

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य
 एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T.
 Varkey, JM]

I.T.A. No. 898/Kol/2015
Assessment Year: 2011-12

Nanda Lal Dey (PAN: AIJPD2089D)	Vs.	Income-tax Officer, Ward-1, Bankura
Appellant		Respondent

Date of Hearing	23.01.2018
Date of Pronouncement	15.02.2018
For the Appellant	Shri Somnath Ghosh, Advocate
For the Respondent	Shri Arindam Bhattacharjee, Addl. CIT, Sr.DR

ORDER

Per Shri A.T.Varkey, JM

The appeal filed by the assessee is against the order of Ld. CIT(A)-Durgapur dated 21.04.2015 for AY 2011-12 whereby he confirmed the penalty u/s. 271A of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) against the assessee.

2. Brief facts of the case are that assessee is trading in wholesale and retail of eggs. Case was selected for scrutiny and during the assessment proceedings the AO found fault with the assessee not able to produce purchase bills, vouchers etc. to support the expenditure. Thereafter, he was of the view “without supporting evidence, correctness and completeness of the paper, and book of accounts submitted by the assessee as well as in absence of supporting evidence the paper book is not acceptable and he made the difference of purchases as the undisclosed purchases and gross profit @ 2.99% was added on that also.” Net profit was estimated @ 8% on the sum of Rs.4,80,05,648/- and net taxable income was computed at Rs.38,16,005/-. Thereafter, the AO initiated penalty proceedings

u/s. 271A of the Act for non-maintenance of books of account as required by sec. 44A of the Act and the rules made there under and was pleased to levy penalty of Rs.25,000/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to confirm the same. Aggrieved, the assessee is before us.

3. We have heard rival submissions and gone through facts and circumstances of the case. We note that during assessment proceedings the assessee has filed copy of audited accounts, copies of all bank statements etc. for the assessment year under consideration. The AO has clearly stated in page 3 of the assessment order that he had verified purchase register, ledger, books of accounts etc. and has also gone through the sales register and audited books of accounts. He has also stated that on 21.02.2014 the Ld. AR of the assessee appeared and submitted paper books of account, postal address of sundry creditors and statement regarding names and addresses of the sundry traders. In the penalty order, the AO found fault with the assessee for not producing the supporting documents to cross verify the entries in the books. The AO has failed to specify as to which books of accounts like ledger, cash book, bank book has not been produced before him. The assessment order passed by the AO is vague and from the reading of the assessment order as well as the penalty order, we note that the AO has not specifically stated which books were statutorily required to be maintained by the assessee, which the assessee has failed to maintain and without making a specific charge or default, the penalty cannot be levied. Having said so, we also note that if the assessee is not able to produce vouchers or bills in support of its claim for expenditure then the AO is at liberty not to allow the claims of expenditure made by the assessee. However, if a penalty u/s. 271A of the Act is to be levied then the AO has to make out a case that assessee was statutorily required to maintain books in the course of his business, which the assessee has failed to keep and maintain and other documents which are required to be maintained as per section 44AA of the Act or Rules made there under and to retain such books of account and other documents for the period specified in the Rules. Here, in this case, the AO failed to specify which books the assessee has not kept and maintained as per law and rules made thereunder. We note that in the instant case, the assessee has produced the audited books, purchase register, sales register, ledger, bank

statement, paper books of account etc. and the assessment has been done u/s. 143(3) of the Act as noted from the title of the assessment order as item no. 13. In the said scenario, penalty levied u/s. 271A of the Act is not legally sustainable and, therefore, we direct the deletion of the same. Appeal of assessee is allowed.

4. In the result, appeal of assessee is allowed.

Order is pronounced in the open court on 15.02.2018

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 15th February, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Nanda Lal Dey, C/o, S. N. Ghosh & Associates, Advocates, ‘Seven Brothers Lodge’, P.O. Buroshibtala, P.S. Chinsurah, Dist. Hooghly, Pin-712 105.
- 2 Respondent – ITO, Ward-1, Bankura.
3. The CIT(A) Durgapur
4. CIT Durgapur
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Sr. Pvt. Secretary