

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 188/JP/2018
निर्धारण वर्ष/ Assessment Years : 2013-14

M/s Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Vidyut Bhawan, Jan Path, Jyoti Nagar, Jaipur	बनाम Vs.	ACIT, Circle-06 Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AABCR8312A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri P. C. Parwal (CA)
राजस्व की ओर से / Revenue by : Smt. Seema Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 09/04/2018
उद्घोषणा की तारीख / Date of Pronouncement : 11/04/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 21.11.2017 for Assessment Year 2013-14 wherein the assessee has challenged the confirmation of levy of penalty of Rs. 1,50,000/- u/s 271B of the IT Act, 1961.

2. Briefly stated, the facts of the case are that the assessee company is a State Government undertaking engaged in the transmission of electricity within the State of Rajasthan. During the year under consideration, it filed its return of income on 20.09.2013 claiming

loss of Rs. 3,66,02,91,213/-. The said return of income was accepted except for an amount of Rs. 9,048/- which was disallowed u/s 36(1)(va) and Rs. 429,539/- which was brought to tax in respect of interest on income tax refund. During the course of assessment proceedings, on perusal of Form No. 3CA, the Assessing Officer noticed that the statutory audit of the assessee was conducted on 16.07.2014 and the assessee has therefore failed to furnish and get his accounts audited and furnished the report before the specified date i.e. 30.09.2013. Therefore, in view of the facts and circumstances of the case under consideration, penalty proceedings u/s 271B of the Act for failure to get the accounts audited and furnishing the report in the prescribed performa before the specified date was initiated against the assessee company by issuance of notice dated 12.03.2016.

3. During the course of penalty proceedings, the assessee company submitted that the delay in getting the accounts audited u/s 44AB is on account of delay in finalization of accounts of the previous years starting from the F.Y 2008-09 and the audit by the statutory auditor as well as by C&AG and without which, the tax audit cannot be taken up by the tax auditor. However, the reply filed by the assessee was not found acceptable to the Assessing Officer. The Assessing Officer observed that the audit has been carried out on 16.07.2014 i.e after delay of 10 months and hence the assessee company has failed to get its accounts audited and furnished the audit report before the specified date. It was accordingly held that there is no reasonable cause for the delay in getting the accounts audited and penalty u/s 271B was levied on the assessee company.

4. Being aggrieved, the assessee company carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) held that the reasons submitted for the delay are not backed by evidences. Further, Id. CIT(A) held that the statutory auditors not agreeing to the audit fees and hence the delay is not a plausible reason and efforts should have been made in time to get the audit conducted within the stipulated time. Hence, the penalty levied by the AO was confirmed by the Id. CIT(A).

5. During the course of hearing, the Id. AR submitted that the reasons for delay in getting the accounts audited u/s 44AB is due to delay in getting accounts audited by statutory auditor as well as C&AG for earlier years starting from F.Y 2008-09 relevant to assessment year 2009-10. It was submitted that for FY 2008-09, initially M/s Ghiya & Company, Chartered Accountants was appointed as statutory auditor by C&AG vide letter dated 31.07.2008 u/s 619(2) of the Companies Act, 1956. In view of refusal of M/s Ghiya & Company to conduct the audit, C&AG vide letter dated 06.02.2009 appointed another auditor M/s D.R. Mohnot & Company, which again refused to accept the audit of the company due to their pre-occupation in some other work. In view of the same, another auditor M/s S. R. Goyal & Company was appointed vide letter dated 23.04.2009 who against submitted that given the quantum of work involved, they are not in position to conduct the audit at the specified fees of Rs. 175000/-. The matter was thereafter taken by the Board and fees was increased to Rs 3 lacs and communicated to the auditor vide letter dated 02.09.2009. Further, a meeting was conducted by C&AG with management and statutory auditor wherein it was directed to make compliance of all the accounting standards. Thus, due to delay in appointment of auditors and to make all these compliance with the accounting standards, has resulted in delay in the statutory audit for FY

2008-09 which was completed in the month of December, 2009 and approved by the Board in its meeting held on 21.12.2009. Subsequently, the accounts was submitted to C&AG for their comments who have raised many issues and thereafter, the Board of Directors decided to recast the accounts of the company and finally, the audit of the recasted accounts was completed in the month of July, 2010 and approved in the Board Meeting held on 12.07.2010. Thereafter, C&AG approved the accounts vide its letter dated 13.07.2010 and thereafter the AGM of the company for FY 2008-09 was held on 16.09.2010.

6. It was further submitted that due to delay in getting the amounts audited for FY 2008-09, the accounts for FY 2009-10 were finalized and approved by Board of Directors on 29.03.2011 and approved by the C&AG on 28.06.2011. Thereafter, accounts for FY 2010-11 were finalized and approved by the Board of Directors on 12.01.2012 and C&AG certificate was received on 21.5.2012. Thereafter annual accounts for FY 2011-12 were finalized and approved by the Board on 28.02.2013 and CAG certificate was received on 27.06.2013.

7. It was accordingly submitted that the delay in finalization of accounts of earlier years resultant in consequential delay in finalization of accounts of year under consideration. It was submitted that immediately after finalization of accounts of FY 2011-12 and obtaining of the C&AG certificate in June, 2013, accounts for the year under consideration were taken up which were finalized and approved by the Board on 27.12.2013 and same were sent to C&AG for their audit and certificate from C&AG was received on 25.06.2014. Thereafter, AGM of company was held on 01.09.2014. Simultaneously, tax auditor has also taken up the audit and tax audit was completed on 16.07.2014 and the

same was uploaded on the same day on the website of Income Tax Department.

8. It was accordingly submitted the delay in getting accounts audited is because of delay in conducting the statutory audit and without the statutory audit, tax audit cannot be conducted. Thus, there was a reasonable cause in obtaining the audit report u/s 44AB within due date. It was further submitted that under similar circumstances, for AY 2009-10, penalty proceedings u/s 271B was dropped by the AO vide order dated 19.06.2012.

9. Further, the Id. AR submitted that it is settled law that levy of penalty u/s 271B is mandatory but is subject to the provision of section 273B which provides that no penalty shall be imposed on the assessee if he proves that there was reasonable cause for the failure. Penalty cannot be levied laconically or mechanically without examining whether there was reasonable cause as advanced by the assessee for the said failure or default. In the present case there was a reasonable cause for delay in conducting the audit u/s 44AB and therefore, penalty u/s 271B is not leviable. For this purpose, reliance is placed on the following cases:-

- Hindustan Steel Ltd. vs. State of Orissa 83 ITR 26 (SC)
- RSEB vs. ITAT & Anr. (2003) 262 ITR 262 (Raj.) (HC)
- RCDF vs. DCIT (2003) 259 ITR 126 (Raj.)(HC)
- Gemorium vs. ITO (2016) 48 CCH 147 (Jaipur) (Trib.)
- Kripa Industries (I) Ltd. vs. JCIT (2001) 20 CCH 387 (Pune)(Trib.)

10. It is noted that a similar issue has been examined and by us recently in case of M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd. (*ITA No.100/JP/2018 dated 28/03/2018*) wherein we have held as under:-

"7. We have heard the rival contentions and perused the material available on record. In the instant case, the limited issue for consideration is whether there is a reasonable cause for the delay in completing the tax audit and submitting the report of the tax auditor within the specified due date. Under section 273B, no penalty shall be imposable on the assessee for any failure which inter alia include the defaults mentioned in section 271B, if the assessee proves that there was reasonable cause for the said failure. In the present case, the reason for the delay has been stated to be the delay in completing the statutory audit for the earlier years which has resulted in delay in completion of statutory audit for the year under consideration and the resultant delay in completing the tax audit and submitting the report thereof. It was submitted that without completing the statutory audit, the tax audit could not have been completed. We find that the statutory auditors are appointed by the Comptroller & Auditor General of India under section 619(2) of the Companies Act, 1956 and they have completed the statutory audit and submitted their audit report dated 27.03.2014. Thereafter, the tax audit has been completed on 15.07.2014 and the revised return was filed on 16.9.2014. The Hon'ble Punjab & Haryana High Court in the case of CIT v. Punjab State Leather Development Corpn. Ltd. [2001] 119 Taxman 258 has held that delay in completion of statutory audit was a reasonable cause for non-compliance with section 44AB and it was held that the Tribunal was right in cancelling penalty levied under section 271B. Respectfully

following the same, we are of the view that in the instant case, where there has been a delay in completion of statutory audit, there exist a reasonable cause for the delay in completion and submission of the tax audit report under section 44AB of the Act. The penalty levied under section 271B is therefore deleted.”

11. In the instant case, we find that there is a reasonable cause for the delay in completion and submission of the tax audit report under section 44AB of the Act due to delay in appointment of statutory auditors and consequent delay in finalization of annual accounts for the earlier years. Following our aforesaid decision, the penalty levied under section 271B is hereby directed to be deleted.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 11/04/2018.

Sd/-
(विजय पॉल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11/04/2018

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-6, 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 No. 188/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar