

IN THE INCOME TAX APPELLATE TRIBUNAL "C"
(Virtual Court Hearing) BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.390/Kol/2021
Assessment Year: 2013-14

Anuraj Singh Sabarwal.....Appellant
P.4A, C.I.T. Road,
Kolkata-700019.
[PAN:AVCPS7765H]

vs.

ITO, Ward-31(2), Kolkata.....Respondent

Appearances by:

Shri K. M. Roy, Advocate, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : December 15, 2021

Date of pronouncing the order : December 15, 2021

Hearing through Video Conferencing

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 13.06.2021 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT'] confirming penalty levied by the Assessing Officer u/s 271A as well as 271B of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1. That having initiated penalty u/s 271A for non-maintenance of books, simultaneous invocation of section 271B is bad in law.

2. That once having been established that no book of accounts are maintained, conduct of audit is an impossibility and hence initiation of penalty is unsustainable and hence liable to be quashed.

3. That the appellant reserves the right to raise additional grounds."

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon'ble Supreme Court in the case of *Miscellaneous Application No.665 of 2021 in SMW(C) No.3 of 2020*, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, this appeal is treated as filed within the limitation period.

3. A perusal of the above grounds of appeal reveals that the only issue is relating to the imposition of penalty u/s 271B at Rs.1,50,000/- for failure to obtain audit report u/s 44AB of the Act on the ground of non-maintenance of books of accounts.

4. The brief facts of the case are that the assessee is engaged in the business of trading in electrical items under the name and style of 'Heena Electronics'. The Assessing Officer vide assessment order u/s 147/144 on 14.12.2016 assessed the total income of Rs.21,91,180/-. During the assessment proceedings, the Assessing Officer found total deposits of Rs.4,38,23,621/- in the bank accounts of the assessee. The entire deposits were held as gross turnover of the business by the Assessing Officer. The assessee had not got the accounts audited as required u/s 44AB of the Act. The Assessing Officer thereafter invoked penalty u/s 271B of the Act at Rs.1,50,000/-.

5. Aggrieved by the above action of the Assessing Officer, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) confirmed the penalty made by the Assessing Officer u/s 271A as well as 271B of the Act.

6. Being aggrieved by the above action of the CIT(A), the assessee has come in appeal before us.

At the outset, the Ld. counsel for the assessee submitted that the assessee in fact did not maintain the accounts for the assessment year under consideration. He has further submitted that penalty u/s 271A has already been levied by the Assessing Officer. That further penalty u/s 271B was not warranted in this case. He has invited our attention to the decision of the Tribunal in the case of Smt. Mukti Roy vs. ITO in ITA No.113/Kol/2019 for assessment year 2010-11 order dated 01.01.2020, wherein the Tribunal relying upon various decisions of Hon'ble High Courts and Coordinate Benches of the Tribunal has decided the identical issue in favour of the assessee by observing as under:

"4. We have heard rival submissions and gone through the facts and circumstances of the case. At the outset itself, we note that the AO in the assessment order dated 25.03.2015 at para 6 has found that assessee is not maintaining any books of account. In such a scenario penalty u/s. 271A of the Act in contravention of sec. 44AA can be only levied and not u/s 271B of the Act. We note that the Delhi Tribunal in Nirmal Kumar Jain

Vs. ITO in ITA Nos. 6696 & 6645/Del/2014 for AY 2010-11 dated 02.03.2016 has held that when the AO has found during assessment that assessee is not maintaining books of account, then penalty u/s 271B for not getting the books audited should not be levied as under:

"3. In so far as the penalty u/s. 271B is concerned, it is noticed that the Ao has recorded a categorical finding on page 2 of the assessment order that no books of account were maintained by the assessee. Under such circumstances, a question arises as to whether any penalty can be imposed u/s. 271B for not getting the books of account audited. The Hon'ble Gauhati High Court in [Suraj Mal Parasuram Todi vs. CIT](#) (1996) 222 ITR 691 (Gau) has held that where no books of account are maintained, penalty should be imposed for non-maintenance of books of account u/s. 271A and no penalty can be imposed u/s. 271B for violation of section 44AB requiring ITA Nos. 6696 & 6645/Del/2014 audit of accounts. Similar view has been taken by the Hon'ble Allahabad High Court in [CIT vs. Bisauli tractors](#) (2008) 299 ITR 219 (All). The Hon'ble Allahabad High Court reiterated the similar view in [CIT and Anr. Vs. S. K. Gupta and Co.](#) (2010) 322 ITR 86 (All) by holding that requirement of getting the books of account audited can arise only where the books of account are maintained. In the absence of the maintenance of books of account, there can be no penalty u/s. 271B of the Act. In view of the foregoing legal position emanating from the judgments of the two Hon'ble High courts, we are convinced that penalty u/s. 271B ought not to have been levied because the assessee admittedly did not maintain any books of account as has been recorded in the assessment order itself. We, therefore", order for the deletion of penalty."

5. Respectfully following the ratio in Nirmal Kumar Jain (supra), of the Tribunal & taking note of the ratio laid by the Hon'ble High Courts mentioned in that order, we are of the opinion that penalty u/s 271B ought not to have been levied against the assessee and since the ld. CIT(A) has exercised his co-terminus power to levy penalty u/s 271A of the Act for not maintaining books of account, therefore, we restrict the penalty to the tune of Rs. 25,000/- in place of R.1,50,000/- as imposed by AO and confirmed by Ld. CIT(A). So, the assessee gets relief of Rs.1,25,000/-."

7. Respectfully following the decision cited supra, the penalty levied by the Assessing Officer u/s 271B of the Act is set aside.

9. In the result, the appeal of the assessee stands allowed.

Kolkata, the 15th December, 2021.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 15.12.2021.

RS

Copy of the order forwarded to:

1. Anuraj Singh Sabarwal
2. ITO, Ward-31(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Sr.PS/D.D.O, Kolkata Benches