



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

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

ITA No.770/Lkw/2016
Assessment Year:2013-2014

Ravi Kanwal Nursing Home Pvt. Ltd., 91, Janakpuri, Bareilly. PAN:AAACR 7219 K (Appellant)	Vs.	Income Tax Officer-2(3), Bareilly. (Respondent)
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Appellant by	Shri Ashish Raj Shukla, Advocate
Respondent by	Shri C. K. Singh, D.R.
Date of hearing	22/04/2019
Date of pronouncement	26/04/2019

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of learned CIT(A), Bareilly dated 18/10/2016 pertaining to assessment year 2013-14. This appeal was earlier dismissed for non prosecution on 10/05/2018. However, the order dated 10/05/2018 dismissing the appeal of the assessee ex-parte was recalled vide order dated 18/01/2019 and now the appeal has been refixed for hearing the grounds on merits.

2. In this appeal the only ground taken by the assessee is the action of learned CIT(A) by which he has upheld the penalty imposed by the Assessing Officer u/s 271B of the Act.

3. Learned A. R. submitted that assessee is a private limited company which is engaged in running of a nursing home and Assessing Officer imposed the penalty u/s 271B of the Act by holding that the total receipts declared by the assessee exceeded the minimum amount which required the accounts to be audited u/s 44AB(a) of the Act. Learned A. R. in this respect submitted that assessee itself was not engaged in professional activities and rather it was running a business in the form of a private limited company therefore, the provisions of section 44AB(b) of the Act were applicable and the turnover limit for that year under consideration was Rs.60 lacs as against the turnover of Rs.54,45,940/- declared by the assessee. It was submitted that the authorities below have wrongly assumed that the assessee was engaged in professional activities whereas the company itself did not possess any professional qualification and therefore, the penalty should not have been levied.

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

5. We have heard the rival parties and have gone through the material placed on record. We find that assessee is a private limited company which is engaged in providing medical facilities through engagement of professional doctors. The receipts of the assessee were Rs.54,45,940/-. The authorities below have held that this was the professional activity of the assessee and therefore, the assessee was liable to penalty for not getting its accounts audited as the turnover exceeded the limit mentioned in section 44AB(a) of the Act. However, we find that assessee itself did not possess any professional degree and rather it was engaged in commercial activities. There is difference between business and profession. For carrying on a profession, possession of some professional qualification is must. From the qualification we mean that there must be some special training of particular

skill which involve high level education. The company in itself cannot be said to be having any professional qualification or education. It was running only with a motive to earn profit through engagement of specialized doctors and with the help of plant & machinery. Therefore, the assessee company cannot be said to be engaged in professional activities and rather it is held to be engaged in business activities. Therefore, the provisions of section 44AB(a) will apply for determining the amount of limit required for audit of accounts. The turnover limit for the year under consideration was Rs.60 lacs and the turnover of the assessee was Rs.54,45,940/- therefore, the assessee was not liable to get its accounts audited and therefore, the penalty imposed and sustained by learned CIT(A) u/s 271B is not justified and hence it is deleted.

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

(Order pronounced in the open court on 26/04/2019)

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

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

Dated:26/04/2019
*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

Assistant Registrar