

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH 'SMC' ALLAHABAD**

[THROUGH VIRTUAL COURT]

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No.102/ALLD/2019
Assessment Year 2014-15**

M/s S. Lal Enterprises, C/o Shri Dharmendra Kumar Jaiswal, C-7, First Floor, Super Market, Civil Lines, Sultanpur (U.P.)	v.	The Income Tax Officer, Sultanpur
TAN/PAN:ABJFS 6655H		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri A.K. Singh, CIT (DR)
Date of hearing:	18.01.2021
Date of pronouncement:	19.01.2021

ORDER

PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order dated 31.05.2019 of Id. CIT(A)- Lucknow arising from penalty order passed u/s. 271B of the Income Tax Act, 1961 for the AY 2014-15.
2. None has appeared on behalf of the assessee despite repeated notice issued through RPAD. Therefore, this appeal is taken up for hearing and adjudication exparte. The assessee has raised following grounds:

- “1. *The ld. Commissioner of Income tax (Appeal) has erred in law and on facts in passing the order, which is unlawful, unjustified and against the principles of natural justice.*
2. *The Ld. Commissioner of Income-tax (Appeal) has erred in law and on facts in passing the order without giving adequate opportunity of being heard.*
3. *That the Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in confirming the penalty u/s 271B of the Income-tax Act imposed by the Ld. Assessing Officer.*
4. *The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in passing assessment order which is contrary to the facts and law.*
5. *The appellant craves leave to add, amend, alter or withdraw any ground of appeal or raise any new ground of appeal during the pendency of appeal.”*

3. The ld. DR has submitted that the assessee has failed to comply with the provisions of Section 44AB of the Act as regards the filing of audit report. Undisputedly the fact that the turnover of the assessee was more than the threshold limit of requiring the assessee to get his accounts audited and to file the audit report before the prescribed date as per Section 44AB of the Act. He has referred to the finding of the Assessing Officer and submitted that there was no explanation on behalf of the assessee for not filing the audit report before the specified date. The ld. DR has further pointed out that none has appeared on behalf of the assessee before the CIT(A) and consequentially the appeal of the assessee was dismissed.

4. Having considered the submissions of the ld. DR and careful perusal of the impugned order it is noted that the Assessing Officer while passing the penalty order u/s. 271B of the Act on 13.10.2016 has recorded the fact that in response to the show cause notice u/s. 271B of the Act the assessee filed the

written submission dated 06.09.2016. However the Assessing Officer was not convinced with the written submission filed by the assessee and levied the penalty equivalent to one and half percent of the total turnover of the assessee which comes to Rs.98,918/-. The relevant part of the penalty order where the Assessing Officer has declined to accept the explanation of the assessee is as under:

“The assessee has furnished written submission dated 06.09.2016 in compliance to the penalty notice u/s. 271B in this office only on 8.09.2016 which is placed on record. I have considered the explanation offered by the assessee and also facts of the case. The explanation furnished by the assessee is not convincing and not tenable at all. None submission of audit report within specified date and non filing of return of income as per provisions of Section 139(1) of the IT Act, 1961 affected the proper computation of income.”

5. Thus, it is clear that though the assessee filed the written submissions in response to the notice issued u/s. 271B of the Act however, the Assessing Officer has not discussed what is the explanation of the assessee for filing the audit report belatedly and not within the prescribed date as per provisions of Section 44AB of the Act. The Assessing Officer has simply stated that the explanation furnished by the assessee is not convincing and not tenable at all without discussing what explanation has been furnished by the assessee. The CIT(A) has dismissed the appeal of the assessee in limine for want of attendance without deciding the appeal on merits. Thus, it is clear that neither the Assessing Officer nor the CIT(A) has considered the explanation of the assessee objectively. The order of the Assessing Officer is non speaking on the explanation as furnished by the assessee, whereas the CIT(A) has not even deciding the appeal on merits. Accordingly, in the facts and circumstances of the case, the impugned order of the CIT(A) is set aside and

the matter is remanded to the record of the CIT(A) for deciding the same afresh by speaking order after considering the explanation of the assessee as furnished before the Assessing Officer as well as giving one more opportunity of hearing of the assessee .

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

(Order pronounced on 19/01/2021 at Allahabad in the open Court through Video Conferencing)

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Dated: /01/2021

Aks/-

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) -
4. CIT
5. DR -