
(2006) 10 KAR CK 0067
In the Karnataka High Court
Case No : ITA No. 336 of 2001

Saraswathi Electronics

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Income Tax Act, 1961 — Section 271 B, 273 B, 44 AB

Citation : (2007) 207 CTR 207 : (2007) 2 KCCR 1063

Hon'ble Judges : R. Gururajan, J;N. Ananda, J

Bench : Division Bench

Advocate : S. Parthasarathi, for the Appellant; E.R. Indrakumar, for the Respondent

Judgement

R. Gururajan, J.—M/s. Saraswathi Electronics, Hassan, is before us in this appeal.

2. The appellant-assesses is a regular income tax assessee. He has filed returns for the assessment years 1991-92 to 1994-95 simultaneously along with the audit report on 25-7-1995. Though the audit reports were obtained belatedly, they were enclosed along with the returns of income for the relevant years. The Assessing Authority noticing the income of more than Rs. 40 lakhs has chosen to initiate proceedings in terms of the Income Tax Act (for short, "the Act"). Thereafter, penalty proceedings were initiated. The appellant was heard and penalty was levied. The same was challenged unsuccessfully both before the Appellant Commissioner and the Tribunal. The assessee having lost at all levels is before us by raising the following questions of law for our consideration:

(1) Whether the Tribunal was justified in holding that penalty u/s 271B of the Act was exigible for the belated audit reports u/s 44AB of the Act inspite of the fact that the audit reports were obtained and enclosed along with the returns filed by the appellant?

(2) Whether on the facts, the penalty u/s 271B of the Act was exigible for the mere delay in obtaining the audit report when the report was ultimately obtained

and enclosed along with the returns as required under the statute?

(3) If the answers to the two questions are in the affirmative, whether the Tribunal was right in holding that there was no reasonable cause in obtaining the belated audit report to attract the provisions of Section 271B of the Act?

(4) Whether non-finalisation of accounts of the first year had caused the delay in finalisation of accounts of that year would be a reasonable cause for the delay in finalisation of accounts and obtaining of the audit report for the subsequent years i.e., for the assessment years 1992-93 to 1994-95 in the case of the appellant?

3. Sri S. Parthasarathi, learned Counsel for the assessee has placed before us several Judgments of several High Courts in the matter of levy of penalty. He would say that the facts of this case warrant no penalty and he wants all the orders passed to be set aside in this appeal.

4. Per contra, Sri E.R. Indrakumar, learned Counsel for the revenue supports the orders.

5. After hearing, we have carefully perused the material on record.

6. Section 271B of the Act would provide for levy of penalty. The said section reads as under:

271B. If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or (furnish a report of such audit as required u/s 44AB), 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.

7. The said provision has been considered by several High Courts. The Gujarat High Court in a Judgment in reported *Rajkot Engineering Association and Others and Tax Advocates Association and Others Vs. Union of India and Others*, has noticed the scope of Section 271B and also Section 44AB for the purpose of levy of penalty. The Gujarat High Court has noticed that it will be for the Department to prima facie show that there was want of reasonable cause on the part of the assessee for committing the default. The Judgment of the Madhya Pradesh High Court *ITO v. Nanak Singh Guliani*, (2002) 257 ITR 677 (MP) would also say that if sufficient cause is shown, no penalty could be levied. The Allahabad High Court *Commissioner of Income Tax Vs. Jai Durga Construction Co.*, in a Judgment has chosen to say that failure to furnish audit report itself would not result in penal proceedings. The Gujarat High Court 123 Taxman 162 in a subsequent Judgment would hold that penalty cannot be levied in the event of books of accounts were ready in terms of the facts mentioned therein. A Division Bench of this Court in *ITRC No. 269/98 C/W ITRC No. 270/984* dated 25-11-1999 has noticed similar provision and thereafter would say as under:

...From a reading of the provisions of Section 44AB and 271B, this contention of the learned standing Counsel for the department may be correct. But Section 273B has contemplated that such penalty can be levied if there is no reasonable cause. Granting of time by the department in furnishing the report and obtaining the return within that time and furnishing the audit report along with the returns before that time as considered a reasonable cause by the Tribunal. Technically there may be a default if the report is not obtained within the time stipulated for filing the return. But there may be circumstances where the regard of provisions has to be softened. Even the application has to be softened. Even the application for extension of time may be for the reason that the accounts were not complete and if that was the position the accounts could not have been audited. In any case the finding which has been recorded, that there was reasonable cause, cannot be considered to be perverse or illegal in any manner. In these circumstances, we are of the opinion that the Income Tax Appellate Tribunal was justified in cancelling the penalty u/s 271B. The penalty u/s 271B cannot be considered to be leviable in every case. It appears that the provisions of Section 273B were not specifically mentioned by the Tribunal in its order and therefore, the proper interpretation of law would be that the penalty u/s 271B can be levied if there is no reasonable cause.

8. The said Judgment has been subsequently upheld. From all these Judgments, we find that there must be some reasons in the matter of levy of penalty in terms of various case laws. Let us see as to whether the appellant has placed any sufficient cause in the case on hand.

9. The admitted facts would reveal the accounts of the appellant should have been audited before 31-10-1991 for the assessment year 1991-92; 31-10-1992 for the assessment year 1992-93; 31-10-1993 for the assessment year 1993-94; and 31-10-1994 for the assessment year 1994-95. Factually audit was completed in respect of all the aforesaid assessment years on 22-07-1995, 25-07-1995, 25-10-1995 and 01 -08-1995 respectively. The Assessing Officer, noticing the delay of four years and after noticing the reasons, has chosen to impose penalty. In paragraph 4 of the order of assessment, the reasons have been culled out. The reasons are that the assessee could not get the accounts written up daily due to non-availability of accounts clerk, the assessee was not conversant with the I.T. Act and the assessee was not aware that accounts were to be got audited and the audit report along with the return of income should be filed within the time allowed under the I.T. Act. The assessee was also advised that the return of income could be filed at any time within 10 years from the end of the year and no penalty would be levied. All these reasons have been considered to be unacceptable by the Assessing Officer. In that view of the matter, he has chosen to impose penalty. We do not find any illegality in the order passed by the Assessing Officer. The ignorance of the I.T. Act cannot be a ground for non-writing of the books of account as contended by the assessee. In these circumstances, the Assessing Officer, in our view has taken a right view in levying penalty. When the same was challenged before the Appellate Authority,

the Appellate Authority, without noticing the facts properly, has chosen to refer to case laws and allowed the appeal and the same was challenged before the Tribunal. The Tribunal, noticing the facts in the light of the case laws has rightly in our view accepted the order of the Assessing Officer. In the circumstances, we are of the view that penalty imposed for the assessment years 1991-92, 1992-93 and 1993-94 are to be upheld. However, insofar as penalty imposed for the assessment year 1994-95 is concerned, the due date for obtaining the audit report was 31-10-1994 and the date on which the audit report obtained was 01-08-1995. There was a marginal delay in obtaining the audit report for the assessment year 1994-95. Insofar as the case laws are concerned, each case stands on a different footing. The MADHYA PRADESH HIGH COURT (Supra) in a Judgment in ITO v. Nanak Singh Guliani, (2002) 257 ITR 677 (MP) has accepted a reasonable cause of the assessee having no control over the accounts. The Gujarat High Court Rajkot Engineering Association and Others and Tax Advocates Association and Others Vs. Union of India and Others, in a Judgment has noticed the reasonable cause in accepting the case of the assessee. The same High Court in a subsequent case reported in 123 Taxman 162 has noticed the books of accounts were ready and the same could not be audited and has accepted the reasons for the delay. Unfortunately, for the earlier three assessment years, no reasonable cause is shown. But however, we have softened the rigour of law for the assessment year 1994-95 in the case on hand.

10. In the result, this appeal is partly accepted. Questions of law are answered against the assessee. However, penalty for the assessment year 1994-95 is set aside in the light of the binding Judgment of this Court is ITRC No. 269/98 c/w ITRC No. 270/98 dated 25-11-1999. Ordered accordingly. No costs.