

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.702 & 703/Lkw/2019
Assessment Year:2016-17 & 17-18

Shri Narendra Bahadur Singh, 1-64, Vardan Khand, Gomti Nagar, Lucknow. PAN:ANFPS9936H	Vs.	Dy.C.I.T., Central Circle-II, Lucknow.
(Appellant)		(Respondent)

ITA No.704 to 710/Lkw/2019
Assessment Year:2011-12 to 17-18

Shri Divakar Singh, 1-64, Vardan Khand, Gomti Nagar, Lucknow. PAN:AOUPS5649M	Vs.	Dy.C.I.T., Central Circle-II, Lucknow.
(Appellant)		(Respondent)

ITA No.54 to 60/Lkw/2020
Assessment Year:2011-12 to 17-18

Smt. Gunjan Singh, 1-64, Vardan Khand, Gomti Nagar, Lucknow. PAN:BPMP1407M	Vs.	Dy.C.I.T., Central Circle-II, Lucknow.
(Appellant)		(Respondent)

Appellant by	Shri G. C. Srivastava, Advocate
Respondent by	Smt. Sheela Chopra, CIT (D.R.) Shri Harish Gidwani, D.R.
Date of hearing	07/07/2022
Date of pronouncement	26/07/2022

ORDER

PER BENCH:

This is a group of 16 appeals filed by three different assessees for different assessment years against separate orders of learned CIT(A) dated 29/10/2019 in the case of Shri Narendra Bahadur Singh, dated 27/06/2019 in the case of Shri Diwakar Singh and dated 26/06/2019 in the case of Smt. Gunjan Singh. In these appeals the assessees have challenged the sustenance of penalty which the Assessing Officer had imposed u/s 271A of the I.T. Act. At the outset, Learned counsel for the assessee, explaining the facts of the cases, submitted that in all these appeals relating to different assessees, similar findings have been made for upholding the penalty u/s 271A of the Act therefore, these appeals were heard together and a common and consolidated order is being passed.

2. Learned counsel for the assessees submitted that the penalty has been imposed and upheld for failure to keep, maintain or retain books of account, documents etc. which are required by section 44AA of the Act. Learned counsel for the assessee submitted that non maintenance of books of account attracts a penalty of Rs.25,000/- and in this respect Learned counsel for the assessees read the provisions of section 44AA as well as the provisions of section 271A of the Act. Learned counsel for the assessee submitted that penalty u/s 271A of the Act shall be levied only if the assessee either fails to keep such books of account as required u/s 44AA of the Act or the rules made there under, or to retain such books of account and other documents for the period specified in the said rules. Learned counsel for the assessee in this respect invited our attention to the copy of tax audit reports obtained u/s 44AB of the Act wherein the auditor has certified that the assessee was maintaining books of account which he has

audited and has submitted the audit report. Learned counsel for the assessee submitted that the Assessing Officer has imposed the penalties for these year by holding that the assessee had not produced books of accounts before him during assessment proceedings despite specific directions in this regard. It was submitted that the Assessing Officer also held that during survey and search proceedings, the assessee could not produce books of account. Further it was submitted that the Assessing Officer further held that even during post search proceedings before the Director of Income Tax (Inv), the assessee did not produce the books of account. Learned counsel for the assessee submitted that from the findings of the Assessing Officer in the penalty order it is very much clear that the Assessing Officer in the entire penalty order has emphasized that the books of account were not produced in the post search proceedings, in the survey proceedings and during assessment proceedings. Learned counsel for the assessee submitted that on this basis the Assessing Officer presumed that the books of account were not being maintained whereas to support his presumption, no material has been brought on record. Learned counsel for the assessee in this respect submitted that the books of account, required u/s 44AA(2), has not been prescribed in the Act and rather it has been mentioned in the section that assessee will maintain such books of account which may enable the Assessing Officer to compute his total income in accordance with the provisions of the Act. Learned counsel for the assessee submitted that in the present cases, the assessee maintained books of account on electronic medium and the system got corrupted causing non production of books of account. It was submitted that various purchase bills and sales bills were seized during search and are in possession of the Department and Assessing Officer had made the assessment u/s 153A of the Act which shows that he was able to compute total income of the assessee in accordance with the provisions of this Act.

Learned counsel for the assessee further submitted that another admitted material fact is that the assessee got their books of account audited as per the provisions of section 44AB of the Act and had obtained the audit report and had filed the audit report along with return of income u/s 139 of the Act. In view of these facts and circumstances Learned counsel for the assessee submitted that since the Assessing Officer was able to compute the total income of the assessee and the auditor has issued audit report on the basis of books of account, therefore, the provisions of section 44AA(2) of the Act has been met and if it has been met then no penalty u/s 271A can be levied. It was submitted that the authorities could have imposed penalty for non production of books of account which is available under the provisions of the Act and which they have not imposed and have imposed the penalty for non maintenance of books of account which is wrong and therefore, it was prayed that the penalty imposed and sustained by learned CIT(A) be deleted.

3. Learned D. R., on the other hand, submitted that during search proceedings the assessee did not produce books of account. During assessment proceedings and during proceedings before Director of Investigation, books of account were not produced. Therefore, the arguments of Learned counsel for the assessee that books of account were maintained, is not in accordance with facts. Learned D. R. submitted that the audit reports, obtained by the assessee, are of no help to the assessee because as per the provisions of section 44AA of the Act, the assessee has to maintain and retain the books of account and if the books of account were maintained by the assessee, there was no reason for not producing the same before any of the authorities. As regards the arguments of Learned counsel for the assessee that such books of account were maintained which enabled the Assessing Officer to compute the total income

of the assessee, it was submitted that this is not correct as the Assessing Officer, in his order, has specifically mentioned that no books of account were produced and he has estimated the net income on the basis of documents as available to him. It was submitted that had there been books of account before Assessing Officer, he would have computed the net income instead of estimating it. In view of these facts and circumstances, it was prayed that the penalty imposed and sustained by learned CIT(A) is in accordance with law.

4. We have heard the rival parties and have gone through the material placed on record. We find that three assessees are involved in this group of appeals. In the case of Shri Divakar Singh and Smt. Gunjan Singh, the assessment years involved are 2011-12 to 2017-18 whereas in the case of Shri Narendra Bahadur Singh, the assessment years involved are 2016-17 and 2017-18. We find that during a search & seizure operation u/s 132 of the Act on the residential premises of Divakar Singh, several incriminating papers and documents were claimed to have been found which included sales, purchase bills and also included documents indicating acquisition of immovable properties by the assessees. The assessment order further states that various diaries and incriminating documents were also seized and statements were recorded. We find that despite repeated requests by the Assessing Officer, no books of account/bills and vouchers were produced during the entire assessment proceedings therefore, the Assessing Officer held that assessees had not maintained books of account, as required under the provisions of section 44AA of the Act and therefore, he imposed penalty u/s 271A of the Act. On appeal filed before learned CIT(A), the arguments taken by the assessees was that the assessees had maintained books of account electronically which got corrupted and thus could not be submitted. The learned CIT(A) rejected the contention of the assessees by holding that

books of account were not even produced during the course of search & seizure operation. Learned CIT(A) also held that Assessing Officer was not able to compute correctly the income of the assesseees in the absence of books of account and therefore, he upheld the penalty imposed by the Assessing Officer.

5. We find that Assessing Officer has passed the assessment order on 30.12.2018/31.12.2018 and the penalty orders, in all cases, have been passed on 30/05/2019. The orders of learned CIT(A), confirming the penalties, have been passed on 27/06/2019 and 22/10/2019 respectively. The period between 31/12/2018 and 22/10/2019 is quite long and assesseees could have produced books of account before learned CIT(A) for their claim that they were maintaining books of account but which they did not do. The period between passing of orders by learned CIT(A) and hearing of the appeals by us is also quite long and before us also, no books were produced, which means that either assesseees did not maintain books of account or a corrupted data in the computers was not got corrected till the hearing of the appeals before us. On the one hand the assesseees have not produced any books of account before any authority including before us and on the other hand the assesseees have obtained and filed audit reports in a few cases. The auditors in the audit reports has mentioned that assesseees had maintained cash book and ledger. Even if on the basis of copies of audit report obtained and filed by assesseees, we accept that assesseees had maintained books of account but whether the maintenance of only cash book and ledger were sufficient to enable the Assessing Officer to compute correct income of the assessee is a question of fact which can only be examined by the Assessing Officer. Therefore, in the facts and circumstances of the cases, we deem it fit to remit the cases back to the Assessing Officer who should direct the assesseees to produce such books of

account maintained and preserved by them and then arrive at a conclusion as to whether the assessee had maintained such books of account which enables him to compute their income correctly and then pass a consequent penalty order afresh, if required. In view of the above, the appeals are allowed for statistical purposes.

6. In the result, all the appeals of the assessee are allowed for statistical purposes.

(Order pronounced in the open court on 26/07/2022)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:26/07/2022
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar