

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

श्री भागचन्द, लेखा सदस्य एवं श्री ललित कुमार, न्यायिक सदस्य के समक्ष  
BEFORE:SHRI BHAGCHAND, AM & SHRI LALIET KUMAR, JM

आयकर अपील सं./ITA No. 514/JP/2014  
निर्धारण वर्ष/Assessment Year : 2008-09

M/s. Gemorium 1969, Dhabaji Ka Khurra Ramganj Bazar, Jaipur	बनाम Vs.	The ITO Ward- 5(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACFG 7515 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani and  
Shri Rajiv Sogani, CA

राजस्व की ओर से / Revenue by: Shri R.A. Verma, Addl.CIT -DR

सुनवाई की तारीख / Date of Hearing : 24/08/2016  
घोषणा की तारीख / Date of Pronouncement : 14 /09/2016

आदेश / ORDER

PER LALIET KUMAR, JM

The assessee has filed an appeal against the order of the Id.  
CIT(A)- 2, Jaipur dated 13-05-2014 for the assessment year 2008-09  
raising therein solitary ground as under.

“In the facts and circumstances of the case and in law  
the Id. CIT(A) has erred in confirming the action of the AO  
in imposing penalty u/s 271B of the Act amounting to Rs.

1.00 lac. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the penalty of Rs. 1.00 lac imposed u/s 271B of the Act.

2.1 Brief facts as conclusively emerges out from the order of the Id.

CIT(A) is reproduced as under:-

“2.3 I have considered the facts of the case; penalty order and appellant’s written submission. Assessing Officer levied penalty u/s 271B for not getting accounts audited and submitting audit report in time. It is not in dispute that appellant got the accounts audited after due date of filing return of income and therefore, it was liable for penalty unless there were justifiable reasons for delay. Appellant submitted that delay was caused by the auditor with whom it had dispute over audit fees. Appellant also submitted that it is for the first time such delay happened and after this year auditor was also changed. However, Assessing Officer examined the auditor to verify the appellant’s explanation. On examination, AO reached the conclusion that the delay in audit was caused by late submission of accounts by the assessee to the auditor. Auditor confirmed that there was no dispute over fees and therefore, it was not the reason for delay in audit. Delay was caused by the appellant only by submitting accounts on 30-09-2009 resulting in delay in audit. Considering the order and appellant’s submission, it is clear that appellant did not get accounts audited for the year without any justifiable reason and therefore, penalty is leviable u/s 271B. Accordingly, penalty levied by the AO is confirmed.”

2.2 During the course of hearing, the Id. AR of the assessee submitted that the delay was on account of dispute with the auditor regarding audit

fees and the explanation of the assessee was not accepted by the AO and thus he imposed the penalty u/s 271B of the Act. The Id. AR of the assessee submitted that there was no delay in filing of the return for the last about 18 years, the delay was made only during assessment year under consideration i.e. 2008-09, the assessee changed the auditor from the assessment year 2009-10, there was no delay in filing the return of income for the assessment year 2009-10, the penalty was levied solely relying on the statements recorded from the auditor Shri R.A. Sharma and no opportunity was provided to the assessee to cross examine the statements made by auditor Shri R.A.Sharma. The Id. AR of the assessee relied on following case laws:-

- (i) Azadi Bachao Andolan vs. Union of India (2001) 252 ITR 471 (Del.)
- (ii) Indian Handloom Textiles vs. ITO (1999) 68 ITD 560 (Kol. Tribunal)
- (iii) Aleli & Co. (P) Ltd. vs. DCIT, 7 SOT 639 (Mum)
- (iv) Kripa Industries (I) Ltd. (2002) 76 TTJ 502 (Pune)
- (v) Ashoka Dairy (2005) 149 Taxman 732 (P&H)
- (vi) A.K. Kraipak vs. Union of India AIR 1970 SC-150

(vii) Shree Ram Durga Prasad and Fateh Chand vs. Settlement Commissioner 1989-SC-1038

(viii) Andaman Timber Industries (Civil Appeal No. 4228 of 2006)

The Id. AR of the assessee prayed for quashing the penalty imposed by the lower authorities.

2.3 The Id. DR relied on the orders of the lower authorities.

2.4 We have heard the rival contentions and perused the materials available on record. It is noted from the records that the assessee firm filed the return of income for the assessment year 2008-09 on 23-05-2009 through e-filing and copy of ITR-V was filed on 26-05-2009. The assessment u/s 143(3) of the Act was completed on 27-12-2010 and penalty proceedings u/s 271B of the Act were initiated as the assessee firm could not get the accounts audited within time limit prescribed u/s 44AB of the Act. It is noted that due date of filing of return of income for the assessment year 2008-09 was 30-09-2008. However, the assessee firm got the accounts audited on 1-05-2009 and filed the return of income on 23-05-2009 which resulted delay of almost 08 months. It is noted from the submissions of the assessee that it is the first instance of delay in

getting the accounts audited pertaining to assessment year 2008-09. The assessee submitted that the bone of contention of the issue was on account of audit fees of the auditor which resulted delay in completion of the audit and the same was completed by 01-05-2009 and thereafter the assessee filed the return on 26-05-2009. It is noted from the records that the assessee was not provided opportunity by the lower authorities to cross examine the statements given by Shri R.A. Sharma, Auditor of the firm and the assessee was deprived of countering Shri R.A. Sharma, Auditor. It appears from the discussions held hereinabove that the delay made by the assessee firm in filing the return of income is for the first time i.e. in A.Y. 2008-09 which was on account of dispute of audit fee between the assessee and the auditor. Hence, it appears that the dispute with the statutory auditor is a reasonable cause within the meaning of Section 273B as held in the case of Kripa Industries (I) Ltd. vs. JCIT by ITAT Pune Bench(supra) *that there is no mala fide reason for not obtaining the accounts audited in time and penalty u/s 271B should not be imposed.* Taking into consideration the decision of ITAT Pune Bench in the case of Kripa Industries (I) Ltd. vs. JCIT (supra) and other case

laws relied hereinabove, we feel that the Id. CIT(A) is not justified in imposing the penalty u/s 271B. Hence, the solitary ground of appeal of the assessee is allowed.

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

Order pronounced in the open court on 14/09/2016.

Sd/- (भागचन्द) (Bhagchand) लेखा सदस्य / Accountant Member	Sd/- (ललित कुमार ) (Laliet Kumar) न्यायिक सदस्य / Judicial Member
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जयपुर / Jaipur

दिनांक / Dated:- 14/09/ 2016

\*Mishra

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

1. अपीलार्थी / The Appellant- M/s. Gemorium, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 5(1), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 514/JP/2014)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar