



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND  
LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA No. 74/CTK/2017**  
Assessment Year : 2011-12

Meraj Yusha, N-4/135, IRC Village, Nayapali, Bhubaneswar.	Vs.	ACIT, Circle 1(2), Aayakar Bhavan, Rajaswa Vihar, Bhubaneswar
PAN/GIR No.ABFPY 5082 N		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Sunil Mishra, AR  
Revenue by : Shri S.M.Keshkamat, CIT, DR

**Date of Hearing : 05/09/ 2019**  
**Date of Pronouncement : 05/09/ 2019**

**ORDER**

**Per C.M.Garg,JM**

This is an appeal filed by the assessee against the order of the CIT(A),2, Bhubaneswar dated 14.12.2016 for the assessment year 2011-2012.

2. The sole grievance raised by the assessee is that the CIT(A) is not justified in confirming the penalty of Rs.32,083/- levied u/s.271B of the Act.

3. The brief and relevant facts are that the Assessing Officer observed that the assessee has received commission of Rs.64,16,667/- from M/s. F. Serajuddin Exports Pvt Ltd., for which has neither got his books of account audited nor furnished report on such audit as required u/s.44AB of the Act. Therefore, he initiated penalty proceedings u/s.271B of the Act. In reply to

show cause, the assessee submitted that since the assessee has not claimed any expenditure against the income earned under different heads of income, the provision of section 44AB is not applicable. The Assessing Officer observed that as per the provision of section 44AB of the Act, a person carrying on business is required to get the accounts compulsory audited if the total sales, turnover or gross receipts in the business for the previous year relevant to the assessment year exceeds Rs.60 lakhs and furnish the report of such audit report before the specified date as prescribed in the said Act. Since, the assessee has neither got his accounts audited nor submitted any such report as required u/s.44AB of the Act, the Assessing officer levied penalty of Rs.32,083/- u/s.271B of the Act.

4. On appeal, the CIT(A) confirmed the penalty levied by the Assessing Officer.

5. Ld A.R submitted that the levy of penalty under [section 271B](#) is not tenable in the eyes of law because the assessee has disclosed the entire receipt as per Form 26AS as income without incurring any expenditure. He submitted that the Assessing Officer has duly accepted the income as per books of account maintained by the assessee. Ld A.R. has submitted that the entire amount has been offered to tax, therefore, the assessee was under bonafide belief that there is no requirement of audit of accounts. Therefore, the immunity should be granted to the assessee from levy of penalty u/s.271B of the Act.

6. On the other hand, the learned Departmental Representative heavily relied on the orders of the authorities below and further submitted that as per provisions of section 44AB of the Act, the assessee is required to audit his books of account if turnover exceeds Rs.60 lakhs, which has not been complied by the assessee. Therefore, the immunity from penalty cannot be allowed to the assessee merely because the entire amount received by the assessee has been offered to tax without claiming any expenditure or deduction therefrom.

7. We have heard rival submissions and perused the record of the case. For proper adjudication of the case, we find it appropriate to reproduce relevant provisions of section 44AB of the Act, which reads as under:

**“44AB.** Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year; or

(b) carrying on profession shall, if his gross receipts in profession exceed <sup>51</sup>[fifty] lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the <sup>52</sup>[profession] shall, if the profits and gains from the <sup>52</sup>[profession] are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and

*gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or*

*(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,*

*get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed .”*

8. Section 271B reads asunder:

*“271B. If any person fails, without reasonable cause, to get his accounts audited in respect of any previous year or years relevant to an assessment year or obtain a report of such audit as required under section 44AB, the Income-tax Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent. of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred thousand rupees, whichever is less”.*

9. On a conjecture reading of provisions of section 44AB and Section 271B of the Act, we noted that it is a mandatory provision that the assessee should get his books of account audited having turnover of more than Rs.60 lakhs. In the present case, undisputedly, the admitted facts are that the gross receipts of Rs.64,16,667/- and the assessee did not audit his books of account during the relevant financial period. We are unable to see any safeguard in the said provisions in a situation when the assessee has shown entire income/receipts without claiming any expenditure or

deduction. Therefore, the contention of Id A.R. of the assessee is devoid of any merits and same is dismissed.

10. In the result, appeal of the assessee is dismissed.

Order pronounced on 5/09/2019.

Sd/-  
**(Laxmi Prasad Sahu)**  
**ACCOUNTANT MEMBER**

sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 5/09/2019  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Meraj Yusha, N-4/135, IRC  
Village, Nayapali, Bhubaneswar
2. The Respondent. ACIT, Circle 1(2), Aayakar  
Bhavan, Rajaswa Vihar, Bhubaneswar
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT- 2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**