

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'H' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.6045/Del./2019  
(ASSESSMENT YEAR : 2015-16)**

Shri Yogesh Goel, vs. ITO, Ward 35 (3),  
214/2, Gali No.7, Padam Nagar, New Delhi.  
Kishan Ganj,  
Delhi – 110 007.

**(PAN : AJAPG0392E)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None  
REVENUE BY : Shri R.S. Yadav, Sr. DR

Date of Hearing : 21.12.2022  
Date of Order : 23.12.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-12, New Delhi dated 10.04.2019 for the AY 2015-16.

2. The issue raised is that Id. CIT (A) erred in confirming the levy of penalty under section 271B of the Income-tax Act, 1961 (for short 'the Act') amounting to Rs.1,50,000/-.
3. Brief facts of the case are that the assessee filed the return of income declaring total income of Rs.2,49,980/-. The Assessing Officer

has mentioned that the Assessee declared gross receipts of Rs.3,98,72,048/-. There were cash deposits amounting to Rs.3,88,32,910/- in the bank accounts maintained by the assessee. The AO has observed that the assessee was required to get his accounts audited u/s 44AB of the Income-tax Act, 1961 (for short 'the Act') because total sales or turnover or gross receipts from the business exceeded Rs.1,00,00,000/- in the year under consideration. Since, the books of account were not audited u/s 44AB of the Act and the audit report was not uploaded within the specified time, the assessee was liable for penalty u/s 271B of the Act. The AO issued show cause notice on 11.04.2018 to furnish explanation on 18.04.2018. But no compliance with this notice was made. Accordingly, the AO has levied penalty amounting to Rs.1,50,000/- being the less than  $\frac{1}{2}$  % of total sales.

4. Against this order, assessee went in appeal before the Id. CIT (A). Before the Id. CIT (A), the assessee has submitted that he is a selling agent of Mother Dairy Fruit & Vegetable Pvt. Ltd. (Mother Dairy) and supplied the products of Mother Dairy to the retailers at predetermined and approved prices. That Mother Dairy had full control over the supply chain and margin at each stage. He submitted that the Assessee earned fixed margin/commission only. It is pleaded that assessee had reasonable cause on his part for not getting the books audited. Further, assessee

submitted that no penalty can be imposed where there is a technical or venial breach of the provisions of law.

5. After considering the facts of the case and the submission of the assessee, ld. CIT(A) noted that the assessee has not submitted the copy of the agreement with the Mother Dairy to verify his contention that he had no control over the prices and he was entitled only to fixed rate of commission. That the role of the assessee to deposit the cash in the bank account is not explained in terms of the agreement between the principal and agent. He further noted that under these circumstances, the receipts on which the assessee earned income will be considered the gross receipts of the business. Since the gross receipts exceeded Rs.1,00,00,000/- the assessee was liable to get his accounts audited u/s 44AB of the Act and upload the same to the site within the prescribed time. He noted that the assessee has failed to prove his bona fide when he himself accepted the gross receipts in the return of income. Therefore, ld. CIT (A) upheld the penalty imposed by the Assessing Officer.

6. Against the above order, assessee has filed appeal before us. We have heard the ld. DR for the Revenue. None appeared on behalf of the assessee despite notice.

7. We note that Revenue authorities have given a finding that assessee turnover which includes amount deposited in bank account

warranted that the assessee obtain and submit tax audit report u/s 44AB of the Act. The assessee has given only self serving statement before the CIT (A), which have rightly been found to be non-satisfactory by Id. CIT (A). Accordingly, we do not find any infirmity in the order of Id. CIT (A). Hence we uphold the same.

8. In the result, this appeal by the assessee stands dismissed.

**Order pronounced in the open court on this 23<sup>rd</sup> day of December, 2022.**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 23<sup>rd</sup> day of December, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-12, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**

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