

No penalty for belated filing of tax audit report as it was caused due to delay in completion of statutory audit

Summary – The Mumbai ITAT in a recent case of APL (India) (P.) Ltd., (the Assessee) held that late completion of statutory audit by auditors and consequent late receiving of tax audit report constituted reasonable cause for non-compliance with provisions of section 44AB.

Facts

- The assessee company, engaged in the business as shipping agents, was required to obtain Tax Audit Report under the provisions of section 44AB before the specified date and also to furnish the same before due date of filing the return which was 30-9-2008.
- The Tax Audit Report was obtained by the assessee only on 26-6-2009 and it was furnished alongwith return which was filed on 3-9-2009. There being non-compliance with the provisions of section 44AB, the Assessing Officer initiated penalty proceedings under section 271B.
- In response to notice of the Assessing Officer, the assessee filed reply stating that the delay was on account of various reasons. One of such reasons was that the personnel from the statutory auditor's office were not conversant with the accounting systems and records maintained by the assessee company which resulted into delay for finalization of the audited accounts for the year. The statutory audit was concluded by them on 21-4-2009. Thereafter, tax audit was completed and same was signed by auditors on 25-6-2009.
- However, the Assessing Officer did not accept this as a reasonable cause and levied the maximum penalty of Rs. 1,00,000 under section 271B.
- On appeal, the Commissioner (Appeals) upheld the stand of the Assessing Officer.
- On appeal to Tribunal:

Held

- According to section 273B, no penalty shall be imposable on the person or the assessee, as the case may be for any failure which *inter alia* include the defaults mentioned in section 271B, if he proves that there was reasonable cause for the said failure. A plain reading of section 273B makes it clear that the same is a procedural law with regard to the question of imposition of penalty under different sections which include section 271B. Section 271B maintains imposition of penalty on the failure but, by reason of rule of evidence provided under section 273B, such imposition of penalty is dependent on the proof that there was no reasonable cause for the failure.
- Unless it is proved that there was reasonable cause for the failure there is no escape from the imposition of penalty. Section 271B does not leave any discretion at the hands of the authority except as provided in section 273B. There cannot be any proposition conceived of to the extent that if there was a substantive compliance or if there was no absolute default then penalty cannot be imposed. But the statute has used the expression 'may' employed in section 271B which cannot be

treated to be mandatory. It has left a discretion that the taxing authority in given facts and circumstances may not impose penalty if they are satisfied that there was sufficient ground for not imposing penalty. But it depends on the facts of each case and having regard to the materials placed before it or where the finding is such that it can conceive of two alternate meaning, then the meaning beneficial to the assessee has to be accepted.

- There was material on record according to which it could be said that the assessee was prevented by sufficient cause for non-compliance with the provisions of section 44AB. The reason given in the present case for non-compliance with the statutory provisions of section 44AB was late completion of statutory audit by the auditors which was completed on 21.04.2009. After completion of the said statutory audit, within a reasonable time *i.e.* within a period of little more than 2 months, the assessee obtained tax audit report on 25.06.2009 and return was e-filed on 03.09.2009. Without completing statutory audit, the assessee could not have obtained tax audit report, which constituted reasonable cause. This plea was raised by the assessee even before the Assessing Officer and Assessing Officer had not doubted such contention of the assessee. 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 reasonable cause for non-compliance with section 44AB and it was held that the Tribunal was right in cancelling penalty levied under section 271B.
- Thus Commissioner (Appeals) was not right in upholding the levy of penalty under section 271B. Penalty was directed to be deleted.