

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**AND**

**SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.7/DEL/2015( A.Y 2012-13)**

Suraj Bhan Vill. Mehrana Distt. Jhajjar Haryana ADIPB2792H <b>(APPELLANT)</b>	Vs	ITO Ward-4 Rohtak <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>None</b>
<b>Respondent by</b>	<b>Sh. S. R. Senapati, Sr. DR</b>

<b>Date of Hearing</b>	<b>07.06.2018</b>
<b>Date of Pronouncement</b>	<b>13.06.2018</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 11/11/2014 passed by CIT(A)-Rohtak, New Delhi for A.Y. 2012-13.

2. The grounds of appeal are as under:-

1 *Assessment order passed by Ld.CIT(A) & as well as A.O ward-4-Rohtak U/S . 271-A dated 21-03-2013 of the income tax act 1961 is erroneous on facts and law*

2 *That the Id. AO. Was not justified in imposing the Penalty without any reasonable cause without knowing all the facts of the case without any reasonable cause and not considering my reply dt 13-02-2013, against law and facts in Imposig the Penalty of Rs 25000 u/s 271 A on account of, The Reasons best known to him .*

*3 The appellant caused the leave of the Id.I T A T appeals for adding altering or deleting . of any ground of appeal before the appeal is finally heard and disposed off.”*

3. The assessee is engaged in the business of Civil Construction or supply of labour for civil construction. The Assessee filed his Return of Income of A.Y. 2012-2013 on 04.04.2012 showing Income of Rs. 3,07,201/-. The assessee paid taxes of Rs 3,536 while T.D.S was deducted at Rs 3,13,045/-. The Assessee received a Show Cause Notice dated 01.02.2013 and the assessee filed reply. The Assessing Officer observed that the assessee did not maintain the books of account. Therefore, the Assessing Officer held that the assessee failed to comply with the provisions of Section 44AA of the Income Tax Act, 1961. Thus, the penalty proceedings u/s 271A for the failure to comply with the provisions of Section 44AA was initiated and penalty notice dated 01.02.2013 was served upon the assessee. In response, the assessee filed reply and stated that the assessee has shown profit @ 8% u/s 40AE and therefore, did not require to maintain Books of account. The Assessing Officer after considering the reply, imposed penalty of Rs. 25,000/- under Section 271A of the Income Tax Act, 1961 by holding that the assessee is in default for non compliance of provisions of Section 44AA of the Act.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. When the matter was called out none appeared for the assessee. There was no representation despite the notice has been served to the assessee. Therefore, we are taking the submissions of the assessee submitted before the CIT(A) as the arguments of the assessee before us.

6. The Ld. DR submitted that the CIT(A) has rightly dismissed the appeal of assessee as no books of accounts were maintained by the assessee.

6. We have heard both the parties and perused the material available on

record. It is pertinent to note that the assessee received gross receipt from the commission as he is into the business of Civil Construction/Supply of Labour for Civil Construction. As per the provisions of Section 40AE, the assessee submitted before the Assessing Officer that the assessee has shown profit at 8% and there is no need to maintain books of account. After going through the records, it can be seen that the assessee has paid maximum net taxes and therefore, he is not required to maintain books of accounts. The income declared by the assessee is only to the extent of Rs. 3,07,201/-. After taking into consideration the wordings of Section 44AD of the Act, it can be seen that the Section has not categorically mandates the assessee to maintain books of accounts. Therefore, the Assessing Officer was not right in imposing the penalty u/s 271A of the Act. The order of the CIT(A) is set aside and the appeal of the assessee is allowed. It is pertinent to note here that in earlier A.Y. 2011-12 in assessee's own case, the penalty u/s 271A of the Act is deleted by the Tribunal vide order dated 11.06.2018 being ITA No. 6/DEL/2015 on the similar findings.

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

**Order pronounced in the Open Court on 13<sup>th</sup> June, 2018.**

Sd/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 11/06/2018

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| 1. | Appellant    |
| 2. | Respondent   |
| 3. | CIT          |
| 4. | CIT(Appeals) |
| 5. | DR: ITAT     |

ASSISTANT REGISTRAR

ITAT NEW DELHI