

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA
BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**ITA Nos. 168 & 169/Agra/2018
(ASSESSMENT YEAR: 2009-10)**

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| Smt. Neeru Jain, Jawahar Ganj, Dabra. PANNo.AEGPJ3411C (Assessee) | Vs. | ITO, Ward-1(1), Gwalior. (Revenue) |
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| Assessee by | Shri Anurag Sinha, AR. |
| Revenue by | Shri Waseem Arshad, Sr. DR. |

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| Date of Hearing | 05.06.2018 |
| Date of Pronouncement | 02.07.2018 |

ORDER

PER, A. D. JAIN, JUDICIAL MEMBER:

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The assessee is up against confirmation of levy of penalty of Rs.25,000/- u/s 271A of the IT Act.

2. The assessee had filed her return of income on 15.3.2010, for A.Y. 2009-10, declaring total income of Rs.2,00,450/-. The case was selected for scrutiny and notice u/s 148 of the Act was issued on 15.3.2013. Thereafter, various statutory notices were issued/served, which remained to be complied with. The A.O. has observed in the assessment order that the assessee was engaged in the business of

cattle feed and had shown profit of Rs.2,00,450/- from business. Thereafter, the A.O. received AIR information about the cash deposit of Rs.99,45,500/- in her saving bank account maintained with Punjab National Bank. This information was duly cross-verified from bank by issuing of notice u/s 133(6) of the Act. Even after repeated opportunities, the assessee failed to explain the source of the cash deposit and also failed to produce the books of account. The A.O. had also mentioned that in her statement recorded by ITO Ward 2(1), Gwalior, the assessee stated that she did not maintain any books of account. In view of the assessee's total receipts being Rs.99,47,820/- (Rs.99,45,500/- + Rs.2,00,450/-), the assessee was required to maintain books of account and get them audited as well. As the assessee has failed on both counts, proceedings for penalty u/s 271A for non-maintenance of books of account and penalty proceedings u/s 271B for not getting the books of account audited were initiated. Considering the continuous non-compliance, assessment was framed u/s 144 of the Act, determining the total income at Rs.1,01,48,270/-.

3. During the penalty proceedings, the assessee made a request to keep the penalty proceedings in abeyance due to pendency of appeal in quantum proceedings. However, the .A.O has observed that as during the year, the assessee was having business income exceeding Rs. 1,20,000/- and total sales of her

business exceeding Rs.10,00,000/-, she was required to keep and maintain regular books of account as required u/s 44AA of the Act. As per the A.O, since the assessee herself has accepted in her statement dated 12.12.2011 about non-maintenance of books of account, the contention of the assessee was not found tenable and the A.O. imposed penalty of Rs.25,000/- u/s 271A of the Act.

4. The Id. CIT(A) has confirmed the penalty.

5. The assessee, as before the Authorities below, has contended that:

“2. The fact is that in this case assessment was completed u/s 144 of the Income Tax Act and, therefore, there was no occasion for the Assessing Officer to come to a conclusion that the appellant does not maintain books of account. The appellant filed return of income filing a copy of trading account, profit & loss account and claiming income u/s 44AD of the Income Tax Act. The appellant was under the bona fide belief that the provisions of section 44AA of the income Tax Act are not applicable to her as no accounts are required to be maintained, if the turn-over is less than Rs. 1 crore and under this bona fide belief she did not maintain any books of account. This is what has been presumed by the learned A.O.

3. The learned Assessing Officer passed assessment order u/s 144 of the income Tax Act and a huge addition of Rs.99,47,820/- has been made which is still pending before the

appellate Authority for decision. This request was also made before the learned Assessing Officer before levying penalty u/s 271A of the Income Tax Act but unfortunately it has not been considered. In our opinion, it was bonafide belief of the appellant that she is not required to maintain books of accounts, as her turn over is below Rs. 1 crore. On the basis of this bona fide belief and also considering that the assessee is living in a small town called Dabra, it is prayed to your honour to kindly cancel the penalty by accepting our submission and oblige. In case your honour if deem fit, kindly keep the matter in abeyance till the decision of quantum appeal.”

6. The Id. DR has placed strong reliance on the impugned order.
7. Heard. It has been found as a fact by the Id. CIT(A) that:

“On perusal of Trading & Profit & Loss account it is seen that the appellant has shown total sales of Rs.97,15,865/- and cash deposited in her savings Bank with PNB to the tune of Rs.99,45,500/-. In any case, the income from Business/Profession disclosed in the Return was Rs.2,00,450/- which is more than Rs.1,20,000/- and turnover of her business was more than Rs.10 lacs (Rs.97,45,865/-). Thus, both the conditions prescribed in Section 44AA of the Act were fulfilled, making it mandatory for her to keep and maintain books of accounts which she did not. Not only this, in her statement recorded on 12.12.2011 she had categorically admitted that she

did not maintain any books of accounts, in such circumstances having a huge turnover and substantial income, assessee willfully violated the provision of Section 44AA of the Act, therefore, she was liable for penalty u/s 271A of the Act. Since the turnover of the assessee during the year was Rs.97,15,865/- which is much more than the turnover prescribed for application of Section 44AD of the Act i.e., 40 lacs (at the relevant time). As such the provisions of Section 44AD were not applicable in the case of the appellant.”

8. These findings of the Id. CIT(A) have not been successfully challenged. Therefore, the CIT(A)'s order confirming the penalty is correct. It is upheld. The appeal is dismissed.

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9. This is assessee's appeal against the confirmation of levy of penalty of Rs.49,730/- u/s 271B of the Act.

10. At the outset the Id. Counsel for the assessee has contended that where penalty u/s 271A of the Act has been levied, no penalty u/s 271B can be imposed. Reliance has been placed on 'CIT vs. Bisauli Tractros', 299 ITR 219 (All).

11. The Id. DR as relied on the order under appeal.

12. The contention of the assessee is correct. Penalty u/s 271A is for failure to keep, maintain or retain books of account, documents, etc., whereas penalty u/s 271B concerns failure to keep the accounts audited. Now, where, as in the present case, no accounts are kept, obviously, penalty u/s 271A is leviable and no penalty u/s 271B can be imposed.

13. Therefore, the penalty imposed u/s 271B of the Act is deleted.

14. The appeal is allowed.

15. In the result, ITA No. 168/Agra/2018 is dismissed and ITA No.169/Agra/2018 is allowed.

Order pronounced in the open court on 02/07/2018.

**Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

**Sd/-
(A.D. JAIN)
JUDICIAL MEMBER**

AKV

Copy forwarded to:

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

ASSISTANT REGISTRAR