

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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.7315 & 7316/DEL/2018
Assessment Years 2010-11 & 2011-12

Dharam Pal Singh, Dharam Gases, Kala Aam, Bulandshahr, Uttar Pradesh.	Vs.	ITO, Ward-1(2), Meerut
TAN/PAN: AEBPS5118N		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Kumar Pranav, Sr.DR		
Date of hearing:	23	11	2022
Date of pronouncement:	25	11	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed by the Assessee against the orders of the Commissioner of Income Tax (Appeals), Meerut ['CIT(A)' in short] dated 10.09.2018 arising from the penalty order dated 22.05.2018 passed by the Assessing Officer (AO) under Section 271B of the Income Tax Act, 1961 (the Act) concerning AY 2010-11 and 2011-12 respectively.

2. As per the captioned appeal, the assessee has challenged the penalty levied by the Assessing Officer under Section 271B of the Act amounting to Rs.1 lakh for not furnishing tax audit report enjoined by Section 44AB of the Act.

3. When the matter was called for hearing, none appeared for

the assessee. Accordingly, the matter was proceeded *ex-parte*.

4. During verification of cash transactions made by the assessee during demonetization period, it was found by the Assessing Officer that assessee was a proprietor of M/s. Dharam Gases, Bulandshahar and is also a distributor of Bharat LPG Gas. The assessee did not file return of income for the Assessment Year 2010-11 in question. On verification of the bank statement, it was observed by the Assessing Officer that the credits in the bank account was Rs.3,17,74,647/-. However, the assessee did not file the return for Assessment Year 2010-11. The case of the assessee was reopened. The assessment was completed at an assessed income of Rs.5,15,960/-.

5. In the course of the assessment proceedings, the Assessing Officer also noted that the total turnover of the assessee was Rs.3,28,16,185/- but the assessee has neither filed the return of income nor filed any tax audit report. The Assessing Officer accordingly invoked the provisions of Section 271B of the Act and imposed penalty of Rs.1 lakh for alleged default in compliance of provisions of Section 44AB of the Act.

6. The assessee before the CIT(A) submitted that he is doing the business of LP Gas on commission basis for and on behalf of the Bharat Petroleum Corporation Ltd. and the commission earned is far below the threshold limit prescribed under Section 44AB of the Act. Despite this, the assessee got his account audited in terms of Section 44AB before the due date prescribed under Section 139(1) but the report was not submitted in the absence of any return filed under Section 139(1) of the Act. The tax audit report was eventually filed in the course of re-assessment proceedings

along with return of income.

7. On perusal of these facts, we observe that it is the case of the assessee that tax audit was obtained indeed despite absence of any statutory requirement as the receipt from commission does not surpass the threshold limit prescribed under Section 44AB of the Act. In such a situation, the case of the assessee is supported by the judgment rendered in *Abhay Kumar and Co. vs. Union of India*, (1987) 164 ITR 148 Rajasthan and also the CBDT Circular No.452 dated 07.03.1986. The assessee in the instant case claims that he has merely earned commission income and has not acted as Principal but rendered services on behalf of the Principal. The assessee eventually has furnished the tax audit report and the assessment has been carried out. Hence, no grave prejudice is caused as may be attributable to tax audit report. This being so, we find that reasonable cause exists to exonerate the assessee from the clutches of penalty under Section 271B of the Act attributable to allege default of Section 44AB of the Act.

6. In the totality of circumstances, the imposition of penalty under Section 271B is not justified. The order of the CIT(A) is thus set aside and the Assessing Officer is directed to delete the impugned penalty.

7. In the result, the appeal of the assessee is allowed *ex-parte*.

8. The appeal in ITA No.7316/Del/2018 concerning Assessment Year 2011-12 towards challenging the imposition of penalty under Section 271B amounting to Rs.1,50,000/- the facts and circumstances being identical. The conclusion drawn in ITA No.7315/Del/2018 shall apply *mutatis mutandis*. The penalty imposed under Section 271B thus stands deleted for similarity of

reasons.

9. In the result, the appeal of the assessee In ITA No.7316/Del/2018 is allowed.

10. In the combined result, both the appeals of the assessee are allowed *ex-parte*.

Order pronounced in the open Court on 25/11/2022.

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /11/2022

prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**