
(1999) 11 AHC CK 0162
In the Allahabad High Court
Case No : Income-tax Appeal No. 33 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Jai Durga Construction Co.

RESPONDENT

Date of Decision : 18-11-1999

Acts Referred:

Finance Act, 1995 — Section 271B
Income Tax Act, 1961 — Section 44AB

Citation : (2000) 164 CTR 512 : (2000) 245 ITR 857 : (2003) 133 TAXMAN 99

Hon'ble Judges : S. Rafat Alam, J; M.C. Agarwal, J

Bench : Division Bench

Advocate : Prakash Krishna, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), has been preferred by the Commissioner of Income Tax, Allahabad, against an order dated November 5, 1998, passed in ITA No. 2343 (Alld.) of 1993 for the assessment year 1991-92. The following substantial questions of law are stated to arise out of the said order:

"(i) Whether the Tribunal was justified in dismissing the Departmental appeal and holding that audit report was obtained before the specified date in view of the fact that it was prepared on the last date of the specified date, i.e., on October 31, 1991, and without confirming/verifying when it was obtained by the assessee in view of the fact that it was filed along with the return of income on January 20, 1992 ?

(ii) Whether the Tribunal was justified in holding that audit report was obtained before the specified date as provided u/s 44AB of the Income Tax Act, 1961, in view of the fact that audit report (as is evident from the date given on it) itself was prepared on October 31, 1991 ?

(iii) Whether the Tribunal was justified in holding that there was no requirement

of law, as it stood at the relevant point of time, before its amendment from July 1, 1995, of filing the audit report before the specified date in view of the fact that Section 44AB of the Income Tax Act, 1961, says that audit report be "obtained before" the specified date so that it may be filed along with the return of income by/on the specified date ?"

2. We have heard Sri Prakash Krishna, learned counsel for the appellant.

3. The relevant part of the Tribunal's order is as under :

"2. In terms of Section 44AB of the Income Tax Act, 1961, the assessee was required to get its accounts audited and to obtain the audit report by October 31, 1991. The audit report dated October 31, 1991, was filed by the assessee along with the belated return furnished on January 20, 1992. The Assessing Officer held that on account of its failure to furnish the return of income along with the audit report within the time allowed u/s 139(1) of the Income Tax Act, the assessee was liable to penalty u/s 271B of the Act. The penalty under consideration was imposed. In appeal, the learned Commissioner of Income Tax (Appeals), following certain decisions of the Income Tax Appellate Tribunal Benches, held that the audit report having been obtained in time, no penalty was eligible u/s 271B of the Income Tax Act.

3. Both the parties were heard. There is no dispute about the fact that the audit report was obtained before the specified date. Most of the Benches of the Tribunal, including the Allahabad Benches, have been taking a view that in a case where the audit report has been obtained by an assessee before the specified date, the mere fact that it has been filed belatedly along with the belated return of income, would not attract imposition of penalty u/s 271 of the Act. It has been so held because the provision, or section 44AB, as they stood at the relevant point of time, did not require filing of audit report independently. It was only after realising" the lacuna of law that the provisions of Section 44AB and Section 271B were amended by the Finance Act, 1995, with effect from July 1, 1995, enjoining upon the assessee to furnish the audit report before the specified date. These amendments have not been made retrospective in operation, which fact also confirms that at the relevant point of time, filing of the audit report before the specified date, was not the requirement of law. In the view of the matter also, the order of the learned Commissioner of Income Tax (Appeals) cancelling the penalty does not call for any interference."

4. At the relevant time, the obligation created by Section 44AB was merely to get the accounts audited before the specified date. There was no obligation to furnish that audit report before the Assessing Officer before the specified date. This obligation has been created by substituting the words "furnish by" for the words "obtain before" by the Finance Act, 1995, with effect from July 1, 1995. Thus, prior to the amendment the obligation of an assessee to whom u/s 44AB applied was merely to get the accounts audited and obtain an audit report before the specified date. There is no dispute that in the present case the assessee

complied with these requirements. The contention of the Commissioner that if the report has not been filed before the Assessing Officer before the specified date, the assessee becomes liable to penalty u/s 271B is not sustain-able from the language of Section 44AB or Section 271B. We are, therefore, of the opinion that the legal position is clear and self-evident and the Tribunal has taken the correct legal view. Therefore, no substantial question of law arises in the appeal. The same is hereby dismissed in limine.