th December, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 04th December, 2019

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Copy to:-

- 1) Sri K. Borra Reddy, Flat No.610, Babu Khan Estate, Basheerbagh, Hyderabad - 500 001.
- 2) Income Tax Officer, Ward-1, Nalgonda, Aayakar Bhavan, Near Rail Under Bridge, Nalgonda - 508 001.
- 3) The CIT(A)-3, Hyderabad
- 4) The Pr. CIT-3, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File