

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.1736/MUM/2020  
(Assessment Year: 2011-12)**

NarpatKumar D. Chandan  
Pavan Metal Corporation  
55/B Nanubhai Desai Road,  
Opp. Islampura Street  
Mumbai -400 004

Vs. The Income Tax Officer,  
Ward 19(2)(4),  
Room No. 217, 2<sup>nd</sup> Floor,  
Matru Mandir, Tardeo Road,  
Mumbai – 400 007

**PAN No. AAAPC6295M**

**(Assessee)**

**(Revenue)**

Assessee by : Shri Rajesh Chamaria, A.R  
Revenue by : Shri C.T. Mathews, D.R

Date of Hearing : 25/10/2021  
Date of pronouncement : 02/11/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-18, Mumbai, dated 20.01.2020, which in turn arises from the order passed by the A.O imposing penalty u/s 271B of the Income Tax Act, 1961 (for short 'Act'), dated 30.05.2017 for A.Y. 2011-12. The assessee has assailed the impugned order on the following grounds before us:

- (1) On the facts and in law, the Ld. CIT (A) erred in upholding levy of penalty of Rs.1,50,000/- u/s 271B of the Income Tax Act for non-furnishing of Tax Audit Report without considering the fact that details of Tax Audit Report were duly uploaded (including name of Auditor, M. No. of Auditor, date of Audit Report etc.) along with Income Tax Return filed online on 17.09.2011.
- (2) On the facts and in law, the Ld. CIT (A) erred in upholding addition penalty of Rs.1,50,000/- u/s 271B of the Income Tax Act by Order dt. 20.01.2020 after observing that Audit Report in Form 3 CD was not submitted before her although

Tax Audit Report dt. 05.08.2011 along with Audited Financial Statements, ITR set clearly mentioning date of Tax Audit Report as 05.08.2011 and ITR-V dt. 17.09.2011 were submitted before Ld. CIT(A) vide duly acknowledged letter dt. 14.01.2020.

- (3) Appellant prays for leave to add, amend or delete any ground/s of appeal on or before the final date of hearing.”

2. Briefly stated, the assessee who is engaged in the business of trading in ferrous and non-ferrous metals, iron and steel alloys had filed his return of income for A.Y. 2011-12 on 17.09.2011, declaring an income of Rs.8,39,357/-. Subsequently, the case of the assessee was reopened u/s 147 of the Act. Assessment was thereafter framed by the A.O vide his order passed u/s 144 r.w.s 147, dated 30.11.2016, determining the assessee's income at Rs.15,22,640/-.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had shown a total sales/turnover of Rs.4,15,29,738/-. Observing, that as the assessee's turnover was above the threshold limit of sixty lacs rupees, therefore, he was required to get his accounts audited under Sec. 44AB of the Act in the prescribed Form 3CB/3CD, the A.O called upon him to file the same. However, the assessee did not comply with the aforesaid directions of the A.O and failed to furnish the audit report in the course of the assessment proceedings. Backed by the aforesaid facts, the A.O while culminating the assessment, inter alia, initiated penalty proceedings u/s 271B of the Act.

4. As the assessee despite having been afforded sufficient opportunity in the course of the penalty proceedings did not come forth with any explanation as to why he had not furnished the audit report during the course of the assessment proceedings, therefore, the A.O vide his order u/s 271B, dated 30.05.2017 imposed on him a penalty of Rs.1,50,000/-.

5. Aggrieved, the assessee assailed the order passed by the A.O u/s 271B before the CIT(A). However, the CIT(A) not finding any merit in the contentions of the assessee upheld the penalty imposed and dismissed the appeal, observing as under:

“7.4 On careful consideration of the facts of the case and material on record an on perusal the penalty order as well as the submission of the appellant, I find that the fact that the total sales/turnover in the impugned assessment year amounted to total sales of Rs.4,15,29,738/-. Hence, according to section 44AB, the books of accounts of the appellant are required to be audited by a qualified and competent accountant (defined in section 288) since the total sales in the impugned assessment year exceeded 60 lakhs. During the assessment proceedings, to verify the alleged purchases claimed by the appellant to have purchased from the tainted parties identified as accommodation entry providers, the AO called for the audit report. However, the appellant did not furnish the audit report for verification of the AO in the assessment proceedings. Hence, also considering the fact that the Local sales amounted to Rs.4,15,29,738/-, notice u/s.274 r.w.s Section 271B was issued and served on the appellant by way of affixture by the Ward Inspector since the same notice was returned unserved by the postal authority. I find the contention of the appellant that the said notice/letter was not served on the appellant by affixture as there is very little chance of missing out the address of the appellant being a shop with a name board at the top of the shop and that the original letter is in the possession of the appellant is not supported by documentary evidence since the aforesaid letter has not been produced. It is also an undisputed fact that the audit report in form 3CD has never been produced neither during the assessment and penalty proceedings nor in the appellate proceedings before me. In the given facts and circumstances of the case, I concur with the views of the AO that the accounts of the business carried on by the appellant during the impugned assessment year has not been audited as mandated by the provisions of section 44AB and that there was no reasonable cause as envisaged by section 273B for violating the provisions of section 44AB. Thus, it is a fit case for levy of penalty under section 271B. I hereby confirm the penalty amounting to Rs.1,50,000/- imposed u/s.271B by the AO. Accordingly, the appellant's ground of appeal stands dismissed.”

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. A.R that the A.O failing to appreciate that the tax audit report was duly uploaded a/w the requisite details, viz. name of the auditor, membership number of the auditor, date of audit report etc. a/w his return of income that was filed online on 17.09.2011, had thus grossly erred in law and the facts of the case in imposing penalty u/s 271B of the Act. It was further submitted by the Id. A.R that though the aforesaid fact of furnishing of the audit report a/w the return of income was duly brought to the

notice of the CIT(A), vide a letter dated 14.01.2020 that was filed with him in the course of the appellate proceedings, however, the said material fact was not considered by him while disposing off the appeal. It was submitted by the Id. A.R that in the backdrop of the aforesaid facts, the penalty imposed by the A.O u/s 271B, which thereafter had been upheld by the CIT(A) could not be sustained and was liable to be vacated.

7. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

8. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record. As is discernible from the records, it is the claim of the assessee that as subsequent to the notice u/s 142(1), dated 02.06.2016 that was served upon him no notice was thereafter received by him, therefore, it was for the said reason that he had failed to participate in the course of the proceedings before the lower authorities. Also, the assessee has assailed the claim of the revenue that the notice that was sent through postal authorities was returned unserved with the remarks 'not known'. Backed by the aforesaid facts, the assessee had therein tried to explain as to why he had failed to participate in the course of the proceedings before the lower authorities. Further, as regards the default for which the penalty had been imposed on the assessee u/s 271B of the Act, we find, that it is the claim of the assessee that he had duly got his accounts audited u/s 44AB of the Act and had uploaded the audit report in form No. 3CB and form 3CD as per mandate of law a/w his return of income that was filed online on 17.09.2011. It is further stated before us, that though the aforesaid fact was brought to the notice of the CIT(A) vide a duly acknowledged letter dated 14.01.2020, however, he had failed to take cognizance of the same.

9. In the backdrop of the aforesaid facts, we find, that it is the claim of the assessee that it had not only got his accounts audited as per mandate of law u/s 44AB of the Act, but had also duly uploaded the audit report in Form No. 3CB and Form No. 3CD a/w his return of income that was filed on 17.09.2011. Also, as observed by us hereinabove, there appears to be some substance in the explanation of the assessee as regards his failure to participate in the course of the proceedings before the lower authorities. Be that as it may, we are of the considered view that in the totality of the facts involved in the present case before us the matter requires to be revisited by the A.O for verifying the aforesaid claim of the assessee i.e he had duly got his accounts audited u/s 44AB of the Act and had uploaded the tax audit reports in Form No. 3CB and Form No. 3CD, dated 05.08.2011 a/w his return of income that was filed on 17.09.2011. In case, if the claim of the assessee is found to be in order, then, the penalty imposed by the A.O u/s 271B would stand vacated. We, thus, in terms of our aforesaid observations set-aside the matter to the file of the A.O for the limited purpose of giving effect to our aforesaid observations. Needless to say, the A.O shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee.

10. Resultantly, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 02.11.2021

Sd/-  
(Pramod Kumar)  
VICE PRESIDENT

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;  
Dated: 02.11.2021  
PS: Rohit

**Copy of the Order forwarded to :**

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

BY ORDER,  
//True Copy//

(Sr. Private Secretary)  
**ITAT, Mumbai**