

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'SMC'
JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 423/JPR/2022
निर्धारण वर्ष/Assessment Year :2017-18

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|---|-------------|-------------------------------|
| Manju Saran B-2,Sukhija Vihar, Opp. Mansarovar, Jaipur. | बनाम Vs. | ITO, Ward-7(1), Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAZPS 5546 E | | |
| अपीलार्थी/ Appellant | | प्रत्यर्थी/ Respondent |

निर्धारिती की ओर से/ Assessee by : Shri R.S. Poonia (CA) &
Shri Rajat Chaudhary (Adv.)
राजस्व की ओर से/ Revenue by : Ms Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 15/02/2023
उदघोषणा की तारीख/Date of Pronouncement: 20/02/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as to "NFAC"/ CIT(A)] for the assessment year 2017-18 dated 10.10.2022, which in turn arises from the order passed by

the National Faceless Assessment Centre (NFAC) Delhi passed under Section 271B of the Income tax Act, 1961 (in short 'the Act') dated 28.12.2021.

2. The assessee has marched this appeal on following grounds of appeal;

“1. That under the facts and in the circumstances of the case the Ld. CIT(Appeals), has erred in law and facts in confirming the penalty amounting to Rs. 1,50,000/- under Section 271B of the I.T. Act, 1961 which is wrong, unwarranted and bad in law. Kindly delete the same.

2. That the appellant craves permission to add to or amend or any of the above grounds of appeal or to withdraw any of them.”

3. The facts as culled out from the records is that the assessee e-filed her return of income on 09.02.2018 declaring total income at Rs. 3,21,510/-. The case was selected for scrutiny assessment which was completed vide assessment order u/s 143(3) of the Income-tax Act, 1961 dated 19.12.2019 at total income of Rs. 3,21,510/-. The AO initiated the penalty u/s 271B of the Act for failure to file audit report on due date. Penalty notice u/s 274 r.w.s. 271B of the act dated 19.12.2019 was issued.

3.1 During the course of penalty proceedings, show cause notices were issued to the assessee. The assessee on 13.08.2021 uploaded the reply. It was stated that accounts were maintained in the tally software and on the eleventh hour of due date, the entire data got corrupted so it took time to recover the data & get finalized the account again. Further, it was stated that they always filed the audit report within time and that no adverse finding was noticed by the AO during assessment proceedings. Vide notice dated 02.11.2021, the assessee was requested to submit documentary evidences in this respect of assessee's submission uploaded on 13.08.2021. In response to the same, the assessee on 08.11.2021, uploaded an affidavit affirming submission uploaded on 13.08.2021. The reply of the assessee has been examined with respect to the facts of the case. however, the same is not acceptable. After the closing of the F.Y on 31.03.2017, the assessee gets seven months to audit the accounts and file the return of income. Any further delay is not tenable. Further, the assessee failed to furnish documentary evidences including third party evidence in respect of its claim that accounts got corrupted at the last time, therefore, assessee's cause is not accepted. At the

same time, the assessee should not have waited till the last time to get the accounts audited. As said earlier that after the closing of the FY on 31.03.2017, the assessee gets seven months to audit the accounts and file the return of income, therefore, any further delay is not tenable. The assessee failed to furnish the audit report within due date and the same was uploaded on 07.02 2018. After examining assessee's reply, no reasonable cause was found for such delay. Therefore, it is held that penalty u/s 2718 is leviable in this case at one half percent of total turnover, i.e. Rs.1,77,037/- or Rs. 1,50,000/- whichever is less. Considering the facts of the case, penalty of Rs. 1,50,000/- is hereby levied u/s 271B of the Act. 4. Therefore, a penalty of Rs. 1,50,000/- is hereby imposed on the assessee us 271B of the Act.

4. On receipt of an order levying penalty u/s 271B of the Act dated 28.12.2021 imposing penalty of Rs. 1,50,000/- the assessee preferred an appeal before the Id. CIT(A)/NFAC. The relevant findings as emerges from the order of the NFAC on the related grounds raised by the assessee is reiterated here in below:

“4.4 The submissions of the appellant which are at para 3 supra, state that due to unknown reasons/technical glitch, the entire data was

corrupted at the eleventh hour of due date of finalizing the audit & accounts. However, neither before the Assessing Officer, nor during first appeal proceedings did the appellant furnish any evidence/corroborating material like bill of computer technicians etc. in support of its claim that there was some technical glitch in the software.

4.5 The Assessing Officer has recorded that during penalty proceedings even though the appellant had seven months from the end of the financial year from 31st March, 2017 to get its accounts audited, in reply to show cause notice the assessee stated that on the eleventh hour of due date, the entire data of its accounts got corrupted so it took time to recover the data & get finalized the account again. However, no proof in support of its claim was furnished to AO.

4.6 The return of income was filed on 09/02/2018 and Form 3CB was uploaded on the income tax portal on 06/02/2018, whereas the due date to furnish audit report u/s 44AB was 31/10/2017. Hence, it is clear that there was no reasonable cause for the delay by appellant in getting accounts audited u/s 44AB and uploading the same on the ITBA portal. The facts of the cases relied upon by appellant can be distinguished from the facts of this case. In view of the above discussion this ground of appeal is dismissed.

5. As the assessee did not find any favor from an appeal filed before the Commissioner of Income Tax, appeals the assessee has filed an appeal before this tribunal on the grounds as raised here in above. To support the grounds so raised by the assessee the Id. AR appearing on behalf of the assessee submitted a paper book containing the audit report, affidavit of the assessee,

assessment order and the fact that in earlier year the audit reports were submitted in time. The Id. AR of the assessee also submitted that the audit report was filed suo moto before pointing out by revenue. The Id. AR of the assessee submitted that even the return of income is accepted in the scrutiny assessment without any adjustments to the returned income. All these voluntary acts prove the bona fide of the assessee. The assessee has filed a detailed affidavit in support of the delay in submission of the audit report reiterating the same contentions that due to crash in to the computer the audit report could not filed in time.

6. Per contra, the Id. Sr. DR has relied upon the orders of the Id. CIT(A) and finding of the assessing officer in the penalty order passed by the assessing officer. The Id. Sr. DR also submitted that how at the last moment the computer data crash and the assessee has not placed any independent evidence to support the contention so raised in the absence of the evidence the reasonable cause has not been established and therefore, she relied upon the orders of the lower authorities.

7. We have heard the rival contentions, perused the material on record. There is no dispute that the assessee has submitted that audit report without issue of any notice but the audit report was filed delayed and after the due date of furnishing the date expired. The lower authorities did not find the explanation of the assessee that since the data crashed on the compute, they could get their books of accounted and there by they have based on the information rewrite the books and this has taken them three months' time. As the assessee's business turnover in the year under consideration is Rs. 3,54,07,472/-, assessee suppose to get their books of account audited and has to furnish a report of a Chartered Accountant by 31.10.2017. As explained by the assessee in her affidavit that the computer data crashed and therefore, the accounts rewritten and the audit report ultimately submitted on 07.02.2018. This fact is submitted by the assessee in a sworn affidavit. The revenue did not controvert this fact and also the fact that the assessee has voluntarily filed delayed audit report and subsequent scrutiny assessment was also completed without finding any fault. This shows that the assessee is compliant. The Id. AR of the assessee also submitted that in past

also no such default is observed by the revenue and the assessee has voluntarily filed delayed report and revenue has nothing to loose as the assessee has filed the report and return by paying tax due thereon and the revenue has assessed their income accepting the returned income. Now coming to the provision of levy of penalty u/s. 271B. The provision of that sections is reiterated here under:

Section 271B.

If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or [furnish a report of such audit as required under section 44AB], [Assessing] Officer **may direct** that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of [one hundred fifty thousand rupees], whichever is less.]

7.1 Based on the above factual metrics of the case and provision of law, when the assessee has voluntarily complied the law, the revenue has not substantiated by placing anything on record that the explanation given by the assessee are not genuine. The assessee has filed the return has paid the taxes and the returned income is accepted by the revenue. Therefore,

based on these facts and voluntary compliance made by the assessee the lower authorities should have exercised the discretion available with him in not penalizing the assessee as there is no direct or indirect loss of delay in submission of the audit report and there is no malafide intention and the assessee has voluntarily complied though belatedly. The reasons based on upon it the audit report was filed belated is explained by the assessee by filling a correct fact on record and the assessee immediately filed the audit report after getting rewriting the books of account and the reason placed on record are the genuine and it may happen to anyone and has to face technical bugs in the system and the delay based on that technical bug in filling the audit report is based on genuine reasons. Therefore, she has sufficient reason to file the audit report delayed. We find that this is a reasonable cause which has resulted into failure of the assessee to comply with the law. In view of this, we find that penalty levied under section 271B of the Act cannot be levied for the reason that there was a failure on the part of the assessee to obtain tax audit report was on account of a bona fide reason of crashing the compute data and thus has to rewrite the same. The

revenue could not show that the belief of the assessee was mala fide. There are various judicial precedents of not levying the penalty under such circumstances. In view of this, we reverse the orders of the lower authorities and direct the learned assessing officer to delete the penalty of Rs. 1,50,000/- levied under section 271B of the Act.

8. Accordingly, appeal of the assessee is allowed.

Order pronounced in the open court on 20/02/2022

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20/02/2022

*Santosh.

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

1. अपीलार्थी / The Appellant- Manju Saran, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 423/JPR/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar