

आयकर अपीलीय 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.100/JP/2018
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd., Bhawan, Jan Path, Jyoti Nagar, Jaipur	बनाम Vs.	ACIT, Circle-06 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR7436B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती 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 : 27/03/2018
उदघोषणा की तारीख / Date of Pronouncement: 28/03/2018

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 Act.

2. Briefly stated, the facts of the case are that the assessee is a 100% State Government undertaking engaged in the business of transmission of electricity. The assessee company has filed its return of income on 27.09.2013 based on unaudited books of accounts which was subsequently revised on 16.09.2014 on the basis of audited books of accounts. In its original return of income, the assessee company has reported NIL income which was revised to a loss of Rs. 473,37,51,392/- as per the revised return of income which was

accepted during the assessment proceedings except for an amount of Rs. 4,80,494/- in respect of interest on income tax refund which was brought to tax under the head "income from other sources". 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 15.07.2014 and the assessee has therefore failed to furnish and get his accounts audited and furnished the report on or before 30.09.2013, being the specified due date. In view of the same, penalty proceedings u/s 271B of the Act for failure to get the accounts audited and furnished the audit report before the specified due date was initiated against the assessee company by way of issuance of penalty notice dated 15.03.2016.

3. During the course of penalty proceedings, the assessee company submitted that delay in getting the tax audit report is due to delay in getting statutory audit and audit by C&AG and also due to introduction of new Schedule VI of Companies Act, 1961. It was further submitted that there was demerger of Giral Power Project to new company Giral Lignite Power Ltd and allocation of assets and liabilities and its value to Giral Lignite Ltd. took a lot of time which has also resulted in delay in finalization of accounts and delay in getting accounts audited from statutory auditor as well as the tax auditor. The submission of the assessee company was however not found acceptable to the Assessing Officer. As per the Assessing Officer, the assessee company was required u/s 44AB of the Act to get its accounts audited and furnished the audit report on or before 30.09.2013 and in the instant case, the audit has been conducted after delay of 10 months on 15.07.2014. Further, the reasons for the delay in getting accounts audited were not found acceptable to the Assessing Officer. It was accordingly held that the assessee company has breached the provisions of section 44AB without any reasonable cause. Hence, penalty amounting to Rs. 1.5 lakh was imposed on the assessee company.

4. Against the said levy of penalty, the assessee company filed an appeal before the Id. CIT(A). The Id CIT(A) held that the reasons submitted by the assessee company for the delay in getting its accounts audited and submitting the audit report before the specified due date are not backed by evidence. It was further held by the Id CIT(A) that the statutory auditors not agreeing to the audit fees and resultant delay is not a plausible reason. It was held by the Id CIT(A) that efforts should have made in time to get the audit conducted within the stipulated time. The penalty levied by the AO was accordingly confirmed by the Id. CIT(A).

5. During the course of hearing, the Id. AR drawn a reference to the following table:-

Statement showing date of Statutory Audit, C&AG Audit, Tax Audit

FY	AY	Statutory Audit	C&AG Audit	Tax Audit	Date of filing of return/ revised return
2010-11	2011-12	08.11.2012	22.04.2013	25.03.2013	27.09.2011/29.03.2013
2011-12	2012-13	28.11.2013	28.03.2014	26.03.2014	26.09.2012/29.03.2014
2012-13	2013-14	27.03.2014	19.08.2014	15.07.2014	27.09.2013/16.09.2014

The Id. AR, drawing our reference to above table, submitted that the delay in obtaining the tax audit report u/s 44AB is on account of delay in conducting the statutory audit/ C&AG audit because unless the statutory audit is conducted, tax audit report cannot be issued. The statutory audit was delayed in FY 2010-11 as even after all the efforts, the statutory audit report was issued by CR Mehta & Co. on 08.11.2012 and thereafter, C&AG made comments on the accounts on 22.04.2013. Thereafter, the statutory audit for FY 2011-12 could be started. The statutory audit report for FY 2011-12 was issued by P.C. Modi & Co. on 28.11.2013 and thereafter, C&AG made comments on the accounts on 28.03.2014. After this, the statutory audit report for FY 2012-13 was issued on 27.03.2014 and thereafter, C&AG made comments on the accounts on 19.08.2014. It is not the case of lower

authorities that delay in the statutory audit is because of the fault of the assessee. Thus, delay in obtaining the tax audit report is because of a reasonable cause as envisaged u/s 273B and therefore, the penalty levied u/s 271B be deleted.

5.1 The Ld. CIT(A) has confirmed the levy of penalty only on the ground that the reasons forwarded by the assessee are not backed by evidence ignoring that all these dates are mentioned in the printed Balance Sheet available on the record of AO. The further observation of Ld. CIT(A) that statutory auditor have not agreed to the audit fees and hence, there is a delay is not the claim of assessee as is evident from the submission extracted at Para 2.2 of the order. Thus, Ld. CIT(A) has confirmed the levy of penalty without application of mind.

5.2 The Id AR further placed reliance on the following cases:-

- Hindustan Steel Ltd. Vs. State of Orissa 83 ITR 26 (SC)
- CIT Vs. Punjab State Leather Development Corporation Ltd. (2001) 119 Taxman 258 (P&H) (HC)
- APL India Pvt. Ltd. Vs. JCIT (2014) 62 SOT 91 (Mum.) (Trib.)

In view of above, it was submitted that the penalty imposed by AO and confirmed by Ld. CIT(A) be directed to be deleted.

6. The Id DR has vehemently argued the matter and relied upon the orders of the lower authorities.

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 interalia 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.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 28/03/2018.

Sd/-

(विजय पॉल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Jaipur
Dated:- 28/03/2018
*Ganesh Kr

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

1. अपीलार्थी / The Appellant- M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-6, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 100/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.