

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “बी” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “B”, PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND  
SHRI ANIL CHATURVEDI, AM

आयकर अपील स / ITA Nos.908 to 915/PUN/2016  
निर्धारण वर्ष / Assessment years : 2007-08 to 2010-11

Shri Dattatraya Shivaji Bandal,  
Prop. Kailash Food Industries,  
At Amrutwadi, Post Pachwad,  
Tal. Wai. Dist. Satara.

..... अपीलार्थी /  
Appellant

PAN : AABPB8740K.

बनाम v/s

The Dy. Commissioner of Income-  
Tax, Satara Circle, Satara.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri M.K. Kulkarni.

Revenue by : Shri Mukesh Jha, JCIT.

सुनवाई की तारीख / Date of Hearing : 19.04.2018	घोषणा की तारीख / Date of Pronouncement: 24.04.2018
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आदेश / ORDER

**PER SUSHMA CHOWLA, JM**

Out of the bunch of 8 appeals, four appeals in ITA Nos.908 to 911/PUN/2016 are against separate orders of the Commissioner of Income Tax (Appeals) – 4, Pune dt.13.02.2016 relating to assessment years 2007-08 to 2010-11 against the levy of penalty under Section 271A of the Income Tax Act, 1961 (in short ‘the Act’). The balance four appeals in ITA Nos.912 to 915/PUN/2016 are against separate orders of the Commissioner of Income Tax (Appeals) – 4, Pune dated 15.02.2016 relating to assessment years 2007-08 to 2010-11 against the levy of penalty under Section 271B of the Act.

2. All the appeals of the assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee is aggrieved by the levy of penalty under Section 271A / 271B of the Act. However, we proceed to dispose of the bunch of appeals after referring to the facts and issue in ITA No.908/PUN/2016.

4. The assessee in ITA No.908/PUN/2016 has raised the following grounds of appeal :

*“1. On the facts and circumstances of the case and in law the Ld.CIT(A)-4, Pune was not justified in confirming the penalty levied by the AO under Section 271-B of the Act. The penalty be deleted.*

*2. The appellant craves to leave, add / amend or alter any of the above grounds of appeal.”*

5. Briefly, in the facts of the case, the assessee had originally filed the return of income for assessment year 2007-08 declaring total income of Rs.1,63,750/- and agricultural income of Rs.69,045/-. The said return was processed under Section 143(1) of the Act. The survey under Section 133A of the Act was carried out at the business premises of assessee on 25.02.2010. During the course of survey, it was noticed that there were unrecorded sales as well as purchases recorded in the separate registers which were found and impounded during the course of survey proceedings. The assessee filed revised return on 31.03.2010 declaring total income of Rs.6,08,920/- and agricultural income of Rs.69,045/-. The Assessing Officer held the said return to be a nonest return of the income, since it was not filed within the prescribed period and also because the original return was not filed on or before the due date of filing the return of income of the relevant year. The assessment

in this case was completed under Section 143(3) r.w.s. 147 of the Act determining the total income at Rs.7,08,920/- and agricultural income of Rs.69,045/-. The Assessing Officer also initiated penalty proceedings under section 271A of the Act as assessee had failed to maintain regular books of accounts in terms of provisions of Section 44AA of the Act. The Assessing Officer took note of the fact that the turnover of the assessee for the year under consideration was Rs.49,81,251/- and as such the assessee was required to maintain the books of accounts. However, no such books of accounts were initially maintained by the assessee. Later on, the assessee obtained the photocopies of all the records and prepared the books of accounts. The assessee had also not got the accounts audited though it was statutorily required to do so as the turnover of the business exceeded Rs.40 lacs. Since the assessee had failed to comply with the provisions of Section 44AA and 44AB of the Act, penalty proceedings under Section 271A of the Act for failure to maintain the books of accounts and under section 271B of the Act for failure to get such accounts audited, were separately initiated. The assessee was show caused in this regard. The assessee explained that though no accounts were maintained but there was no defect in computation of the taxable income since all other details necessary for computation of such income were available and were also produced before the Assessing Officer during the course of assessment proceedings. The Assessing Officer rejecting the said plea, held the assessee to have defaulted in non-compliance of provisions of Section 44AA of the Act and levied penalty of Rs.25,000/-. The Commissioner of Income Tax (Appeals) upheld the levy of penalty under section 271A of the Act against which the assessee is in appeal before us.

6. The Learned Authorised Representative for the assessee pointed that there was no merit in the aforesaid levy of penalty under section 271A of the Act since the Assessing Officer had accepted the books of accounts prepared by the assessee after survey and no addition has been made in the hands of the assessee.

7. The Learned Departmental Representative for the Revenue placed reliance on the orders of the authorities below.

8. We have heard the rival contentions and perused the record. The first issue which arises in the present appeal is against the levy of penalty under section 271A of the Act for violation of provisions of Section 44AA of the Act.

9. Under Section 44AA(2) of the Act, every person carrying on business or profession, not being a profession referred to in sub-section (1), shall (i) if his income from business or profession exceeds rupees one lakh twenty thousand rupees, (ii) or his total sales, turnover or gross receipts, as the case may be, in the business or profession exceed or exceeds ten lakh rupees, in any one of the three years immediately preceding the previous year; then he is under obligation to keep and maintain such books of accounts and other documents, which may enable the Assessing Officer to compute his total income in accordance with the provisions of the Act. The requirement of Section is that where the income of the assessee from business or profession exceeds rupees one lakh twenty thousand or his sales, turnover or gross receipts exceeds rupees ten lakhs, then there is an obligation on the assessee to maintain the books of accounts and on failure to maintain such books

of accounts, the assessee is liable to levy of penalty under Section 271A of the Act. In such default the penalty of Rs.25,000/- can be levied.

10. In the facts of the present case, the assessee had originally filed the return of income. However, after survey proceedings under Section 133A of the Act, the assessee prepared the books of accounts on the basis of the impounded registers and documents which reflected higher sales than the sales declared by the assessee in the original return of income. Consequent to the survey in the case of the assessee, the assessment was completed under section 143(3) r.w.s. 147 of the Act at a higher income. The turnover of the assessee exceeded the limit prescribed under Section 44AA of the Act under which it was obligatory upon the assessee to maintain the books of account. The requirement of the section is that in cases where the income exceeds the threshold limit or turnover then it was obligatory upon the person to maintain proper books of accounts and in the absence of the same, assessee was liable to levy of penalty under Section 271A of the Act. We find that the survey team on the basis of the impounded documents found during the course of survey, had computed the income of the assessee for the relevant assessment years and found the assessee to have violated the provisions of Section 44AA of the Act for not maintaining the books of accounts as required under the Act. Where the assessee had defaulted, then he is liable for levy of penalty under section 271A of the Act. We hold so. In such circumstances, we uphold the levy of penalty u/ 271A of the Act at Rs.25,000/-.

11. In respect of the balance years i.e., assessment years 2008-09 to 2011-12, the facts and circumstances are identical i.e., the receipts are more than the prescribed limit and the assessee had failed to maintain

required books of accounts. It is only on the basis of the sales registers / documents found and impounded during the course of survey, assessee filed the return of income for the said years offering the said income. In view thereof, where the facts and issue are identical to the facts in assessment year 2007-08, we uphold the levy of penalty under section 271A of the Act at Rs.25,000/- for each of the years respectively.

12. Now coming to the next bunch of appeals, wherein the penalty under Section 271B of the Act was levied for not auditing the books of accounts. It is an admitted position that no books of accounts were maintained by the assessee. We have upheld the penalty order of the authorities below under section 271A of the Act in the above paras at Rs.25,000/- for each of the years respectively. Once the books of accounts have not been maintained by the assessee in the regular course of business then the next consequence follows i.e. the audit of the said accounts of the assessee from year to year. In the above said factual circumstances, where the assessee had defaulted for not maintaining of books of account, additional default, though attracted for non audit of books of account under Section 271B of the Act, is not leviable against the assessee because of the provisions of Sec.273B of the Act. The said section clearly provides that where the assessee had reasonable cause for the default then no penalty is to be levied. Where the assessee had failed to maintain books of account, then such non existing books of account cannot be audited. We find merit in the plea of the assessee and accordingly direct the Assessing Officer to delete the penalty levied under Section 271B of the Act, for the relevant assessment years.

13. The facts and issues raised in assessment years 2008-09 to 2010-11 are similar to the facts and issues raised in assessment year 2007-08. Accordingly, our decision in assessment year 2007-08 both in respect of penalty levied under section 271A and 271B of the Act would apply *mutatis-mutandis* to assessment years 2008-09 to 2010-11.

14. In the result, the appeals of assessee in ITA Nos.908 to 911/PUN/2016 are dismissed and the appeals of assessee in ITA Nos.912 to 915/PUN/2016 are allowed.

Order pronounced on 24<sup>th</sup> day of April, 2018.

<b>Sd/-</b>	<b>Sd/-</b>
<b>(ANIL CHATURVEDI)</b>	<b>(SUSHMA CHOWLA)</b>
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 24<sup>th</sup> April, 2018.

Yamini

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(Appeals)-4, Pune.
4. Pr.CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.