

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

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM  
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA Nos.2423 & 2424/PUN/2017  
निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

Dr. Sunil Keshavrao Sonawane,  
Sonawane Heart Case Hospital,  
Shrihari Kute Marg, Tidke Colony,  
Nashik- 422 007.

PAN : ADPPS7978F

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle-2,  
Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 02.03.2021  
घोषणा की तारीख / Date of Pronouncement : 03.03.2021

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

These are the appeals filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 2, Nashik ('CIT(A)' for short) commonly dated 10.07.2017 confirming the levy of penalty for the assessment years 2008-09 and 2009-10.

2. Since the identical facts and issues are involved in both the appeals, we proceed to dispose of the same by way of this common order.

3. Briefly, the facts of the case are that the appellant is an individual engaged in profession of doctor in D.N.B. Cardiology. A survey operations u/s 133A of the Income Tax Act, 1961 ('the Act' for short) were conducted in

the business premises of the appellant on 11.03.2011. During the course of survey operations, the Assessing Officer found that the actual professional receipts were reflected in the returns of income filed for the assessment years 2008-09, 2009-10 and 2010-11. Accordingly, a notice u/s 148 of the Act was issued on 26.09.2011. In response to the notice u/s 148, the appellant filed the returns of income showing the gross receipts exceeding turnover prescribed for filing the tax audit report u/s 44AB of the Act. Accordingly, the Assessing Officer initiated the penalty proceedings u/s 271B of the Act and imposed the penalty of Rs.22,550/- and Rs.25,040/- for the assessment years 2008-09 and 2009-10 vide penalty order dated 25.09.2013 rejecting the contention of the appellant that since the assessments were made consequent to the returns of income filed in response to notice u/s 148 of the Act since tax audit report was filed allowing with the same, no penalty should be imposed.

4. Being aggrieved by the above action of the Assessing Officer, an appeal was preferred before the Id. CIT(A), who vide his impugned order confirmed the action of the Assessing Officer.

5. Being aggrieved by the order of the Id. CIT(A), the appellant is before us in the present appeals.

6. We heard the Id. CIT-DR and perused the material on record. Admittedly, in the original returns of income filed, the appellant had not disclosed the actual gross receipts and the actual gross receipts were reflected in the revised returns of income filed by the appellant and the tax audited report was filed along with the revised returns of income. The occasion to get the books of account audited would arise only once the actual turnover was reflected in the books of account regularly maintained. The

provisions of Income Tax Act, 1961 prescribes a different penalty for the act of non-disclosing of actual professional receipts and, therefore, in our considered opinion, the levy of penalty u/s 271B of the Act is not warranted. Accordingly, we direct the Assessing Officer to delete the penalty Rs.22,550/- and Rs.25,040/- for the assessment years 2008-09 and 2009-10 made u/s 271B of the Act respectively.

7. In the result, both the appeals of the assessee stand allowed.

Order pronounced on this 03<sup>rd</sup> day of March, 2021.

**Sd/-**

**(S. S. VISWANETHRA RAVI)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

**(INTURI RAMA RAO)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 03<sup>rd</sup> March, 2021.  
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Nashik.
4. The Pr. CIT-2, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.