

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'C', KOLKATA**

[Before Shri P.M. Jagtap, AM and Shri S.S. Viswanethra Ravi, JM]

**I.T.A. No. 261/Kol/2017
Assessment Year: 2013-14**

Dr. Shantanu Datta.....Appellant
Baganbati, Khalisani,
Chandannagar, Hooghly,
Pin - 712 138
[PAN : AECPD 5385 D]

ITO, Ward 23(1).....Respondent
Aayakar Bhawan,
Khadinamore, Chinsurah,
Hooghly - 712 101

Appearances by:

Shri S.P. Datta, Advocate appearing on behalf of the Assessee.

Shri A. Bhattacharjee, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : May 08, 2018

Date of pronouncing the order : May 11, 2018

ORDER

Per P.M. Jagtap, AM

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 6, Kolkata dated 14.12.2016 whereby he confirmed the penalty of Rs. 26,812/- imposed by the A.O. under section 271B of the Income Tax Act, 1961.

2. The assessee in the present case is an individual who is doctor by profession. During the year under consideration, he derived income from his two clinics viz. Accutare & Dutta Clinic. During the course of assessment proceedings, it was noticed by the A.O. that gross receipts of the two clinics of the assessee for the year under consideration were Rs. 53,62,470/- and he, therefore, was required to get his accounts audited and furnish the report of such audit as per

section 44AB of the Act. Since the assessee had failed to comply with the said requirement, penalty proceedings under section 271B were initiated by the A.O. In reply to the show cause notice issued by the A.O. during the course of said proceedings, it was explained by the assessee that even though he was a doctor, the activity carried on by him as diagnostics centre was in the nature of business. It was submitted that the said activity was carried on by purchasing some specific instrument and machinery, employing some doctors and technicians which did not relate to the medical profession. It was contended that since the turn over of the said business was below Rs. 1 crore, the requirements of section 44AB were not applicable. This contention of the assessee was not found acceptable by the A.O. He found that the assessee himself had declared the nature of his activities as professional in the return of income. He also found on the basis of inspector's report that the activity of running of diagnostic centre was part of the medical profession of the assessee. He, therefore, held that the provisions of section 44AB were applicable in the case of the assessee and since the assessee had failed to comply with the requirements of the said provisions, a penalty of Rs. 26,812/- being $\frac{1}{2}\%$ of Rs. 53,62,470/- was imposed by the A.O. under section 271B of the Act.

3. The penalty imposed by the A.O. under section 271B was challenged by the assessee in the appeal filed before the Ld. CIT(A) and submissions made before the A.O. were reiterated by the assessee before the Ld. CIT(A) in support of his case that penalty imposed by the A.O. under section 271B was not justified. The Ld. CIT(A) did not find merit in the said submission and proceeded to confirm the

penalty imposed by the A.O. under section 271B for the following reasons given in paragraph no 4:

"I have considered the facts of the case and the written submission of the appellant. It is undisputed that the appellant is a doctor and engaged in the medical profession. That he is running his clinic and employs other doctors and uses various machines to carry out medical examination does not take away from the income earned by him as a medical professional. The appellant has vaguely discussed the nature of his expenses but not discussed his receipts in detail. He has not furnished any evidence to show that the receipts are not in any way linked to his profession as a doctor. I, therefore, hold that the A.O. was right in holding that the appellant is a professional and liable to get his books audited in the light of the total receipts of Rs. 53,62,470/-. Hence, the penalty of Rs. 26,812/- imposed u/s 271B of the Act by the A.O. is confirmed."

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. Although the learned DR has strongly supported the impugned order of the Ld. CIT(A) confirming the penalty imposed by the A.O. under section 271B of the Act by submitting that the entire receipts earned by the assessee from two clinics constitutional his professional income, we find merit in the contention of the learned counsel for the assessee that the assessee, going by the nature of the activity of his diagnostic centre, was of the belief that the receipts from the said activity were in the nature of business income and the quantum of such receipts being less than the Rs. 1 crore, the provisions of section 44AB were not applicable. This belief entertained by the assessee was duly supported by the fact that the activity of diagnostic centre required trade licenses from the concerned authorities. Although this belief

entertained by the assessee turned out to be wrong as held by the authorities below, we are of the view that the same was a bona fide belief entertained by the assessee in the facts and circumstances of the case and the same constitutes a reasonable cause for the failure of the assessee to comply with the requirement of section 44AB. In our opinion, the case of the assessee thus is not a fit to impose penalty under section 271B and cancelling the same, we allow this appeal of the assessee.

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

Order Pronounced in the Open Court on 11th May, 2018.

Sd/-

(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 11/05/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Dr. Shantanu Datta, Baganbati, Khalisani, Chandannagar, Hooghly, Pin – 712 138.
2. ITO, Wd 23(1), Aayakar Bhawan, Khadinamore, Chinsurah, Hooghly – 712 101.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata