

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA**

**BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.106/Kol/2019**

**(निर्धारणवर्ष / Assessment Year: 2015-16)**

<b>Ashok Kumar Dutta</b>	<b>Vs.</b>	<b>DCIT, Circle-12, Kolkata</b>
<b>90/1B, Durga Charan Mitra Street, Kolkata</b>		
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : ADGPD 0600 C		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri K.M. Roy, FCA

Respondent by : Shri Shankar Halder, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 12/03/2019

घोषणाकीतारीख/Date of Pronouncement : 15/05/2018

**आदेश / O R D E R**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the assessee , pertaining to Assessment Year 2015-16, is directed against an order passed by the Commissioner of Income Tax(Appeals)-11, Kolkata which in turn arises out of penalty order passed by the Assessing Officer u/s.271A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 28.06.2018.

2. The grounds of appeal raised by the assessee are as follows:

*1. That the imposition of penalty u/s 271A is bad in law.*

3. The brief facts qua the issue are that the return of income of the assessee was filed on 30.03.2017 declaring total income of Rs. 2,33,290/-. The assessee's case

was selected for scrutiny through 'CASS' u/s 143(2) of the Act. The assessment was completed u/s.143(3) of the I.T. Act, 1961 on 08.12.2017 determining total income to the tune of Rs 2,33,290/-. It was noticed that the assessee had made high value transaction in futures(derivative) in recognized stock exchange. Such transactions are business in nature. The business turnover of the assessee for the relevant financial year exceeded the financial limit for maintaining books of accounts u/s 44AA. Though the assessee filed his return in ITR-2 although assessee had responsibility to maintain books of accounts and get them audited as the transactions were of business nature, voluminous and exceeded the limit mentioned in section 44AB for getting them audited. As assessee failed to do so therefore notice u/s 271A was issued to him initiating penalty proceeding u/s 271B. Penalty proceeding u/s. 271A of the Income Tax Act, 1961 was initiated on 08.12.2017 by issuing show cause notice and fixing the date of hearing on 17.01.2018. A reply was submitted by the assessee during the penalty proceedings vide letter dated 17.01.2018 as follows:

*" With reference to the above, I am hereby to inform you that the assessee is a retired senior citizen and making the investment in different areas only. Accordingly, he invests in shares and carries out the share and future and option transaction through three different recognized brokers during the previous year and all the accounts are maintained by them only and the assessee is getting the transaction statement only from them which already submitted before you, where the profit or loss earned or incurred by the assessee are shown. The assessee neither has any infrastructure for doing business nor any personnel deployed for business in the, office, As such the assessee doesn't have any business set up, so he has not maintained any books of accounts on its own but his accounts are maintained by recognized broker on behalf of him for all share and F & O transaction and only copies of all the documents are with him.*

*In this connection, I would like to submit that the entire income from the shares of the assessee can be classified either earnings of Capital transactions where capital gain/loss has arisen or from speculative income, So the assessee has no business income.*

*As per the decision of ITAT Delhi Bench, between ACIT, Circle-19(1) Vs. M/s Arora and Bharat Associates, penalty u/s 271A and 271B is not applicable. Copy of judgment is enclosed herewith for your perusal. Therefore my humble request to kindly waive the above mentioned penalty and oblige."*

4. The Assessing Officer had gone through the reply of assessee and noticed that the reply of the assessee is perused carefully. The assessee cited the decision of

ITAT Delhi Bench, between ACIT, Circle-19(1) vs. M/s Arora and Bharat Associates. At the last para of the appellate order it is clear that in case of transactions without delivery like commodity transaction, the amount of turnover for the purposes of section 44AB of the Act shall be only profit and loss and not the whole turnover embedded therein. And even in the light of above decision the assessee was liable to maintain books of accounts and get them audited as his total turnover was of Rs. 1,51,03,566/-. The Assessing Officer also noted that in the instant case the aggregate figure of profits and losses i.e. favourable and unfavourable balances of assessee's transactions in Future (derivatives) is found to be Rs. 1,51,03,566/- which exceeds the limit envisaged in section 44AA of Income Tax Act, 1961 for maintaining books of accounts. As the assessee failed to maintain the books of accounts u/s 44AA notice u/s 271A was issued initiating penalty proceeding u/s 271A. The assessee in this case might have filed his return of income in Form no. ITR-2 to avoid to maintain books of accounts and get them audited u/s 44AB.

In view of above, Assessing Officer satisfied that it is a fit case for imposition of penalty u/s 271A of the Act. Considering the facts and circumstances of the case, a penalty Rs. 25,000/- was imposed on the assessee u/s 271A.”

5. Aggrieved by the penalty imposed by the Assessing Officer u/s 271A of the Act, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the penalty imposed by the Assessing Officer observing the following:

*“3. I have considered the facts of this case and I find that the appellant has not maintained any books of accounts whatsoever. It may be mentioned here that there are prescribed ways of maintaining the books of accounts. What the appellant has talked of is merely an account of share and F&O transactions of the appellant. But books of accounts are much more than this. Thus, the books record the day-to-day financial transactions the outstanding balance, investments etc. In other words, the books of accounts have all the detail required to furnish the return of income. Therefore, the accounts maintained by the broker of the appellant cannot be compared with the regular books of accounts .*

*4. Hence it is held that the appellant has defaulted by not maintaining the regular books of accounts and therefore he is liable to face penalty u/s 271A.”*

6. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.
7. The Id. Counsel for the assessee relied on the submissions made before the authorities below whereas the Id. DR has primarily reiterated the stands taken by the Assessing Officer which we have already discussed in our earlier para and the same is not being repeated for the sake of brevity.
8. We have heard both the parties and perused the material available on record. We note that the main reason to impose the penalty u/s 271A is that the figures shown in the profit & loss account i.e. favourable and unfavourable balances of assessee's transaction in future derivatives was found to be Rs. 1,51,03,560/- which exceeds the limit envisaged in section 44AA of the Act for maintaining books of accounts. Since, the assessee failed to maintain the books of accounts u/s 44AA of the Act therefore the Assessing Officer imposed penalty to the tune of Rs. 25,000/-. We note that this issue is squarely covered in favour of the assessee by the Hon'ble Delhi High Court in the case of Mehta Parvesh vs. ITO [1998] 60 TJJ (Del) 278 wherein it was held as follows:

*“4. I have carefully considered the submissions made by the learned representatives of the parties. The assessee submitted the computation of income for both the years under consideration at an income of Rs. 40,000 and Rs. 42,000 respectively. The assessee also enclosed with the returns of income a statement of affairs giving the details of assets and liabilities as at the beginning of the year as well as on the close of the year. The declared income was estimated by taking into consideration the net increase in assets along with the treadings made by the assessee-firm and the household expenses. The details so furnished by the assessee could enable determination of taxable income in a reasonable manner. The provisions of s. 44AA was required to keep and maintain such books of accounts and documents, as may enable the AO to compute his total income in accordance with the provisions of the IT Act. Sub-s. (3) of s. 44AA authorises the Board to prescribe by rules the books of accounts and other documents to be kept and maintained and the particulars to be contained therein and the form and the manner in which and the place at which such books of accounts shall be kept and maintained. The Board has not yet prescribed any rule so far as persons deriving income from business are concerned. It has only prescribed r. 6F requiring the persons deriving income from profession to maintain the specified books of accounts. Since the Board has not prescribed the necessary rules relating to maintenance of accounts by the persons carrying on business, and as the assessee has furnished adequate information, so as to enable the ITO to compute his total income in accordance with the provisions of this Act, the penalty levied under s. 271A cannot be sustained on the facts and circumstances of the present case. I, therefore, cancel the said penalties for both the years under consideration.”*

Respectfully following the judgment of the Hon'ble Delhi High Court in the case of Mehta Parvesh supra we note that it is not a fit case to impose penalty u/s 271A of the Act and hence we delete the penalty of Rs. 25,000/-

9. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 15.05.2019.

**Sd/-**  
**(S.S.GODARA)**  
न्यायिकसदस्य / JUDICIAL MEMBER

**Sd/-**  
**(DR. A.L.SAINI)**  
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक Dated 15/05/2019  
SB, Sr. PS

Copy of the order forwarded to:

1. Ashok Kumar Dutta
2. ITO, Ward-37(4), Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches