
Rajasthan State Electricity Board Vs Income Tax Appellate Tribunal

IT Appeal No"s. 29 and 30 of 2002

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: March 21, 2003

Acts Referred:

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

Citation: (2003) 130 TAXMAN 840

Hon'ble Judges: Y.R. Meena, J; Khem Chand Sharma, J

Bench: Division Bench

Advocate: P.K. Kasliwal, for the Appellant; R.B. Mathur, for the Respondent

Final Decision: Allowed

Judgement

1. Since both these appeals involve common question of law, the same are being disposed of by this common judgment.

These appeals are directed against the judgment and order of the income tax Appellate Tribunal, Jaipur Bench, Jaipur (for short "the Tribunal")

dated 20-10-1999. The appeal was admitted in terms of the following question :--

Whether the Tribunal was right in law in sustaining the penalty of Rs. 1.00 lac for each year after proper interpretation of section 271B read with

section 273B of the Act?

The relevant assessment years are 1990-91 and 1991-92. The Assessing Officer has initiated proceedings for penalty for the assessment years

1987-88 to 1991-92. The turn over of the assessee was more than 40 lacs. During these three years, the assessee was obliged to file report in

Form No. 3CD along with audited balance sheet, profit and loss account with the return as per the requirement of section 44AB of the income tax

Act, 1961 (hereinafter referred to as "the Act"), which came into effect from the assessment year 1985-86, which requires that each assessee

whose turnover is more than Rs. 40 lacs is liable to get its accounts audited by a Chartered Accountant before the specified date and to obtain an

audited report before the due date.

2. The assessee has not submitted the audit report along with the return in all these cases. Therefore, the Assessing Officer has levied the penalty of

Rs. 1.00 lac for each of the assessment year u/s 271B of the Act.

3. In appeal before the Tribunal, the Tribunal has also affirmed the penalty levied by the Assessing Officer. In appeal before the Tribunal, the

Tribunal found that there was reasonable cause in the first three years (i.e. for the assessment years 1987-88, 1988-89 and 1989-90) for not filing

the audit report as required u/s 44AB of the Act. Hence, the Tribunal cancelled the penalty for these three years. For the assessment years 1990-

91 and 1991-92 the Tribunal found that there was no reasonable cause with the assessee for not submitting the audit report as required u/s 44AB

of the Act. Hence, confirmed the penalty for these two assessment years.

4. Heard, learned counsel for the parties.

5. Mr. P.K. Kasliwal, learned counsel for the appellant submits that in the case of the assessee, the Accountant General is the concerned person

and only competent authority to audit the accounts. It cannot get its accounts audited by any other accountant and unless it receives the audit

report for the preceding year, it cannot make available the accounts to the Accountant General for audit for the subsequent year.

6. Mr. R.B. Mathur, learned counsel appearing for the revenue submits that whether the assessee has a reasonable cause for not submitting the

audit report for the years 1990-91 and 1991-92, the Tribunal has considered the Explanation in para No. 9 of its judgment and found that for both

these assessment years, the assessee has no reasonable cause to file the audit report. Para No. 9 of the Tribunal's judgment reads as under :

9. Now we will take up the penalty issue for assessment years 1990-91 and 1991-92. We noted that the accounts for these two years were

handed over to the AG Office on 29-12-1990 and 3-3-1992. In this way we noted that the accounts book for assessment year 1990-91 were

handed over the AG Office on the last day of the due date. Being last date on 30-12-1990, the accounts were handed over on 29-12-1990 and

accounts for assessment year 1991-92 were handed over on 3-3-1992. It was beyond the due date. Due date was December, 1991 and the

accounts were handed over in March, 1992 and we have seen also that final report for 1989-90 was handed over to the assessee on 28-8-1990

and for 1991-92 the audit report was received on 20-1-1992. It means there is no bona fide on the part of the assessee that why it delayed in

handing over the accounts to the AG Office. Therefore, we are of the view that there was no reasonable cause for getting the accounts audited and

seeking report as per provisions of section 44AB for these two years. Accordingly we confirm the penalties for these two years. Penalties for

assessment years 1987-88, 1988-89 and 1989-90 are deleted and the penalties for assessment years 1990-91 and 1991-92 are confirmed.

7. Mr. Kasliwal, learned counsel appearing for the assessee has submitted a chart showing the details regarding the specified date of audit, date on

which annual accounts of the assessee were rendered to AG Office for Audit, date on which audit certificate was issued and date on which the tax

report was received. The relevant details read as under:--

Asst. Year 1989-90 1990-91 1991-92

Specified date of Audit 31-12-1989 31-12-1990 31-12-1991

Date on which annual

accounts of the Board

rendered to AG Office 23-10-1989 29-12-1990 3-3-1992

Date on which audit

certificate issued by the

AG 22-8-1990 5-12-1991 11-11-1992

Date on which tax audit

report received 28-8-1990 20-1-1992 26-11-1992

8. There is no dispute on the facts that the assessee got its accounts audited by the A.G. Office for the three preceding years. Though the accounts

were submitted before the due date but the accounts were not audited by the AG Office before due date. For these three years the Tribunal found

that the assessee has a reasonable ground for not submitting the audit report on due date as required under the law. If we go through the details

submitted by Mr. Kasliwal, the facts are not in dispute that the assessee has received the audit report for the assessment year 1989-90 on 28-8-

1990 for submission of the accounts for the assessment year 1990-91 and the process took time to adjust the accounts of the assessment year

1990-91 in conformity with the audit report received for the assessment year 1989-90, that takes time and the accounts were submitted on 29-

12-1990. Considering the fact that when the audit report for the assessment year 1989-90 was received on 28-8-1990, we do not find any fault

on the part of the appellants assessee. The appellant-assessee, therefore, has a reasonable ground to submit the accounts for audit on 29-12-

1990.

9. Similarly, for the assessment year 1991-92, the specified date was 31-12-1991 and the assessee submitted its accounts for audit on 3-3-1992

i.e. two months after the specified date. In this year, the assessee has received the audit report from the AG Office on 26-11-1992 and after

receipt of that report for the preceding year 1990-91, the assessee needs some time to adjust the final accounts for the assessment year 1990-91

and that took some time. The assessee has submitted the accounts to the AG Office on 3-3-1992. Considering these facts and the fact that the

assessee was to get the accounts audited from the AG Office and has no control over that office, we are of the view that the Tribunal has

committed error in sustaining the penalty for the assessment year 1991-92 also in case of this assessee.

10. Considering the facts of the cases, we are of the view that the penalty so imposed upon the assessee cannot be sustained as the assessee has

the reasonable cause for not submitting the accounts before due date and the same is liable to be set aside, hence, the same part of the penalty

order is set aside. Both the appeals stand allowed.