The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Challa Kodanda Ram

ITTA No.601 of 2017

Date: 31.10.2017

Between:

A.P.State Agro Industries Development Corporation Ltd.,
Stalin Corporate
5th floor, Industrial Estate, Auto Nagar,
Vijayawada,
Rep. by Managing Director Y.Madhusudana Reddy

… Appellant

and

The Prl.Commissioner of Income Tax-1,
Hyderabad.

…Respondent

Counsel for the Appellant: **Mr. TVL.Narasimha Rao for Mr.GVN.Hari**

The Court made the following:

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

This Appeal is filed against Order, dated 12-04-2017, in ITA.No.370/H/2016 on the file of the Income Tax Appellate Tribunal, Hyderabad Benches "B", Hyderabad (for short 'the Tribunal').

The appellant- State Government Company has filed its income tax returns for the assessment year 2011-2012 on 29.09.2011. However, it failed to file audit report along with the IT returns and instead, it has obtained the same long after the filing of the IT returns *i.e.,* on 24-02-2012. The Assessing Officer (for short 'the AO') levied penalty of Rs.1,50,000/- under Section 271 B of the Income Tax Act, 1961 (for short 'the Act'), for the belated filing of the audit report. Feeling aggrieved by the same, the appellant has filed an appeal before the Commissioner of Income Tax (Appeals) (for short 'the CIT(A)'), who had confirmed the order of the AO. The Tribunal *vide* its Order under Appeal has dismissed the appeal filed by the appellant.

At the hearing, Mr.TVL.Narasimha Rao, learned Counsel representing Mr.GVN.Hari, learned Counsel for the appellant, placed heavy reliance on Section 44 AB of the Act and submitted that as the audit report was filed within the time extended under the provisions of the Companies Act, 1956, the appellant is not liable to pay any penalty in view of the third proviso to Section 44 AB of the Act. The said proviso along with its explanation reads as under:

> "Provided [*also*] that] further that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and [furnishes by] that date the report of the audit as required under such other law and a further report [by an accountant] in the form prescribed under this section.
>
> *Explanation*: -- For the purposes of this section,-
>
> (i) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288;
>
> [(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means [the due date for furnishing the return of income under sub-section (1) of section 139].]]"

It is clear from Clause (ii) of the Explanation to the third Proviso as extracted above that the specified date in relation to the accounts of the assessee of the previous year relevant to an assessment year means the due date for furnishing the income tax returns under Section 139 of the Act. It is not in dispute that under the proviso to Section 139 of the Act, 30th September of the year following the accounting year is the due date for furnishing returns. This is precisely the reason why the appellant had filed its returns on 29-09-2011. As noted above, the audit report was filed far too belatedly. While Section 271 B of the Act provides for levy of penalty for not filing the audit report within the prescribed time, under Section 273 B thereof, such penalty is not leviable, if reasonable cause is shown. The only reason put forth by the appellant for not filing the audit report was the belated conduct of the AGM. Conducting of AGM has no connection with the filing of the audit report as both these aspects are independent of each other. Both the CIT(A) and the Tribunal have rightly declined to accept the said reason as reasonable cause for treating the appellant's case as an exception under Section 273 B of the Act.

For the afore-mentioned reasons, we do not find any merit in this Appeal and the same is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(Challa Kodanda Ram, J)

Dt: 31st October, 2017
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