

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

BEFORE SH. A.T.VARKEY, JM AND SH. PRASHANT MAHARISHI, AM

**ITA No. 6199/Del/2013
Asstt. Year : 2008-09**

Chopra Properties D-10, Main Vikas Marg, Laxmi Nagar New Delhi	Vs	ACIT Circle-33(1) New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAFC8827B		

**Appellant by : Sh. Rajiv Jain, CA
Respondent by : Sh. Hemant Gupta, SR. DR**

Date of Hearing : 13.10.2015	Date of Pronouncement : 21.10.2015
-------------------------------------	---

ORDER

Per Prashant Maharishi, AM:

01. This appeal is preferred by the assessee against the order of CIT(A) dated 27.08.2013 confirming the penalty of Rs. 1,00,000/- u/s 271B of the Income Tax Act.
02. Brief facts of the case are that the assessee is a partnership firm filed its return of income on 30th March, 2009 showing total income of Rs. 58,57,760/- and assessment was completed u/s 143(3) on 24th November, 2010 at total income of Rs. 1,95,51,565/-. During the assessment proceedings while perusing the tax Audit report AO observed that the tax audit report is signed on 30th September 2008. Therefore, according to the AO tax audit report should have been obtained before the specified date i.e. 30th September 2008. Therefore, AO issued a show cause notice, which remained unresponded. On further opportunity, the

assessee submitted that the audit report was obtained on 30th September 2008, which was within the time prescribed for obtaining tax audit report. However, AO was of the view that according to provisions of Section 44AB assessee is required to get his accounts audited before specified date and not on the specified date. Therefore, as assessee has obtained this tax audit report on 30th September 2008 and not before 30th September, 2008, therefore, levied penalty of Rs. 1,00,000/- u/s 271B of the IT Act. Against this, assessee-preferred appeal before the CIT (A) who confirmed penalty holding that assessee has committed a default by not getting its accounts audited before the due date. Against this assessee is in appeal before us.

03. Ld. AR of the appellant submitted that “before” specified date in section 44AB means “on or before” the specified date. Therefore, he submitted that though audit report is signed on 30th September 2008 and the requirement of law is to be construed as tax audit report required to be obtained on or before 30th September 2008. Hence, he submitted that assessee has obtained tax audit report in time and there is no default u/s 271B. For this proposition, he relied on the decision of Hon’ble Bombay High Court in case of Prem Chand Nathmal Kothari vs. Kishanlal Bachharaj Vyas & Ors. dated 5th April 1975 reported in AIR 1976 Bombay 82 wherein relying on the Chambers Dictionary it has been held that word ‘before’ means ‘previous to the expiration of’. Therefore, before 30th September, 2008 means before the end of 30th September 2008. He further relied on the decision of Allahabad ITAT in case of Chandra Kumar Seth vs. ITO 62 ITD 106, CIT vs. Jai Durga

construction Company 133 taxman 99 and CIT vs. V.P.Gupta and Sons 172 taxman 344. He further submitted that alternatively, there is delay of only one day and because of the two views possible it should be considered as a reasonable cause in penalty may be deleted.

04. Ld. DR relied on the decisions of lower authorities and submitted that assessee has failed to obtain tax audit report before 30th September 2008 but obtained only on 30th September 2008. Therefore, the penalty is rightly levied u/s 271B of the Act.
05. We have carefully considered the rival submissions and perused the various decisions cited before us. In this case it is undisputed that assessee has obtained the tax audit report on 30.09.2008. Requirement of provision of section 44AB is that

Every person,--

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds forty lakh rupees in any previous year ;
or

(b) carrying on profession shall, if his gross receipts in profession exceed ten lakh rupees in any previous year, or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AD or section 44AE 3or section 44AF or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Explanation — for the purposes of this section,--

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year means the 30th day of September of the assessment year.

Therefore the controversy is whether tax audit report obtained by assessee on 30.09.2008 is due compliance of provisions of Sec. 271B of the act or not.

06. Above controversy has been decided by ITAT Allahabad bench in Chandra Kr. Seth vs. ITO 62 IT 106 on identical issue and deleted the penalty u/s 271B holding as under :-

"16. The full expression in section 44AB to be considered is not just "get his accounts of such previous year audited by an accountant before the specified date", but "get his accounts of such previous year audited by an accountant before the specified date and obtain before that date the report of such audit in the prescribed form". Thus, there are two requirements, the first being to get the accounts audited and the second being to obtain a report of such audit in the prescribed form i.e. prescribed in Rule 6G of the Income-tax Rules, 1962. In the present case, the prescribed forms are Form No. 3CB and Form No. 3 CD. It is next to be seen what is the default, which is to be penalised under section 271B of the Act, which stood as under in the relevant year :—

"S. 271B. Failure to get accounts audited.—If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or obtain a report of such audit as required under section 44AB or furnish the said report along with the return of his income filed under sub-section (1) of section 139, or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of section 142, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred thousand rupees, whichever is less."

17. There is a link with furnishing the report of audit alongwith the return of his income filed under sub-section (1) of section 139. The last date for obtaining a report of audit was clearly "by that date" and not "before that date". The last date would, therefore, be 31-7-1988 in the present case. No specific purpose would be served in getting the accounts audited a day earlier i.e. by 30-7-1988. It would, therefore, be reasonable to interpret the expression "before the specified date" as "by the specified date".

18. The learned counsel has rightly brought to our notice that a similar expression "before the expiry of four months from the end of the previous year" was used in section 139(1)(a) of the Act as it stood at the relevant time, which was interpreted by the department in practice as "by 31st July" in the case of previous years ending on 31st March. This is borne out by C.B.D.T. Circular No. 549 dated 31-10-1989 appearing at page 3254 of Chaturvedi and Pithisaria's Income Tax Law, Fourth Edition, Vol. 3, relevant extract from which is given below :—

"Under the old provisions of sub-section (1) of section 139, time limits for filing the returns of income were prescribed depending upon whether or not the assessee had income from business or profession. In the case of persons deriving income from business or profession, the date of filing the return of income was before the expiry of four months from the end of the previous year or before the 30th of June of the relevant assessment year, whichever was later, i.e., it could be either 30th June or 31st July. In the case of other persons, not deriving income from business or profession, the date was 30th June. Also, on an application made by the assessee in the prescribed form, the

Income-tax Officer was empowered to extend the date for filing the return of income subject to chargeability of interest under section 139(8).

With the introduction of the financial year (year ending 31st March as the uniform previous year for all assesseees, those having income from business or profession would have been obliged to file their returns by 31st July, after closing their returns by 31st March. This would have resulted in heavy pressure of work on the audit profession, because all those assesseees, who are required to get their accounts audited, would have been obliged to do so within a short span of four months. Also, all such returns would have been filed with the Department, mostly towards the end of July every year, causing a glut of such returns within a very short period. To remove these difficulties, the Amending Act, 1987, has substituted a new sub-section (1), which staggers the dates for filing the returns of income by different classes of assesseees."

19. *We have also gone through carefully the decisions of the Bombay High Court in Premchand Nathmal Kothari's case (supra). The Hon'ble High court interpreted the word "before" in section 3 of Maharashtra (Vidarbha Region) Agricultural Debtors' Relief Act in the expression "before the 1st day of April, 1970." It was observed that the word will have to be considered and interpreted with reference to the context and the subject of enactment. It was no doubt true that a general principle of interpretation, where the words of the statute are plain, precise and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself and no external aid is admissible to construe those words. It is only where the language is ambiguous, uncertain, cloudy or susceptible or more than one meaning or shades of meaning that external aid will be permissible. The following extract from a decision of the Supreme Court in Sheikh Gulfan v. Sanat Kumar AIR 1965 SC 1839 was relied upon :—*

"Normally, the words used in a statute have to be construed in their ordinary meaning, but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which the words occur. Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the subject of the statute in which the provision is included, and the policy underlying the statute assume relevance and become material. As Halsbury has observed, the words 'should be construed in the light of their context rather than what may be either their strict etymological sense or their popular meaning apart from that context'."

20. *Thereafter certain other parts of the Act were also examined and it was observed that if all these sections were read together and harmoniously, it was obvious that the word 'before' was used by the Legislature in the context of the word 'within' meaning thereby 'not later than'. Thereafter, it was observed that even if the dictionary meaning of the word 'before' is to be adhered to, the meaning of the word as given in Chamber's Twentieth Century Dictionary is 'previous to the expiration of'. If this meaning is given, it would mean that an application under section 3 of the Act could be filed before the expiration of or not later than 1st day of April, 1970.*

21. *We find that the ratio of these decisions is equally applicable here. The meaning of the word 'before' in section 44AB of the Act is cloudy and uncertain. The word is possible of two meanings, one being the common meaning and the other as given in Chamber's Twentieth Century Dictionary as 'previous to the expiration of'. Looking to*

the other sections of the Act as above and giving harmonious construction and applying respectfully the ratio of the above decision of the Bombay High Court, we hold that the expression 'before the specified date' in section 44AB of the Act means 'on or before the specified date'. In this view of the matter, there was no delay in audit of the accounts in terms of section 44AB of the Act."

Ld DR has not drawn our attention to any contrary decision. Therefore respectfully following the decision of Coordinate bench we reverse the order of CIT (A) and delete the penalty of Rs 1,00,000/- levied u/ s271B of the Income Tax Act.

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

(Order Pronounced in the Open Court on 21/10/2015)

Sd/-

(A.T.Varkey)
JUDICIAL MEMBER

Sd/-

(Prashant Maharishi)
ACCOUNTANT MEMBER

Dated: 21/10/2015

B. Rukhaiyar

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	13/10/2015		
2.	Draft placed before author	13/10/2015		
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk	21/10/2015		
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			