

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**AND**

**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**I.T.T.A. No.187 of 2005**

**29.11.2017**

Between:

K.Devender Reddy

..Appellant

And

The Income Tax Officer, Warangal

..Respondent

Counsel for the appellant: Mr.A.V.A.Siva Kartikeya  
for Mr.A.V.Krishna Kaundinya

Counsel for the respondent: Mr.T.Vinod Kumar,  
standing counsel for the Income Tax Department

The Court made the following:



**JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

This appeal is filed by the appellant-assessee on the following substantial question of law.

“ Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in upholding the order of the CIT (Appeals)-VI, dated 15.03.2004 wherein he sustained the penalty levied by the Assessing Authority under Section 271B of the Income Tax Act, 1961 in a sum of Rs.60,843/-?”

2. The facts of the case are borne out by the orders of the Commissioner of Income Tax (Appeals)-VI, Hyderabad as well as the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad. Therefore, they need not be repeated here. The only issue that needs to be adjudicated in this appeal is whether the first Appellate Authority was justified in dismissing the appeal filed by the appellant-assessee against the order of the Assessing Officer imposing penalty for failure to get the accounts audited and whether the order of the Tribunal in confirming the order of the first Appellate Authority is proper and legal.

3. Mr.A.V.A.Siva Kartikeya, learned counsel representing Mr.A.V.Krishna Kaundinya, learned counsel for the appellant-assessee, has submitted that due to the auditor refusing to audit the accounts of his client as he has not secured some of the TDS certificates in respect of the amounts received by him, his client has made out sufficient cause as envisaged in Section 273B of the Income Tax Act, 1961 (for short 'the Act') and therefore, both the Appellate Authorities have committed a serious error in not setting aside the order of the Assessing Officer.

4. Section 273B of the Act envisages that no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the various provisions mentioned therein, including Section 271B of the Act, if he proves that there was reasonable cause for the said failure.

5. The first Appellate Authority has in detail dealt with the cause put-forth by the appellant-assessee and rejected it in on unequivocal terms, by giving the following reasons.

“3. In the appeal proceedings before me the appellant has taken broadly the same arguments as taken before the Assessing Officer. It has been stated that the auditor auditing the accounts had refused to certify the accounts unless the balance-sheet was tallied and such tally could not be done before 31.10.2002 for the fact that the TDS certificates and statement of bills passed were not available. The last TDS certificate was received on 06.02.2003 only and there was no revenue loss if he has not filed the return of income. As per the return of income, the appellant has to get refund only and no notice was served on the assessee for filing the return and the return was voluntary. Reliance has been placed on the decision of the Hon’ble Calcutta High Court reported in 261 ITR 4 and the decision of Hon’ble Rajasthan High Court reported in 262 ITR 262, in respect of the contention that no penalty can be imposed unless there is a deliberate and willful violation and that the revenue has suffered in consequence of such violation.

4. After giving careful consideration to the arguments of the learned authorized representative of appellant, I find that the explanation filed by the appellant and the argument taken before me in the appellate proceedings are not acceptable on the facts of the case, in view of the settled legal position that the obligation to get the accounts audited and file the same within the due date as prescribed u/s 44AB of the IT Act, is

independent of the filing of return of income. There is no doubt about the fact as evidenced by the various TDS Certificates, copies of which have been filed before me, that the appellant received payments for the period 1/4/2001 to 31/3/2002 within the Financial Year 2001-02 from the various Government Departments. Thus on 31.03.2003 itself, the appellant was aware of the gross receipts from contracts in the relevant previous year. Similarly, the expenses incurred in the F.Y.2001-02 would also be within the knowledge of the appellant and thus he was in a position to prepare his accounts within the time period prescribed. It would be relevant to see that the Income Tax Act provides for about 7 months period (April to October) for preparation of accounts and this period is sufficient for an assessee who wants to comply to the legal requirements as mandated by the legislature unless there are extreme adverse circumstances resulting into a situation where the appellant is not in a position to comply with the provisions of law. In the present case, no such circumstances existed, as the appellant was aware of receipts and payments as well as his assets and liabilities. As far as the auditor's refusal to certify the accounts till the balances were tallied is concerned, it is noteworthy that the learned AR of the appellant was himself the concerned auditor who was very well aware of the liability cast on the appellant by the express provisions of law. Even if the TDS certificates had not been received by the due date, the learned AR should have audited the accounts on the basis of whatever documents were available with the appellant till October, 2002 and also filed the same along with return. Thus, I have no hesitation to conclude that the learned AR of the appellant as well as the appellant have defaulted with regard to the provisions of law without any reasonable case."

6. The learned counsel for the appellant-assessee could not point out that any of the reasons mentioned by the first Appellate Authority in its order, as reproduced above, is contrary to any legal provision or that the

same suffers from perversity. When it is not in dispute that non-obtaining of TDS certificates cannot constitute a reason for non-auditing of the accounts, the same was rightly held to not constitute a sufficient cause for non-filing of the returns within the prescribed time. Therefore, we are of the opinion that the reasons for which both the Appellate Authorities have declined to interfere with the order of the Assessing Officer are sound and they do not suffer from any error warranting interference of this Court. Accordingly, the substantial question of law raised by the appellant-assessee is answered against him.

7. The Appeal is, accordingly, dismissed.

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C.V.NAGARJUNA REDDY, J

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T.AMARNATH GOUD, J

29<sup>th</sup> November, 2017  
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