

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

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER**

**ITA Nos. 6574 & 6575/Del/2018  
Assessment Years: 2010-11 & 2011-12**

Sh. Keshav Garg C/o G.S. Kohli & Co., CAs R-739 (Basement), New Rajinder Nagar, New Delhi. <b>PAN No. AEHPG5861J</b>	vs	ITO Ward 38(2) New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Sh. Arvind Kumar Maheshwari, CA</b>
<b>Revenue by</b>	<b>Shri S.L. Anuragi, Sr. DR</b>

<b>Date of Hearing</b>	<b>04.04.2019</b>
<b>Date of Pronouncement</b>	<b>08.04.2019</b>

**ORDER**

These two appeals filed by the assessee against the order of CIT(Appeals)-13, New Delhi dated 20.08.2018 for the AYs 2010-11 & 2011-12 respectively. These are being disposed of with this consolidated order.

ITA No. 6574/Del/2018 (AY 2010-11):

2. The grounds of appeal of the assessee are as under:
  1. *"The Ld.CIT(Appeal) was not justified in confirming the penalty imposed u/s 271B of the Income Tax Act, 1961.*
  2. *It is well settled law that the penal action simultaneously cannot be taken u/s 271A as well as 271B of Income Tax*

*Act, 1961. The appellant has conducted the concerned activities for 2 years which no doubt covers 3 Asstt. Years where the penalty was imposed u/s 271(1)(b) for the previous year i.e. AY 2009-10 such penalty has been deleted by ITAT.*

3. *That the appellant craves their right to amend, delete or add any grounds of appeal at or before the time of hearing.”*

ITA No. 6575/Del/2018 (AY 2011-12): -

3. The grounds of appeal of the assessee are as under:

1. *“The Ld.CIT(Appeal) was not justified in confirming the penalty imposed u/s 271B of the Income Tax Act, 1961.*
2. *It is well settled law that the penal action simultaneously cannot be taken u/s 271A as well as 271B of Income Tax Act, 1961. The appellant has conducted the concerned activities for 2 years which no doubt covers 3 Asstt. Years where the penalty was imposed u/s 271(1)(b) for the previous year i.e. AY 2009-10 such penalty has been deleted by ITAT.*
3. *That the appellant craves their right to amend, delete or add any grounds of appeal at or before the time of hearing.”*

4. Learned counsel for the assessee submitted that the assessee has not maintained any books of account and, therefore, no penalty u/s 271B of the Income-tax Act, 1961 could be levied for non-audit of the accounts. He relied on the decision of Hon'ble Allahabad High Court in CIT Vs. Bisauli Tractors - [2008] 299 ITR 219 (All). CIT Vs. S.K. Gupta and Co. - [2010] 322 ITR 86 (All) and of Hon'ble Karnataka High Court in ACIT and Another Vs. Dr. K. Satish Shetty - [2009] 310 ITR 366 (Karn) in support of his arguments. He submitted that the assessee has been separately penalized for non-maintenance of accounts by the Assessing

Officer by levying penalty of Rs. 25,000/- by order dated 26.09.2013 and has filed a copy thereof before the Tribunal. He submitted that the Assessing Officer was not justified in levying penalty twice for the same charge.

5. Learned DR has relied on the order of the Assessing Officer and the learned CIT(A). He submitted that the assessee has admittedly not undertaken the audit of its accounts and has not maintained account books and separate penalties are provided under the Act for the two separate defaults by the legislature.

6. I have considered the rival submissions and have perused the order of the AO and the learned CIT(A). I find that the assessee has claimed that it was not maintaining any account books and, therefore, the audit of the same was not possible and has relied on the decision of Hon'ble Courts cited at the bar by the learned counsel for the assessee. I find that the Assessing Officer has separately penalized the assessee for non-maintenance of accounts by levying a penalty of Rs. 25,000/- u/s 271A of the Act and the Ld. Counsel for the assessee has stated at the bar that the order has become final and assessee has already paid the amount of penalty. In these facts, I hold that since the assessee has been separately penalized for non-maintenance of accounts, the penalty for non-audit of the accounts separately was not justified and accordingly, the penalty imposed u/s 271B is deleted and the grounds of appeal of the assessee are allowed.

7. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 08/04/2019

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

Dated: 08.04.2019

\*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	04/04/2019
Date on which the typed draft is placed before the dictating Member	08/04/2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	08/04/2019
Date on which the fair order comes back to the Sr. PS/PS	08/04/2019
Date on which the final order is uploaded on the website of ITAT	09/04/2019
Date on which the file goes to the Bench Clerk	09/04/2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

