

आयकर अपीलिय अधिकरण न्यायपीठ, नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, NAGPUR

(At e-Court, PUNE)

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

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1-4	43/NAG/2017 44/NAG/2017 45/NAG/2017 46/NAG/2017	Shirish S. Dhande, 36-B, Tilak Nagar, Nagpur- 440010. PAN : AAWPD5230F	ACIT, Central Circle- 1(2), Nagpur.	2004-05 2005-06 2006-07 2007-08
5-6	47/NAG/2017 48/NAG/2017	Dhande Diagnostic Research Institute P. Ltd., Midas Height, C.B. Road, Ramdaspath, Nagpur- 440010. PAN : AAACD6247P	ACIT, Central Circle- 1(2), Nagpur.	2004-05 2005-06
7-13	49/NAG/2017 50/NAG/2017 51/NAG/2017 52/NAG/2017 53/NAG/2017 54/NAG/2017 55/NAG/2017	Sunita Shirish Dhande, 5 th Floor, Midas Height, C.B. Road, Ramdaspath, Nagpur- 440010. PAN : AAWPD5229Q	ACIT, Central Circle- 1(2), Nagpur.	2003-04 2004-05 2005-06 2006-07 2007-08 2008-09 2009-10

Assessee by : Shri Mukesh Agrawal
Revenue by : Smt. Agnes Thomas

सुनवाई की तारीख / Date of Hearing : 11.11.2021
घोषणा की तारीख / Date of Pronouncement : 22.11.2021

आदेश / ORDER

PER BENCH :

These are the appeals filed by the different assessees directed against the respective orders of Id. Commissioner of Income Tax (Appeals)-3, Nagpur [‘CIT(A) for short] for the assessment years 2003-04 to 2009-10 respectively.

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

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.43/NAG/2017 for the assessment year 2004-05 are stated herein.

4. Briefly, the facts of the case are as under :

The appellant is an individual carrying on business of profession of doctor. The return of income u/s 139(1) of the Income Tax Act, 1961 (the Act) for the assessment year 2004-05 was filed on 01.11.2004 declaring total income of Rs.3,74,940/-. Subsequently, there was a search and seizure action u/s 132 in the hospital premises of the appellant on 10.04.2008. Consequent to the search and seizure action u/s 132, a notice u/s 153A was issued to the appellant calling upon to file the return of income. In response to the same, the appellant filed the same return of income as filed u/s 139(1) on 19.07.2010. During the course of assessment proceedings u/s 153A, the appellant was called upon by the Assistant Commissioner of Income Tax, Central Circle-1(2), Nagpur (the Assessing Officer) to produce the books of accounts for whatsoever reasons. The appellant had not complied with such notice. Consequence of this, the Assessing Officer presumed that no books of accounts were maintained by the appellant and levied penalty of Rs.25,000/- u/s 271A of the Act rejecting the explanation that books of accounts were produced during the course of original assessment proceedings and the books of accounts were audited under the provisions of section 43AB of the Act. Even on appeal before the ld. CIT(A), the same was confirmed.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. When the matter was called on, none appeared on behalf of the assessee despite due service of notice. We heard the ld. Sr. DR and perused the material on record. The issue in the present appeal relates to the levy of penalty u/s 271A for non-maintenance of books of accounts. The Assessing Officer presumed that no books of accounts were maintained by the appellant for failure to produce the books of accounts during the course of proceedings pursuant to notice issued u/s 153A of the Act. The contention of the appellant that the books of accounts were audited under the provisions of section 43AB and the same were produced before the Assessing Officer for verification during the course of original assessment proceedings u/s 143(3) remained uncontroverted. The Assessing Officer had failed to take note of distinction between failure to produce the books of accounts and non-maintenance of books of accounts. Mere failure of production of books of accounts does not lead to the conclusion that no books of accounts were maintained especially in the light of the fact that the original assessment proceedings were completed u/s 143(3) after due verification and the books of accounts were audited by the Auditor under the provisions of section 44AB of the Act. The provisions of Income Tax Act prescribes different penal provision for failure to produce the books of accounts. Therefore, the conclusion drawn by the Assessing Officer that no books of accounts were maintained by the appellant has no legs to stand. Therefore, we are of the considered opinion that the order of penalty levied u/s 271A cannot be sustained in the eyes of law. Accordingly, we direct the Assessing Officer to delete the penalty of Rs.25,000/- levied u/s 271A of the Act. Thus, the issue raised by the assessee in the grounds of appeal stands allowed.

7. In the result, the appeal filed by the assessee in ITA No.43/NAG/2017 stands allowed.

ITA Nos.44 to 55/NAG/2017

8. Since the facts and issues are identical to the facts and issues in ITA No.43/NAG/2017, therefore, our decision in ITA No.43/NAG/2017 shall apply *mutatis mutandis* to remaining above captioned appeals of the assessee i.e. ITA Nos.44 to 55/NAG/2017. Thus, the remaining above captioned appeals of the assessee in ITA Nos.44 to 55/NAG/2017 stands allowed.

9. To sum up, all the above captioned appeals filed by the assessee are allowed.

Order pronounced on this 22nd day of November, 2021.

Sd/-

Sd/-

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

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

पुणे / Pune; दिनांक / Dated : 22nd November, 2021.

Sujeet

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-3, Nagpur.
4. The CIT (Central), Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर / DR, ITAT, "Nagpur" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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