

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' DELHI  
BEFORE SHRI C.L. SETHI AND SHRI K.G. BANSAL

ITA No. 4189(Del)/2010  
Assessment year: 2006-07

M/s Cool Breeze Aircon Pvt. Ltd., 33-34,UGF, Ajit Arcade, Kailash Colony, New Delhi-48. Vs. Income-tax Officer, Ward 3(4), New Delhi.

(Appellant)

(Respondent)

Appellant by : Shri R.R.David & Ms. Ruchi Khurana, Adv.  
Respondent by: Ms. Y. Kakkar, Sr. DR

ORDER

PER K.G. BANSAL : AM

The assessee has taken up 9 grounds in the appeal. However, the real grievance is projected in ground no. 1 that the ld. CIT(Appeals) erred in concurring with the Assessing Officer (the AO) in upholding the levy of penalty u/s 271B of the Income-tax Act, 1961 (the Act). The other grounds are in the nature of submissions or arguments.

2. The facts leading to the levy of penalty are that the assessee filed a nil return on 18.11.2006. Assessment under section 143(3) was completed on 23.12.2008, determining the total income of the assessee at Rs. 67,940/-. In the course of assessment, the AO examined the audit report and reproduced form no. 3CA. This form is somewhat differently

worded than the prescribed form. Therefore, it was concluded that it failed to furnish audit report in the prescribed format. The difference in the two formats is that in paragraph no. 2, it has been mentioned that the statement of particulars are based on test check, the words not finding a place in the prescribed format. Therefore, it was held that the assessee has failed to file the audit report as prescribed under the rules. Accordingly, penalty proceedings were initiated u/s 271B. In pursuance of these proceedings, penalty of Rs. 55,389/- was levied on 30.6.2009. The penalty has been confirmed by the CIT(Appeals)-VI, New Delhi, on 30.6.2010 in appeal no. 61/09-10. Aggrieved by this order, the assessee is in appeal before us.

3. The ld. counsel for the assessee filed a copy of the audit report which was furnished along with the return of income. It is submitted that since the audit report had been furnished, there is no question of levy of penalty simply because the words “based on test check and subject to our audit comments and any observations there under” have been added by the auditor in point no. 2 of form 3CA. In reply, the ld. DR relied on the orders of the lower authorities.

4. We have considered the facts of the case and submissions made before us. It is a matter of fact on record that the assessee obtained audit report in form no. 3CA dated 28.10.2006 from chartered accountant, R.K. Lal & Co. This report contains some additional words in point no. 2, mentioned above, which were not required as per prescribed form no. 3CA. According to us, inclusion of these words does not lead to a conclusion that the audit report was not obtained and filed. The error, if any, has been made by the auditor possibly as a matter of abundant caution. No fault can be found with the assessee in this matter. Accordingly, we are of the view that the levy of penalty was not justified.

5. In the result, the appeal is allowed.

This order was pronounced in the open court on 6 May, 2011.

Sd/-

sd/-

(C.L. Sethi)

Judicial Member

Date of order: 6th May, 2011.

SP Satia

Copy of the order forwarded to:-

M/s Cool Breeze Aircon Pvt. Ltd., New Delhi.

ITO, Ward 3(4), New Delhi.

CIT

CIT(A)

The DR, ITAT, New Delhi.

(K.G. Bansal)

Accountant Member

Assistant Registrar.