

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos. 2185 & 2186/PUN/2017

निर्धारण वर्ष / Assessment Years : 2005-06 & 2006-07

The Secretary,  
SETU, Ahmednagar,  
Collector Office Compound,  
Ahmednagar-414 001.  
PAN : AAHTS3279C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-4, Ahmednagar

.....प्रत्यर्थी / Respondent

Assessee by : Shri Hari Krishan  
Revenue by : Shri Hoshang Boman Irani

सुनवाई की तारीख / Date of Hearing : 20.12.2019

घोषणा की तारीख / Date of Pronouncement : 20.12.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

These two appeals preferred by the common assessee emanates from the order of the Ld. CIT(Appeals), Pune-10, dated 08.08.2017 for the assessment years 2005-06 & 2006-07 as per the grounds of appeal on record.

2. Both the parties agreed that facts and circumstances in both these appeals are similar and therefore, these cases were heard together. Since facts common and issues are similar, these cases are being disposed of vide this consolidated order.

3. The crux of the grievance of the assessee in both these appeals is with regard to imposition of penalty u/s.271B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Assessing Officer and as confirmed by the Ld. CIT(Appeals).

4. The assessee is a Government sponsored Trust having registration u/s.12A of the Act. The provisions of Section 271B of the Act will be attracted if the provisions of Section 44AB of the Act are violated. For appropriate understanding of the legal framework, it is pertinent to mention what the provisions of Section 271B of the Act states which reads as follows:

*"271B. If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or [furnish a report of such audit as required under section 44AB], the [Assessing] 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 fifty thousand rupees], whichever is less."*

The provisions of Section 44AB of the Act reads as follows:

*"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 [fifty lakh rupees] in any [previous year; or*
- (c) Carrying on 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 44AB 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 [profession] shall, if the profits and gains from the [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 prescribed 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:*

***Provided** that this section shall not apply to the person who declares profits and gains for the previous year in accordance with the provisions of sub section (1) of Section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year.”*

That on reading of these provisions, it is clear that it relates to a person doing business or profession.

5. The Ld. AR of the assessee submitted before us that they are charitable Trust and they are not doing any business or profession and therefore, provisions of Section 44AB of the Act does not apply to them. Hence, penalty u/s.271B of the Act cannot be leviable on the assessee.

6. The Ld. DR has placed strong reliance in the orders of the Sub-ordinate Authorities.

7. We have perused the case records and heard the rival contentions. When we peruse the penalty order, the reasons for levying penalty recorded

by the Assessing Officer are that in the relevant year, the assessee was assessed in the status of AOP and not in the status of charitable institution and hence, no exemption u/s.11 of the Act was allowable. That further, the Pune Bench of the Tribunal vide order dated 29.06.2012 has allowed the assessee's appeal in ITA No.123/PN/2011 against the order passed u/s.12AA(1)(b)(ii) of the Act of CIT-1, Pune rejecting the application of registration u/s.12A of the Act and the Department has not accepted the Tribunal's decision and had preferred appeal before the Hon'ble Bombay High Court, Aurangabad on 29.11.2012. These are two basic reasons for which the Assessing Officer had imposed penalty u/s.271B of the Act. However, he has not discussed the ingredients of applicability of Section 44AB of the Act vis-à-vis the activities of the assessee and on what circumstances, the assessee was obligated to get their accounts audited whereby failing to do so would have attracted penalty u/s.271B of the Act. These facts are not at all brought out in the penalty order of the Assessing Officer. It is a matter of settled legal position that penalty provisions are to be strictly construed and it has to be applied only for the specific case for the specific default in which the assessee could be penalized.

In this case, while imposing penalty u/s.271B of the Act for violating Section 44AB of the Act, the ingredients and requirements of these legal provisions have not been brought out in the respective orders of the Revenue Authorities.

8. In view of the examination of facts on record, we set aside the order of the Ld. CIT(Appeals) for both the assessment years i.e. A.Y.2005-06 and 2006-07 and direct the Assessing Officer to delete the penalty from the hands of the assessee.

9. In the result, **both the appeals of the assessee for the assessment years 2005-06 & 2006-07 are allowed.**

Order pronounced on 20<sup>th</sup> day of December, 2019.

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 20<sup>th</sup> December, 2019.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-10.
4. The CIT(Exemption), Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	20.12.2019	Sr.PS/PS
2	Draft placed before author	20.12.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		