

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4221/Del./2015  
(ASSESSMENT YEAR : 2009-10)**

**ITA No.4222/Del./2015  
(ASSESSMENT YEAR : 2009-10)**

Shri Irshad, vs. ITO, Ward 1 (3),  
H.No.62, Qassaban, Ghaziabad.  
Dasna Gate, Ghaziabad.

**(PAN : AANPI4503M)**

**ITA No.4223/Del./2015  
(ASSESSMENT YEAR : 2009-10)**

**ITA No.4224/Del./2015  
(ASSESSMENT YEAR : 2009-10)**

Shri Imran, vs. ITO, Ward 1 (3),  
C/o M/s. N. Bhushan & Co., CAs Ghaziabad.  
C-12/114, First Floor,  
D.B. Plaza, R.D.C., Raj Nagar,  
Ghaziabad – 201 002 (U.P.).

**(PAN : AASPI9611B)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Saubhagya Agarwal, Shri  
Saurabh Gupta & Ms. Naina Jain,  
Advocates

REVENUE BY : Shri Subhash Verma, Senior DR

Date of Hearing : 13.09.2018

Date of Order : 17.09.2018

**ORDER**

**PER BENCH :**

Since common questions of facts and law have been raised in all the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, Shri Irshad (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned order dated 09.03.2015 passed by Ld. CIT (Appeals), Muzaffarnagar qua the assessment year 2009-10 on the grounds inter alia that:-

**"ITA NO.4221/DEL/2015**

***1. That the Learned CIT (Appeals) has erred the law and on facts in confirming the action of the Learned AO for imposing the penalty.***

***2. That having regards to the fact and circumstances of the case, Learned CIT (Appeals) has erred in justifying the penalty of Rs.25000/- U/s 271A as law does not prescribed the specific books of accounts which were required to be maintained. .***

***3. That the appellant has a bonafide belief, that there is no requirement for maintaining the books of accounts. The Ld. AO was in position to calculate the profit of the assessee on the basis of the documents / other papers.***

***4. The Ld. CIT(A) have wrongly support the views taken by the Ld. AO in respect of flat rate of profit on sale without raising the question of books of accounts and without any reservation on his part as regard the accounts."***

**"ITA No.4222/Del/2015**

1. *That the Learned CIT (Appeals) has erred the law and on facts in confirming the action of the Learned AO for imposing the penalty.*
  2. *That having regards to the fact and circumstances of the case, Learned CIT (Appeals) has erred in establishing the nature of work of the assessee i.e. the assessee is worked as Kacchha Arhitya during the year, and confirm the action of Ld. AO of imposing the penalty of Rs.68,940/- (wrongly mentioned Rs.1,00,000/- in the grounds of appeal) U/s 271B of the Income Tax Act, 1961.*
  3. *That Learned CIT(A) has wrongly confirmed the action of the Ld. AO, that appellant turnover exceeds the monetary limit as prescribed under section 44AB of the Act and no audit has been conducted of his accounts, therefore, the penalty was attracted.*
  4. *That the Learned CIT(A) did not considered the version of the assessee that the appellant was a Kacchha Arhtia.*
  5. *That Ld. CIT(A) wrongly mentioned In his order that assessee could not established that the assessee is Kacchha Arhtia and the turnover made by him was on behalf of the agriculturists. The assessee has filed complete details and evidence regarding Kachha Arhtia because appellant has contended that he was a retail trader of tomato and his turnover from agriculture produce was Rs. 35,29,2101- and income U/s 44AF @ 5%.*
  6. *That Ld. CIT(A) did considered the facts and circumstances of the case, that penalty U/s 271B for failure to get books of accounts audited where there is failure of to maintain the books of accounts and penalty U/s 271A was levied for this failure.”*
3. The appellant, Shri Imran (hereinafter referred to as ‘the assessee’) by filing the present appeals, sought to set aside the impugned order dated 09.03.2015 passed by Ld. CIT (Appeals),

Muzaffarnagar qua the assessment year 2009-10 on the grounds  
inter alia that:-

**“ITA NO.4223/DEL/2015**

**1. That the Learned CIT (Appeals) has erred the law and on facts in confirming the action of the Learned AO for imposing the penalty.**

**2. That having regards to the fact and circumstances of the case, Learned CIT (Appeals) has erred in justifying the penalty of Rs.25000/- U/s 271A as law does not prescribed the specific books of accounts which were required to be maintained. .**

**3. That the appellant has a bonafide belief, that there is no requirement for maintaining the books of accounts. The Ld. AO was in position to calculate the profit of the assessee on the basis of the documents / other papers.**

**4. The Ld. CIT(A) have wrongly support the views taken by the Ld. AO in respect of flat rate of profit on sale without raising the question of books of accounts and without any reservation on his part as regard the accounts.”**

**“ITA No.4224/Del/2015**

**1. That the Learned CIT (Appeals) has erred the law and on facts in confirming the action of the Learned AO for imposing the penalty.**

**2. That having regards to the fact and circumstances of the case, Learned CIT (Appeals) has erred in establishing the nature of work of the assessee i.e. the assessee is worked as Kacchha Arhitya during the year, and confirm the action of Ld. AO of imposing the penalty of Rs.1,00,000/- U/s 271B of the Income Tax Act, 1961.**

**3. That Learned CIT(A) has wrongly confirmed the action of the Ld. AO, that appellant turnover exceeds the monetary limit as prescribed under section 44AB of the Act and no audit has been conducted of his accounts, therefore, the penalty was attracted.**

4. *That the Learned CIT(A) did not considered the version of the assessee that the appellant was a Kacchha Arhtia.*

5. *That Ld. CIT(A) wrongly mentioned In his order that assessee could not established that the assessee is Kacchha Arhtia and the turnover made by him was on behalf of the agriculturists. The assessee has filed complete details and evidence regarding Kachha Arhtia because appellant has contended that he was a retail trader of tomato and his turnover from agriculture produce was Rs.32,83,100/- and income U/s 44AF @ 5%.*

6. *That Ld. CIT(A) did considered the facts and circumstances of the case, that penalty U/s 271B for failure to get books of accounts audited where there is failure of to maintain the books of accounts and penalty U/s 271A was levied for this failure.”*

**BRIEF FACTS OF ITA No.4221/Del/2015 & ITA No.4222/Del/2015**

4. Briefly stated the facts necessary for adjudication of the controversy at hand in the aforesaid two appeals are : During the assessment proceedings, notices under section 142(1) dated 22.07.2011 in case of Irshad for AY 2009-10 were issued to produce the books of account along with bills and vouchers but the assessee has failed to produce the same and consequently addition of Rs.12,18,290/- was made to the assessee on account of expenses claimed but not verifiable. Consequently, penalty proceedings were initiated vide notice issued u/s 274 read with section 271A and 271B for non-maintenance of books of account in view of the provisions contained u/s 44AA and for not getting the same

audited. Declining the contentions raised by the assessee that he has been filing return showing income on presumptive basis u/s 44AF, penalty to the tune of Rs.25,000/- and Rs.68,940/- in ITA Nos.4221/Del/2015 & 4222/Del/2015 u/s 271A & 271B respectively has been levied.

**BRIEF FACTS OF ITA No.4223/Del/2015 & ITA No.4224/Del/2015**

5. Briefly stated the facts necessary for adjudication of the controversy at hand in the aforesaid two appeals are : During the assessment proceedings, notices under section 142(1) dated 22.07.2011 in case of Imran for AY 2009-10 were issued to produce the books of account along with bills and vouchers but the assessee has failed to produce the same and consequently addition of Rs.18,98,680/- was made to the assessee on account of expenses claimed but not verifiable. Consequently, penalty proceedings were initiated vide notice issued u/s 274 read with section 271A and 271B for non-maintenance of books of account in view of the provisions contained u/s 44AA and for not getting the same audited. Declining the contentions raised by the assessee that he has been filing return showing income on presumptive basis u/s 44AF, penalty to the tune of Rs.25,000/- and Rs.1,00,000/- in ITA

Nos.4223/Del/2015 & 4224/Del/2015 u/s 271A & 271B respectively has been levied.

6. Assessee carried the matter by way of appeals before the ld. CIT (A) who has confirmed the penalties levied by AO by dismissing the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

7. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. AT the very outset, it is brought to our notice by the ld. AR for the assessee that the quantum order passed by the AO / ld. CIT (A) on the basis of which penalty proceedings were initiated, have been set aside by the coordinate Bench of the Tribunal to the file of the Ld. CIT (A) with direction to pass a speaking order as the assessee has raised the question before ld. CIT (A) that he being a '*Kachha Arhatiya*' and as such, he is not maintaining books of account and this issue remained undecided in the quantum proceedings. In the face of these undisputed facts, we are of the considered view that since the quantum proceedings have not yet attained finality having been pending before the ld. CIT (A), the penalty proceedings are not sustainable. So, impugned orders

passed by the Id. CIT (A) in all the aforesaid appeals are hereby set aside and files are restored back to AO to decide afresh after providing an opportunity of being heard to the assessee when the question raised by the assessee that he is a '*Kachha Arhatiya*' is '*decided by the Id. CIT (A)*'. Consequently, all the aforesaid appeals filed by the assesseees are allowed for statistical purposes.

**Order pronounced in open court on this 17<sup>th</sup> day of September, 2018.**

**Sd/-  
(N.K. SAINI)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 17<sup>th</sup> day of September, 2018  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Muzaffarnagar.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**