

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
&**

**SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.4306/Mum/2019  
(Assessment Year :2015-16)**

Shri Pramod Lele 5-8, Chandrasekhar CHS Ltd SN Road, Andheri East Mumbai – 400 069	Vs.	Income Tax Officer 16(3)(2) Mumbai R. No.448, Aayakar Bhavan M.K.Road, Mumbai-400 020
<b>PAN/GIR No.AAAPL6012B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Rajeev Waglay
Revenue by	Ms. Shreekala Pardeshi
<b>Date of Hearing</b>	<b>05/08/2021</b>
<b>Date of Pronouncement</b>	<b>12/08/2021</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M.):**

This appeal in ITA No.4306/Mum/2019 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-7, Mumbai in appeal No.CIT(A)-7/IT-5/2018-19 dated 11/06/2019 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271B of the Income Tax Act, 1961 (hereinafter referred to as Act).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s.271B of the Act in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. It is not in dispute that assessee is an individual carrying on the business of Management Consultancy services. The return of income for the A.Y.2015-16 was filed by the assessee on 27/08/2016 declaring total income of Rs.2,10,69,340/- which admittedly included Management Consultancy fee received by the assessee amounting to Rs.61,40,000/-. The Id. AO levied penalty u/s.271B of the Act on the ground that since the gross receipts of the assessee engaged in profession had exceeded Rs.25,00,000/- as per Section 44AA(1) of the Act, 'Management Consultancy' also falls under the said Section and accordingly, the assessee ought to have got its accounts tax audited u/s.44AB of the Act and failure of which would result in levy of penalty u/s.271B of the Act. The assessee pleaded vehemently that he has not rendered any professional services instead, he is engaged in the business of rendering Management Consultancy Services and accordingly, the eligibility for getting the accounts audited would arise only in the event of gross receipts exceeding Rs. 1 Crore as assessee is only engaged in the business of rendering Management Consultancy services. Disregarding these objections of the assessee, the Id. AO proceeded to levy penalty of Rs.30,700/- u/s.271B of the Act. The same was upheld by the Id. CIT(A).

3.1. We find that the case of the Revenue seems to be that since the clients had deducted tax at source u/s.194J of the Act while making payment of Management Consultancy fees to the assessee, the assessee is to be treated as one engaged in the profession of Management

Consultancy and not in the business of rendering Management Consultancy. One more point of the Revenue to conclude that assessee is engaged only in profession and not in business is that Management Consultancy is covered in the expression "Technical Consultancy" as mentioned in Section 44AA of the Act. In this regard, we hold that at what rate of tax the clients deduct while making payments to the assessee is of absolutely no relevance to determine the character of receipt in the hands of the assessee recipient and for determining the status of the assessee as to whether he is engaged in business or profession. The assessee's plea is that he is engaged in the business of rendering Management Consultancy services. The Id. AR also argued that though the assessee is a qualified Chartered Accountant, but had not practised Chartered Accountancy and is only engaged in the business of rendering Management Consultancy Services. The fact of assessee rendering Management consultancy Services is not disputed by the Revenue. The only dispute is whether the receipts from rendering Management Consultancy Services would be treated as business receipt or professional receipt so as to determine the applicability of provisions of Section 44AA r.w.s. 44AB of the Act for the year under consideration. We find that the expression 'Management Consultancy' does not form part of various professions mentioned in Section 44AA of the Act. For the sake of convenience, the provisions of Section 44AA(1) are reproduced hereunder:-

*“(1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the [Assessing] Officer to compute his total income in accordance with the provisions of this Act.”*

3.2. From the reading of the aforesaid provision, it could be safely concluded that the expression "Technical Consultancy" would only mean rendering of technical services by assessee. In our considered opinion, the expression 'Management Consultancy' could not be brought within the ambit of 'technical consultancy'. Hence, we hold that the provisions of Section 44AA(1) of the Act cannot be made applicable to the assessee in the instant case. Hence, assessee is not liable for getting its accounts tax audited u/s.44AB of the Act. In any case, the assessee had entertained the bonafide plea that the receipts earned by him for rendering Management Consultancy Services is only a business receipt and not professional receipt. This bonafide plea of the assessee has not been doubted by the Revenue but the Revenue had only tried to take different stand by giving different interpretation to the provisions of Section 44AA of the Act and classifying receipts thereon as professional receipts so as to make assessee eligible for getting its accounts audited u/s.44AB of the Act. This becomes debatable issue. Hence, the bonafide plea of the assessee coupled with different interpretation given by the Revenue thereby making the issue debatable, would constitute reasonable cause within the meaning of Section 273B of the Act and hence in any case, the assessee would be protected by the immunity provided in Section 273B of the Act. Accordingly, no penalty u/s.271B of the Act could be levied in the facts of the instant case. Accordingly, the grounds raised by the assessee are allowed.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced on 12/08/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 12/08/2021

KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai