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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Aug-11-1993

Reported in : (1993)47ITD552(Kol.)

Judge : N Pachuau, R Easwar

Appellant : Kumar Bros.

Respondent : Assistant Commissioner of

Judgement :
1. This appeal filed by the assessee is directed against the order of the CIT(A) confirming the penalty of Rs. 1 lac imposed on the assessee under Section 27 1B of the Act.

2. The assessee is a registered firm. During the relevant accounting year, the assessee carried on business in jute goods and shares. The assessee also indulged in certain speculative transactions. In respect of the accounting year ended 12-11-1985, relevant for the assessment year 1986-87, the assessee was liable to have its accounts audited under Section 44AB of the Income-tax Act. The due date for obtaining the Audit Report was 30-6-1986. However, the Audit Report under Section 44AB was obtained by the assessee only on 30-9-1986. The Audit Report was filed along with the return of income on 21-10-1986. The Assessing Officer completed the assessment and initiated proceedings for penalty under Section 271B of the Act. The assessee explained in the course of the penalty proceedings that the Auditor M/s. S.K. Singhania&Co., 19-A,Chowringhee Road,

Calcutta had been entrusted with the audit work and they had informed the assessee that in view of the heavy pressure of work and other professional commitments, it would not be possible for them to complete the audit before 30-6-1986. The assessee was therefore requested by the Auditor to seek extension of time for filing the Income-tax return. It was further pointed out that the assessee had applied for extension of time to file the return up to 31-12-1986 on the ground that its accounts were under audit. On these facts, it was pointed out that there was sufficient cause for the delay in getting the accounts audited under Section 44AB of the Act.

3. The Income-tax Officer did not accept the explanations. He took the view that the assessee should get its accounts audited by 30-6-1986 and this was not in any way related with the filing of the return. He also refused to accept the plea that the delay in completion of the audit had given rise to the delay in getting the audit report under Section 44AB. In this view of the matter, he imposed a penalty of Rs. 1 lac under Section 271B. I have given due consideration to the submission of the appellant, I have also perused the order of the Assessing Officer imposing a penalty under Section 271B. The submission of the A/ R in my opinion does not contain reasonable cause for delay in getting its accounts audited. The appellant was required to have its accounts audited by 30-6-1986. From the correspondence between the auditor and the appellant referred to above it is clear that the requirement of law in this respect was known to the appellant. Yet, it is seen that the appellant wake up to such requirement of law only towards the middle of June 1986 while the entire work of auditing the accounts should have been completed by 30-6-1986. Therefore, at that late stage if the auditor express their inability to complete the work of auditing the appellant's accounts it could not be said that the blame can in the doorsteps of the auditors.

Having regard to the stringent of provisions of Section 44AB read with Section 27 IB, the appellant should have taken adequate steps well in advance to have its accounts audited in time. The contention of the A/R that form No. 6 was filed seeking extension of time also has no merit because the extension of time was sought for reasons that the accounts were under audit. The proceedings presently under appeal question the very reasonableness of the delay in getting the accounts audited.

Under the circumstances, I find no reason to interfere with the order of the A.O. imposing the penalty of Rs. 1 lakh as per provisions of Section 27 IB of the Income-tax Act. In the result, the order of the A.O. imposing the penalty of Rs. 1 lakh under Section 27 1B stands confirmed and the appeal fails.

5. The assessee is in further appeal before us. It was submitted on behalf of the assessee, this is the first year in which the assessee became liable to get its accounts audited under Section 44AB of the Act. It was further pointed out that the Assessing Officer had accepted the very same explanation in proceedings for penalty under Section 271(1)(a) of the Act and therefore it is not open to him to say that the delay in completion of the audit cannot be treated as reasonable cause for the delay in getting the audit report under Section 44AB. The Ld. counsel for the assessee drew our attention to the fact that the assessee had handed over all the books of accounts, vouchers and relevant files to the Auditors M/s. S.K. Singhania & Co. on 25-4-1986 and it was only because of the pressure of work in the Auditor's office that they could not complete the work in time. It was contended that the delay in completing the audit constituted reasonable cause for the delay in getting the accounts audited under Section 44AB of the Act.

Our attention was drawn to the decision of the Calcutta High Court in CIT v. Sulekha Works (P.) Ltd. [1985] 156 ITR 190. On the other hand, the Ld. Departmental Representative, pointed out that the assessee had waited till April 1986 to hand over the books of accounts to the Auditors whereas its accounting year ended on 12-11-1985 itself.

According to the Departmental Representative this shows the lack of vigilance on the part of the assessee. It was further pointed out that the delay in the office of the Auditor cannot constitute reasonable cause for the delay in getting the accounts audited in time under Section 44AB of the Act. It was, therefore, contended that the penalty was rightly imposed and sustained.

6. On a consideration of the rival contentions, we are of the view that the penalty of Rs. 1 lac has to be cancelled. It is not disputed that the assessee handed over

the books of accounts and the other papers to M/s. Singhania & Co., Chartered Accountants on 25-4-1986. The Auditors apparently did not make any progress in the audit. Therefore, the assessee reminded them vide letter dated 12-6-1986. It was brought to the attention of the Auditors that the return of income was due on 30-6-1986. In response to this, the Auditors wrote to the assessee on 17-6-1986 informing the assessee that the audit was in progress but that some more time would be required since they were engaged with other professional commitments. The assessee was requested to seek appropriate extension from the Assessing Officer. Apparently on this basis, the assessee had applied for time in Form No. 6 to file return of income up to 31-12-1986. Obviously, the Income-tax Officer was statisfied that the assessee was prevented by reasonable cause in filing the return of income in time. He had not imposed any penalty under Section 271(1)(a) of the Act. According to us, the very same reason that constituted reasonable cause for the delay in filing the return of ircome would also constitute reasonable cause for the delay in getting the Audit Report under Section 44AB. This is the basis of the decision of the Bombay Bench of the Tribunal in the case of IAC v.Hindustan Lever Ltd. [19911 39ITD 147. The Calcutta High Court has held in CIT v. Sulekha Works (P.) Ltd. [1985] 156 ITR 190 (Cal.), the decision relied on by the assessee before us, that any delay in getting the accounts audited would constitute reasonable cause for the delay in filing the return of income. The Calcutta Bench of the Tribunal has also held that the finalisation of the accounts of the assessee for an earlier year which took considerable time would constitute reasonable cause for the delay in complying with the provisions of Section 44AB of the Act [please see ITO v. Arun Kumar Bhuwalka [1992] 40 ITD 373 (Cal.)]. We have to therefore hold that the delay in completing the audit constituted reasonable cause in the present case for the delay in getting the Audit Report from the Auditor's M/s. Singhania & Co. under Section 44AB before 30-6-1986. The assessee also cannot be stated to have acted negligently or in disregard of the statutory obligations.

The books of accounts were handed over to the Auditor on 25-4-1986.

Though by that time five months had elapsed from the end of the accounting year, having regard to the turnover of the assessee which is Rs. 10.85 crores, it is reasonable to assume that the assessee would have required some more time after the close of the accounting year to gather the complete particulars in support of the books of accounts and to make the final or closing entries. Giving due allowance to this possibility, we are not prepared to accept the contention of the Revenue that the assessee unduly delayed the handing over of the books of accounts to the Auditors for audit. Once the books have been handed over to the Auditor, the assessee ceases to have any control over them and if there is any delay on the part of the Auditor's on account of various reasons, such as pressure of work, prior professional commitments, etc. the assessee cannot be blamed for the delay. We are therefore satisfied that the delay in obtaining the Audit Report under Section 44AB of the Act was due to reasonable cause.

7. At this juncture, we have to remind ourselves that as held by the Supreme Court in Hindustan Steel Ltd. v. State of Orissa [1972] 83 ITR 26, penalty cannot be imposed merely because its is lawfully to do so.

Levy of penalty is the result of quasi-criminal proceedings and penalty should not normally imposed unless the party obliged acts in defiance of law or in brazen disregard of the statutory obligations. In the present case, it cannot be stated that the assessee has acted in defiance of law or in ulter disregard of the statutory obligations. It has taken reasonable care to comply with the provisions of Section 44AB.8. For the aforesaid reasons, we are of the view that the CIT (A) was not justified in sustaining the penalty. We cancel the penalty and allow the appeal.