



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND  
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.712/Lkw/2017  
Assessment Year:2013-14

Shri Ashok Kumar Gupta, M/s Sarawati Traders, Naveen Mandi Esthal, Hardoi. PAN:AJEPG 5658 D (Appellant)	Vs.	Income Tax Officer-3(3), Hardoi.  (Respondent)
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Appellant by	Shri Sanjay Saxena, Advocate
Respondent by	Shri C. K. Singh, D.R.
Date of hearing	06/03/2019
Date of pronouncement	08/03/2019

**ORDER**

**PER T. S. KAPOOR, A.M.**

This appeal has been filed by the assessee against the order of learned CIT(A), Bareilly dated 14/08/2017 pertaining to assessment year 2013-14.

2. The only grievance raised by the assessee in its grounds of appeal is the action of learned CIT(A) by which he has confirmed the penalty of Rs.1,50,000/- which the Assessing Officer had imposed u/s 271B of the Act.

3. At the outset, Learned counsel submitted that assessee is proprietor of the firm M/s Saraswati Traders and got its accounts audited as per the provisions of section 44AB of the Income Tax Act, 1961 and the relevant

report was obtained on 30/09/2013. Learned counsel for the assessee further submitted that the tax audit report was handed over by the assessee to the advocate to file the return of income. He submitted that from this, the Tax Audit Report was to be uploaded from the site of the Department but the advocate failed to do so and filed the same on 24/04/2014. Due to this failure on the part of the old counsel, the assessee changed the counsel also. On enquiry by the assessee from the old counsel, he informed that the CBDT had changed the form No. 3CD several times and also extended the date of filing the same to 31.10.2013 and that initially, there was a faulty system of uploading the Tax Audit Report and the said utility/software was not functioning properly so the audit report could not be uploaded. It was further submitted by Learned counsel for the assessee that there is reasonable cause in not uploading the tax audit report in time. The assessment had been completed by the department on the basis of this Tax Audit Report which was available with the Assessing Officer. Learned counsel for the assessee placed reliance in the case of Smt. Raj Kumari Batra vs. ITO, Ward 1, Beawar of ITAT, Jaipur Bench in ITANo. 837/JP/2016 dated 14.12.2016 for A.Y. 2013-14. In view of the above, it was prayed that the penalty of Rs.1,50,000/- be deleted.

4. Learned D. R., on the other hand, supported the orders of authorities below.

5. We have heard the rival parties and have gone through the material placed on record. We find that in this case the only technical default, which was made by the assessee, relates to the non uploading of tax audit report from the site of the Department within the permissible time. The tax audit report was handed over by the assessee to the advocate to file the return of income. The assessee is very low educated person and does not have any

knowledge in computer and e-filing of the return. Otherwise also, this is the provision which has come into force subsequently and CBDT had changed the form No. 3CD several times and also extended the date of filing the same to 31/10/2013. The assessee had to depend on the counsel to upload the tax audit report. Therefore, the assessee was prevented by sufficient cause in not filing the audit report within the permissible time. In our opinion, this is merely a technical default and for which until and unless it is proved that the assessee has knowingly avoided to upload the tax audit report, the assessee should not be liable for the penalty. The provisions of section 273B which clearly state that if the assessee has been prevented by sufficient cause, no penalty can be imposed on the assessee. We, therefore, set aside the order of CIT(A) and delete the penalty amounting to Rs.1,50,000/-

6. In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 08/03/2019)

**Sd/.**  
**( A. D. JAIN )**  
**Vice President**

**Sd/.**  
**( T. S. KAPOOR )**  
**Accountant Member**

Dated:08/03/2019

\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow