

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT
AND SHRI SANJAY GARG, JUDICIAL MEMBER

ITA Nos. 1191 To 1196/Chd/2018

(Assessment Years : 2007-08 To 2012-13)

Shri Ram Kumar Sharma
Prop. M/s Ram Kumar Mangat Ram,
C/o Sh. Tej Mohan Singh (Advocate)
#527, Sector-10-D , Chandigarh

Vs. The ITO, W-1(1)
W-1(1), Chandigarh

PAN No. AZEPS9867L

(Appellant)

(Respondent)

Assessee by : Shri. Tej Mohan Singh, Advocate
Department by : Shri. Manjit Singh, Sr. DR

Date of hearing : 22/01/2019
Date of Pronouncement : 22/01/2019

ORDER

PER BENCH :

All the above appeals have been filed by the Assessee against the separate orders each dated 29/06/2018 of Ld. CIT(A)-1

2. Since the issue involved is common in all these appeals which were heard together so these are being disposed off by this common order for the sake of convenience and brevity.

3. The only grievance of the assessee in these appeals relate to the confirmation of penalty levied by the Assessing Officer Under Section 271B of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

4. During the course of hearing the Ld. Counsel for the assessee at the very outset stated that penalty under section 271B of the Act was levied by the Assessing Officer for the reasons that the assessee did not get its account audited. It was further submitted that this issue as to whether the assessee maintained the books of account or not is pending before the Ld. CIT(A) in quantum appeals, therefore the present cases may also be sent back to the file of the Ld. CIT(A). It was further submitted that the Assessing Officer himself admitted in the last para at page no. 2 of the penalty order dt. 17/11/2014 for

the A.Y. 2007-08 that the assessee did not maintain the books of account, therefore, there was no justification for levying the penalty under section 271B of the Act, for the reasons that if the assessee did not maintain the books of account there was no question of getting those audited.

5. In his rival submissions, the Ld. Sr. DR strongly supported the orders of the authorities below and further submitted that the assessee neither maintained books of account nor got those audited even when the turnover was more than Rs. 40.00Lacs, therefore the penalty under section 271B of the Act was rightly levied by the Assessing Officer and the Ld. CIT(A) was fully justified in confirm the same.

6. We have considered the rival submissions of both the parties and carefully gone through the material available on record, in the present case the contention of the Ld. Counsel of the Assessee that the issue relating to maintenance of books of account is pending before the Ld. CIT(A) in quantum appeals for the year under consideration was not controverted by the Ld. Sr. DR. It is also noticed that the Assessing Officer in para 2 at page no. 2 of the penalty order under section 271B of the Act, dated 17/11/2014 has mentioned that the assessee did not maintain the books of accounts, this fact requires verification and moreover the Ld. Counsel for the Assessee stated at Bar that the issue relating to the maintenance of books of account is pending before the Ld. CIT(A), we therefore, by considering the totality of the facts deem it appropriate to remand these cases to the file of Ld. CIT(A) to be adjudicated afresh in accordance with law after considering the outcome of the issue relating to maintenance of books of account by the assessee pending before him in quantum appeals, by providing a due and reasonable opportunity of being heard to the assessee.

7. In the result all the above appeals of the Assessee are allowed for statistical purposes.

(Order pronounced in the open Court on 22/01/2019)

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER
Dated : 22/01/2019

AG

Sd/-

(N.K. SAINI)
VICE PRESIDENT

Copy to: 1.The Appellant, 2. The Respondent, 3. The CIT(A), 4. The CIT, 5. The DR