

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 6915/Del/2019  
Asstt. Yr: 2011-12**

Sanjiv Dutta, DD-232, Wesytern Marg, Saidulajab, M.B. Road, Mehrauli, New Delhi-110030.  PAN-AEOPD1198N	<u>Vs</u>	Income-tax Officer, Ward-32(2), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	<b>None</b>	
<b>Department represented by</b>	<b>Shri B.M. Singh Sr. DR</b>	
<b>Date of hearing</b>	<b>30.01.2023</b>	
<b>Date of pronouncement</b>	<b>31.01.2023</b>	

**ORDER**

**PER N.K. CHOUDHRY, JM:**

The Assessee has preferred the instant appeal against the order dated 04.07.2019 impugned herein, passed by the Ld. Commissioner of Income tax (Appeals)-11, New Delhi (in short "Ld. Commissioner") u/s 250 of the Income-tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2011-12.

**2.** In the instant case the Assessee declared its total taxable income of Rs. 6,50,860/- by e-filing its return of income on 30.09.2011, which was subsequently revised on 14.09.2012 admitting the same income. The case of the Assessee was processed u/s 143(1) of the Act.

**3.** Later on, the case of the Assessee was selected for scrutiny through CASS and, therefore, the statutory notices have been issued to the Assessee. The Assessing Officer observed that the Assessee is running a proprietary concern in his own name and also derived income from other sources and during the year under consideration declared sales of Rs. 3,57,70,786/- and purchases of Rs. 3,45,81,398/-.

**3.1** The AO asked the Assessee to furnish its books of account along with supporting vouchers. It appears from the assessment order that the Assessee failed to produce the books of account and therefore it was held by the AO that Assessee has no supporting vouchers for the expenses and purchases debited by it. The AO finally made the disallowance of Rs. 34,58,139/- @ 10% of the purchases and Rs. 1,000/- which was debited as donation in the P&L A/c and the amount of Rs. 3,04,197/- as disallowance @ 50% of the expenses to the tune of Rs. 6,08,395/-, as claimed in his P&L A/c by the Assessee .

**3.2** The AO also observed that case of the Assessee was selected for scrutiny under CASS on the ground that the Auditor mentioned in the original return had denied to have conducted audit for the Assessee, though Assessee claims so. Now the Assessee has submitted that the actual auditor was Shri V.K. Gupta of M/s M.K. Goswami & Co. The revised return was filed through Shri V.K. Gupta of M/s M.K. Goswami & Co. Since the revised return was filed after the due date of filing of return, it is held that the Assessee has got his books of account audited after the stipulated period of time. Accordingly, penalty proceedings u/s 271B of the Act are also being initiated for not getting his accounts audited within the prescribed period.

**3.3** The AO ultimately vide penalty order dated 31.3.2018 imposed the penalty to the tune of Rs. 1,50,000/- u/s 271B of the Act. The said penalty was affirmed by the learned Commissioner, against which the Assessee is in appeal before us.

**4.** Though notice of hearing of this appeal was sent to the Assessee for the date of hearing on 30.01.2023 through speed post at the address furnished in form no. 36, however, the same has been returned by the postal Department with the following remark:

“BAAR BAAR JANE PAR GHAR BAND MILA, ATA VAPAS”

Hence, we are constrained to decide this appeal as ex parte.

**5.** We observe that in the instant case, the income tax return was filed by the Assessee on 30.09.2011 and thereafter on 14.09.2012 the same was revised and filed alongwith audit report dated 30.09.2011. It appears from the impugned order that the accounts were audited on 30.09.2011 by the Auditor Shri V.K. Gupta of M/s M.K. Goswami & Co., which the Assessee has claimed that it were left by the Assessee’s CA while filing original return, as a result the revised return was filed on 14.09.2012 along with audit report dated 30.09.2011 in form no. 3CD. Further, the facts and figures of the original return and the revised return are the same and only the Auditor’s report was left to be endorsed with the original return by mistake.

**5.1** We have given thoughtful consideration to the peculiar facts and circumstances of the case and orders passed by the authorities below. For

imposition of penalty u/s 271B of the Act , the following conditions are enumerated in Section 271B of the Act:

**“If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year;**

**or failed to furnish a report of such audit as required u/s 44AB ...”**

**5.2** In the instant case, the Assessee filed its return of income on 30.09.2011 and the books of account of the Assessee have also been audited only on 30.09.2011, however it seems that somehow due to inadvertent or otherwise mistake in the name of Auditor, the Assessee failed to file correct audited books of account, alongwith original return of income, but it is a fact that audited books of account which are not in dispute, have duly been filed along with the revised return of income. The facts and figures of the original return and the revised return are exactly same and there is nothing contrary. Even it is not the case of the Revenue-Department that the Assessee has failed to get his accounts audited for the year under consideration and/or failed to furnish report of such audit as required u/s 44AB of the Act before the finalization of the assessment order, as mandated u/s 271B of the Act. Considering the facts and circumstances in totality and the relevant provisions of law, we are inclined to delete the penalty levied u/s 271B of the Act by the AO and affirmed by the Ld. Commissioner, which is under consideration.

6. In the result, appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 31.01.2023.

**Sd/-**  
**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**  
\*MP\*

**Sd/-**  
**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**