IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.2.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).No.540 of 2007

Sancheti Motors Ltd.
A-125, Greams Road
Chennai - 600 006. .. Appellant/Appellant

Vs.

The Income Tax Officer
Company Ward I(3)
Chennai. .. Respondent/Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 21.6.2006 made in I.T.A.No.528/Mds/2001 for the assessment year 1987-1988.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.J.Narayanasamy
Senior Standing Counsel

J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

The assessee has filed this appeal challenging the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 21.6.2006 made in I.T.A.No.528/Mds/2001 for the assessment year 1987-1988, and the same was admitted on the following questions of law:

(i) Whether, on the facts and circumstances of the case, the Assessing Officer having initiated penal action under Section 271B of the Income Tax Act on 21.11.1990, the levy of penalty on 4.9.1991 is barred by limitation of time under Section 271(1)(c) of the Act?

(ii) Whether, on the facts and circumstances of the case, and having regard to Section 44AB of the Act as applicable during the relevant year, the levy of penalty under Section 271B of the Act is justified in law when there was a reasonable cause for delayed submission of the audit report?

2.1 The facts in a nutshell are as under: The assessee filed return of income for the assessment year 1987-1988 on 27.3.1990 without enclosing the audit report. The audit report was obtained on 27.4.1990 and submitted during the course of the assessment proceedings. However, the Assessing Officer issued notices on 21.11.1990 and 19.3.1991 for levy of penalty and subsequently by proceedings dated 4.9.1991 levied penalty under Section 271B of the Act.

2.2. Aggrieved by the said order, the assessee appealed to the Commissioner of Income Tax (Appeals), who confirmed the order passed by the Assessing Officer.

2.3. On further appeal by the assessee, the Tribunal confirmed the orders passed by the lower authorities and held that there is no reasonable cause for delayed filing of the audit report.

2.4. Challenging the said order, the assessee has filed this appeal on the questions of law referred supra.

3. We have heard Mr.R.Sivaraman, learned counsel for the assessee and Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the Revenue and perused the orders passed by the Tribunal and the authorities below.

4. The core question that arises for our consideration is "If filing of the audit report along with the return is not mandatory, but directory, whether penalty is leviable?"

5. In the case on hand, the assessee filed return of income on 27.3.1990 and the audit report was obtained on 27.4.1990 and submitted during the course of the assessment proceedings. The reason given by the assessee for the delay in submitting the audit report was that the books were impounded on 29.12.1989. The retention of seized/impounded books of accounts and documents is evidenced by the letter dated 29.12.1989 issued by the Assistant Commissioner of Income Tax, Central Circle II(3), Chennai. Therefore, it is evident that the delay was not intentional, but due to circumstances beyond the control of the assessee.

6. In this backdrop, we would like to analyse the case law on this issue:

(i) In Commissioner of Income Tax v. Ashoka Dairy, (2005) 279 ITR 32, a Division Bench of the Punjab and Haryana High Court held as under:

> "There is nothing in the language of section 44AB of the Income-tax Act, 1961, from which it can be inferred that the levy of penalty is mandatory in all cases of non-compliance with section 44AB and that the Assessing Officer has the discretion in the matter of imposition of penalty and he may not impose penalty if he is satisfied with the explanation given by the assessee for not getting its accounts of the previous year audited by a chartered accountant before the specified date and/or filing it along with the return."
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> (emphasis supplied)

(ii) In CIT v. Ramkrishna Stores [2002] 253 ITR 175, a Division Bench of the Calcutta High Court held that imposition of penalty under section 271B of the Act is not automatic and in appropriate case, the competent authority, on being satisfied with the explanation given by the assessee, is free not to impose penalty.

(iii) In ITO v. Nanak Singh Guliani [2002] 257 ITR 677, a Division Bench of the Madhya Pradesh High Court interpreted section 271B along with section 44AB of the Act and held as under:

> "The provision of section 271B of the Income-tax Act, 1961, makes it clear that the imposition of penalty for non-compliance with the provision of section 44AB is not mandatory. The word 'may' used in that section gives discretion to the Assessing Officer to impose penalty or not to impose penalty. Further, the provision of section 273B contains a non obstante clause and provides that notwithstanding the provision of section 271B, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there was reasonable cause for the said failure."

7. In the light of the law enunciated in the decisions referred supra, we are of the firm view that filing of audit report is not mandatory and it is directory. Moreover, the explanation offered by the assessee that the delay in submitting the audit report was due to the fact that the books were impounded by the department, in our considered opinion, satisfies the reasonable cause to be shown by the assessee.

For the foregoing reasons, we allow the appeal by setting aside the order passed by the Tribunal, by answering the question of law in favour of the assessee and against the Revenue. Consequently, the levy of penalty stands cancelled. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Assistant Registrar,
   Income Tax Appellate Tribunal
   Chennai Bench "B", Chennai.

2. The Secretary, Central Board
   of Direct Taxes, New Delhi.

3. The Commissioner of Income Tax (Appeals)-V
   Chennai 600 034

4. The Income Tax Officer
   Company Ward I(3), Chennai.

+ 1 cc to Mr.J. Narayanasamy, Advocate SR.9217

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