

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.5810/Del./2019
(ASSESSMENT YEAR : 2015-16)**

Sumit Mittal,
28, Kukhrain Apartment, Sector 13,
Rohini,
Delhi – 110 085.

vs. DCIT, International Taxation,
Gurgaon.

(PAN : AJZPM2564K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Abhishek Kumar, Sr. DR

Date of Hearing : 08.12.2022

Date of Order : 05.01.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id.
CIT (Appeals)-43, New Delhi dated 06.05.2019 for the assessment year
2015-16.

2. The grounds of appeal taken by the assessee read as under :-

“1. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Id. AO in levying penalty u/s 271B for not furnishing the tax audit report u/s 44AB.

2. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the applicability of section 44AB in the present case.”

3. In this case, Assessing Officer noted that total gross receipt of the assessee was 95,73,92,751/- thereby making him liable for tax audit under section 44AB of the Income-tax Act, 1961 (for short 'the Act'). Since it was not done penalty under section 271B of the Act was levied amounting to Rs.1,50,000/-.

4. Before the Id. CIT (A), in his submissions assessee stated that he has entered into only Future and Option transactions which resulted in gross receipt of Rs.90,08,691/-. Ld. CIT (A) noted that assessee had attached tabulated details of Future & Option transactions. He noted that however there are no details whatsoever with reference to how the figure of Rs.85.73 crores mentioned in the assessment order was incorrect and how the figure presently submitted is correct. Ld. CIT (A) opined that presumably assessee considered his receipt or payment only to the extent of 1% of the contract value entered into for the Future and Option transactions of any script. However, referring to section 44AB, Id. CIT (A) found that it was not correct. He referred to the provisions of section 44AB and thereafter held that proportion paid by the assessee for entering the contract worth Rs.100 may be 1% but that does not indicate that his turnover from the said contract is only 1% of the gross contract

entered into. Therefore, ld. CIT (A) held that liability for tax audit which depends upon the total turnover, which in assessee's case, certainly exceeded Rs.1 crore, existed. Hence, ld. CIT (A) confirmed the levy of penalty u/s 271B.

5. Against this order, assessee is in appeal before us.

6. Several notices have been issued to the assessee. Notices are returned unserved also. Hence we proceed to decide the issue by hearing ld. DR for the Revenue and perusing the records.

7. Upon careful consideration, we note that Revenue authorities found that assessee's turnover is above the threshold limit to furnish the tax audit report. Admittedly, assessee has not obtained the same under a mistaken belief of his turnover as explained by ld. CIT (A) above. In these circumstances, in our considered opinion, there is no infirmity in the orders of the authorities below, hence we confirm the same.

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

Order pronounced in the open court on this 5th day of January, 2023.

**Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER**

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

**Dated the 5th day of January, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-43, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.