

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL-SURAT-BENCH-SURAT
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.1638,2124,2126,2128/AHD/2014

निर्धारण वर्ष/Assessment Year:1994-95,1995-96, 1996-97 & 1997-98

Shri Ratilal Khushaldas Mali, Opp. Hanuman Temple, Mota Bazar, Navsari PAN: ADBPM 3081 F	बनाम Vs.	Assistant Commissioner of Income Tax, Navsari Circle- Navsari
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Hiren R. Vepari, CA
राजस्व की ओर से /Revenue by	Mrs. Anupama Singla, Sr.D.R.

सुनवाई की तारीख/ Date of hearing:	04.12.2019
उद्घोषणा की तारीख/Pronouncement on	05.12.2019

आदेश /O R D E R

PER O. P. MEENA, AM:

1. The above captioned appeals by the Assessee are directed against the separate orders of learned Commissioner of Income tax (Appeals)-Valsad, Surat (in short “the CIT (A)”) all dated 17.04.2014 for the Assessment Year 1994-95, 1995-96,1996-97 and 1997-98.

I.T.A.No.1638, 2124, 2126/AHD/2014/A.Y.1994-95, 1995-96 and 1996-97.

2. The above appeals are being considered together.

3. The sole ground of appeal in all above assessment years relates to confirming of penalty under section 271B of the Act.

4. At the outset, the learned counsel for the assessee submitted that the penalty under section 271B were levied as the assessee has failed to get audit under section 44AB of the Act due his turnover exceeded Rs.40 Lakh limit on account of protective additions made by the AO in the total income of the assessee. However, the Ld. CIT (A) in appeal has deleted the said protective addition for the assessment years 1994-95, 1995-96 & 1996-97. Consequently, the turnover of the assessee comes down below Rs. 40 lakhs prescribed limit for carrying out compulsory audit under section 44AB of the Act. Therefore, no penalty under section 271B is exigible as the turnover is below the prescribed limit laid down by the Act.

5. The ld. Sr. D.R. has no relied on the AO/ CIT (A).

6. We have heard the rival submissions and perused the relevant material on record. We find that due to deletion of protective addition by the CIT(A), the turnover for assessment year 1994-95, 1995-96 and 1996-97 has been fallen below the prescribed limit under section 44AB. The appeal against the orders of Ld. CIT (A) preferred by the Revenue stands dismissed due low tax effect. Thus, the order of Ld. CIT (A) becomes final. In view of these facts and circumstances, we are of the considered opinion that no penalty under section 271B is leviable as the turnover is below prescribed limit of Rs. 40 lakhs for the aforesaid assessment years. In view of these facts, penalty under section 271B for the assessment year 1994-95, 1995-96, and 1996-97 is cancelled and appeal allowed.

I.T.A.No. 2128/AHD/2014/A.Y. 1997-98

7. Ground No.1 is against the confirmation of penalty under section 271B of the Act.

8. Succinct facts are that the AO noted that the gross receipts of the assessee exceeds Rs. 40 Lakh, hence, as per provisions of section 44AB, the assessee should have get his books of accounts audited and filed audit report in Form No. 3CB and 3CD on or before 30.09.1997. However, the assessee has failed to furnished said audit report, hence, penalty proceeding were initiated by way of notice under section 271B read with section 274 of the Act. It was explained that by the assessee that his income was from capital gains, hence, he was not required to get his accounts audited. However, the AO observed that the capital gains income has been treated as business income; hence, the explanation of the assessee is not reasonable. Therefore, the AO levied a minimum penalty of Rs. 29,267 under section 271B of the Act.

9. Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). Wherein it was contended that the assessee has not carried out any business and has sold old land on which the assessee has disclosed capital gains. Therefore, the assessee was not liable for audit under section 44AB of the Act. However, CIT (A) was not convinced and held that the appellant was carrying out development of plot and received on-money therefrom. Hence, penalty levied was confirmed.

10. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned Counsel for the assessee submitted that the assessee has carried out a solitary transaction of sales of land, which was received as gift in the year 1962. The assessee has not received any on-money during the year under consideration and the finding is based on past assessment. Further, if there is any on-money as alleged , then same cannot be forming part of books of accounts as

same is not disclosed and recorded in books of accounts therefore, his gross receipts are not exceeded, hence, no penalty under section 271B is leviable. For on-money, the assessee is not expected to go to Chartered Accountant and ask for audit of his books of accounts of on-money, as the same is not part of business receipts. Further, the assessee has shown income from capital gains only, and in view of the Department that same is on account of business income. Hence, there was bona fide belief that books of accounts were not required to be audited under section 44AB of the Act.

11. Per contra, Ld. D.R. relied on the order of CIT (A).

12. We have heard the rival submissions and perused the relevant material on record. We find that the assessee has sold land on which capital gains has been disclosed. However, the AO treated the same as business income. The AO also made addition on account of on-money receipt from sale of land. Since, the assessee has shown his income was from capital gains, therefore, he had a bonafide belief that he is not required to get audited his books of accounts as required as per provisions of section 44AB of the Act. The penalty for non-compliance cannot be levied without reading the provisions of Section 271B and 273B together as both are internally connected. Even if, the minimum penalty is prescribed, the authority competent to impose the penalty is not to be justified in leaving the penalty, when there is a technical or venial breach of provisions of Act or when the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by statute. Further, the receipts of the assessee exceeded due to addition made on account of on-money, which could not be ground for treating the gross receipts as exceeded the prescribed limit as the on-money would not be reflected the

books of accounts. Therefore, we are of the view that where where the assessee did not get its accounts audited on the basis bona-fide belief that his income is from capital gains. Therefore, the assessee has a reasonable cause for not getting his accounts audited under section 44AB of the Act. In view of above facts and circumstances, we are of the considered opinion that the penalty under section 271B of the Act for non-compliance with provisions of section 44AB of the Act for the assessment year under consideration is not leviable, hence, penalty so levied is cancelled. This ground of appeal is allowed.

13. In the result, appeals of the assessee for A.Y. 1997-98 is allowed.

14. In the result, the appeal of the assessee stands allowed for A.Y. 1994-95, 1995-96, 1996-97 and 1997-98.

15. The order pronounced in the open Court on 05-12-2019

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 05th December, 2019/opm
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/
Guard file of ITAT.

By order

// TRUE COPY //

Assistant Registrar, Surat

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4	Draft discussed/ approved by Second Member	
5	Approved Draft comes to Sr. PS /PS	
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7	Date of uploading order on the web site	
8	File sent to Bench Clerk	
9	Date on which file goes to the A.R. for signature	
10	Date on which file goes to Head Clerk	
11	Date of dispatch of order	