

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHIBENCH 'E', NEW DELHI**

**Before Sh. A. D. Jain, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2355/Del/2018 : Asstt. Year : 2008-09**

Naresh Chand Rana, C/o M. K. Nagpal & Associates, CA, 14, Muncipal Market, Subhash Chowk, Sonipat, Haryana	Vs	Income Tax Officer, Ward-2, Sonapat
(APPELLANT)		(RESPONDENT)
<b>PAN No. ACNPR1502M</b>		

**Assessee by: Sh. Rajat Bhatla, CA**

**Revenue by: Ms. Sweta Yadav, Sr. DR**

**Date of Hearing: 09.02.2022**

**Date of Pronouncement: 11.04.2022**

**ORDER**

**Per Dr. B.R.R.Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A), Rohtak dated 16.02.2018.

2. Following grounds have been raised by the assessee:

*"a. Receipts of an Assessee engaged in data collection services business as professional receipts although such services are not covered in the definition of profession for the purpose of Section 44AA & 194 J of the Income Tax Act 1961 and Rule 6F of the I.T. Rules 1962 and*

*b. Making presumption that Assessee has professional and technical competence whereas Assessee has no professional qualification and he is simply graduate and didn't require any intellectual skills to perform the job of data collection;*

*c. CIT allegation that Assessee is guilty of failing to get the books of accounts audited as Gross receipts of assessee exceeds the limit prescribed u/s 44AB of the*

*I.T. Act in case of professionals for the said year thereby confirming the penalty u/s 271 (B) of the Income-tax Act, 1961 is not correct."*

3. The assessee is engaged in the business of data collection and running the business in the name of NCR Research Group. The assessee filed his return of income for A.Y. 2008-09 on 28.11.2011 in response to the notice issued u/s 148 of the Income Tax Act, 1961 and declared an income of Rs. 18,750/-. First assessment was completed u/s 147/143(3) on 26.12.2011. After that, on 05.03.2014, the assessee was served with a show cause notice U/s 263(1) and Commissioner of Income Tax has passed the order dated 28.03.2014 and directed the Assessing Authority to make fresh assessment. Thereafter, Assessing Authority served a notice u/s 142(1) for fresh assessment and fresh assessment was completed on 10.02.2015. Later on, show cause notice for penalty u/s 271B was issued and after giving due opportunity the order u/s 271B on 28.08.2015 was passed and penalty of Rs. 15,920 was levied.

4. It was argued by the Id. AR that the assessee's work of data collection is business instead of profession (as defined u/s section 194J) of the Income Tax Act due to the followings and therefore penalty u/s 271B is illegal and unjustified:

- a. The work of data collection performed by the assessee along with his employees consists of data collection through survey conducted in accordance with direction and requirement mentioned in work order issued by the party.
- b. Assessing authority could not and did not produce any such notification incorporating the services rendered in the present case being the professional services within the

meaning of the explanation appended to section 194J of the Act.

- c. Each party had provided fix format of data collection/ survey report and only basic details are required to be filed in that format after collecting data by visiting door to door in specified locations. Detail of some contracts for data collection executed during the above said year is given as under:

Sr. No.	Party Name	Nature of Contract	Type of Report
1.	Consulting Engineering Services (India) Pvt. Ltd.	Field work for household survey for Jalore Water & Sanitation Project	Jalore Water and Sanitation Project Report.
2.	Brindavan Beverages Pvt. Ltd.	Work order for EDS	EDS Format for Coca Cola
3.	Enrich Agro Food Products Pvt. Ltd.	Verification of Outlets in Gurgoan	EDS Format for Coca Cola
4.	Kandhari Beverages Pvt. Ltd.	EDS in Towns	EDS Format for Coca Cola

5. The Id. AR also relied on the judgment of Hon'ble Karnataka High Court in case of CIT Vs. Market Probe India Pvt. Ltd. 227 Taxmann 85. At this juncture, we find that "technical consultancy" is notified by the CBDT for the purpose of Section 44AA and "data collection" is also an integral part of any "technical consultancy". The assessee is doing market research cannot be considered as "work contract" but can only be termed as "professional consultancy".

6. The Id. DR supported the order of the Id. CIT(A) wherein it was stated as under:

*"In the statement of facts submitted by the assessee he has himself stated that he is doing market research. So at this stage, it is necessary to ascertain whether the assessee is engaged in activity which is a profession or not. During the*

*course of appellate proceedings, the assessee was asked to submit the details of employees, their qualifications, work assigned to each employee, work of data collection being done for which organizations, the process and timeline involved in the data collection work, copies of contracts given by the clients and terms of contracts, breakup of data collection charges, qualifications and experience of assessee and why this work should not be treated as profession considering that TDS has been deducted under section 194J of the act by the clients.*

*A list of organizations for whom data collection was done shows that most of them are companies which are selling beverages or food products or are consultants. They are getting the data collection done with a specific format as per the requirement so a market research company the assessee provides solutions and data as per the terms of contract.*

*It is correct that work executed by the assessee is in accordance with the directions given by the clients but the fact remains that if it did not require any professional competence or technical expertise then why this work was assigned to specific market research company and not to any layman. The work which is assigned by the assessee to the casual workers for data collection can be termed in the nature of a contract whereby they do certain job and get paid for it. No professional competence or technical expertise is required there, however in the work assigned to the assessee, the element of professional competence and technical competency is an essential feature. That is why the assessee, because of his experience in this field and expertise built over the years is able to bid and tender for such projects. The assessee himself submitted in this reply that the field boys are non-skilled.*

*The assessee's contention that he is engaged in performing work which requires physical aspect rather than intellectual aspect and so it is covered under section 194C of the Act has no merit because after getting the data collected, which is the physical aspect of his work, it is the responsibility of the assessee as a market research expert to compile the data, edit it and analyze them into comprehensible reports which can be used by the clients. Even for data collection the field officers surveyors have to be briefed as to what should be the target persons in the field. The workers cannot randomly go for the work of data collection. Complete guidance and briefing is required and the requirement of client is to be kept in mind by the aa before embarking on this work of data collection. If it was 'any work' it could have been assigned to anyone and not to a professional, after competitive bidding. The courts are right when they hold that the work of data collection per se is not a technical work which is covered in the definition of professional and technical consultancy for the purpose of sections 44AB or 194J of the Act. The work of data collection assigned by the assessee to the actual data collectors or the team workers who work in the field has no requirement for any technical or professional expertise. The execution of the work does not include any assessment of the area or target clients or analysis of the data collected. This job is covered under the category of 'any work' mentioned in section 194C of the Act. The work being done by the field workers comes in the category of physical work but the work of the assessee is of overall supervision, planning guidance to the field workers and analysis of the data collected and is intellectual work and falls in the category of professional and technical consultancy.*

*Appraisal of one of the contracts given shows that the work assigned to the assessee is very specific. For instance, assessee has been asked to cover potential soft drinks selling outlets, current non-sellers and which would include all groceries, all eating and drinking outlets, pan shops, street shops, bakery and confectionery stores, road side dhabas, lodges, fruit Juice selling outlets, school and college canteens and a total of 20,000 outlets are to be covered. This is very specific work where the market researcher will ensure that it is executed properly and as per the requirements of the clients.*

*In his submissions the assessee has referred to the work of a skilled electrician and census collection work and stated that these activities are not in the category of professional/ technical consultancy work. This comparison is totally misplaced because the work of data collection by census team is different from the work being done by the assessee, who has been assigned the work of data collection in a particular manner by identifying the target persons/enterprises and further analysis of the data collected after sanitizing it for the purpose of the clients. So also comparison with an electrician is totally misplaced in view of the different job being done by the assessee, which requires technical and professional expertise.*

*The AO has not levied penalty on the basis of deduction of tax by the clients u/s 194J of the Act. He has independently arrived at his satisfaction for levy of penalty based on the provisions of the Act and facts of the case. The fact that the clients has awarded work to the assessee based on his professional and technical competence and expertise and are therefore deducting TDS as payments made to a professional, only supports the AO's finding."*

7. Heard the arguments of both the parties and perused the material available on record.

8. We have gone through the legal and factual matrix,

- a. Original Assessment Order dated 26.12.2011
- b. Show cause notice u/s 263 dated 17.02.2014
- c. Order passed by CIT u/s 263 dated 28.03.2014
- d. Fresh Assessment Order dated 10.02.2015
- e. Penalty order u/s 271B dated 28.08.2015
- f. Order passed by ITAT dated 28.03.2017 against order passed u/s 263

9. In the peculiar facts and circumstances of the case, owing to order of the ITAT dated 28.03.2017 dismissing the order u/s 263, the Assessment Order dated 10.02.2015 which is passed in consequence to the order u/s 263 is invalid and accordingly the penalty proceedings initiated u/s 271(1)(c) and u/s 271B would also become infructuous and *non-est* in the eyes of the law. In the result, the assessee gets relief of Rs.15,920/- as penalty levied u/s 271B. Any discussion on the merits of the case would be academic in nature and hence not resorted to.

10. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 11/04/2022.

Sd/-

**(A. D. Jain)**  
**Vice President**

**Dated: 11/04/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**