

## No penalty on late filing of audit report if it was duly submitted before completion of assessment: ITAT

**Summary – The Chennai ITAT in a recent case of Magick Woods Exports (P.) Ltd., (the Assessee) held that where assessee obtained audit report under section 92E much before filing of return and submitted it though belatedly but before date of completion of assessment, penalty under section 271BA could not be levied**

### Facts

- The assessee filed the return of income but audit report in Form 3CEB was not filed along with the return. The same was not filed before the due date of filing the return of income under section 139(1).
- The Assessing Officer levied penalty under section 271BA for non-filing of audit report in Form 3CEB on or before the due date of filing the return under section 139(1).
- On appeal, the Commissioner (Appeals) also upheld the penalty levied by the Assessing Officer.
- In instant appeal, the assessee contended that it was in a bona fide belief that no documents need to be filed along with the return of income in terms of explicit provisions contained in section 139D(c). The assessee pleaded that it was accordingly advised not to file the audit report or any other documents along with the return of income. It was argued that the audit report was obtained from Chartered Accountant much before due date of filing of return. However, it was made available to the TPO at the time of framing of the assessment, thus, vitiating the levy of penalty for technical reasons which overlooked the reasonable cause shown by the appellant for belated filing.

### Held

- In the instant case, the assessee had made available the audit report in Form 3CEB much before the completion of proceedings by the Transfer Pricing Officer. The expression 'May' used in section 271BA needs to be viewed liberally, in view of the reasoning given by the assessee. The assessee's *bona fide* mistaken understanding of provisions contained in section 139D(c) itself would determine reasonable cause in terms of section 273B.
- Also it is not the case of the revenue that audit report in Form 3CEB was not obtained by the assessee. Accordingly, it is held that the assessee had substantively complied with the provisions of the Act by obtaining the audit report in time, by filing the same though belatedly but before the date of completion of assessment.
- In view of aforesaid findings, in the facts and circumstances of the case, the Assessing Officer was to delete the penalty levied under section 271BA. Accordingly, the grounds raised by the assessee are allowed.