

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 28/JP/2023
निर्धारण वर्ष / Assessment Years : 2013-14

Anirudh Baheti HUF D-552 Baheti House, Kabir Marg Bani Park, Jaipur	बनाम Vs.	ITO Ward 3(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAHHA 8948 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri B. P. Mundra (C.A.) &
Smt. Prabha Rana (Adv.)
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 02/03/2023
उदघोषणा की तारीख / Date of Pronouncement : 06/03/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 03/01/2023 [here in after (NFAC)] for assessment year 2013-14 which in turn arise from the order dated 25.08.2021 passed under section 271B of the Income Tax Act, by the ITO, Ward 3 (2), Jaipur.

2. In this appeal, the assessee has raised following ground:-

“1. Imposition of penalty u/s 271B of Rs. 1,50,000/- is bad in law and facts.”

3. The fact as culled out from the records is that as per ITS detail available with the revenue, it was found that the assessee had entered into commodity transactions of Rs. 20,47,47,660/- during the year under consideration. Even though the assessee has made so much of transactions has not filed his return of income for the year under appeal. Therefore, based on the valid reasons the case of the assessee was re-opened after obtaining the necessary approvals. In response to the notice the assessee filed the return on 26.04.2019. The notices were issued from time to time and after considering the submission so made by the assessee the total income of the assessee was determined at Rs. 44,790/- and the assessment was completed on 11.11.2019.

3.1 In the assessment proceeding Id. AO observed that turnover on the account of the commodity transaction are above the prescribed limit and the assessee was liable to get his books of account audited as per the requirement of section 44AB of the Act

and thus failed to do and thus the proceedings u/s. 271B was initiated vide the assessment order dated 11.11.2019.

4. During the penalty proceeding the Id. AO observed that in the assessment proceedings the assessee filed revised computation of total income wherein loss of Rs. 1,94,031/- was returned from commodity transactions. Apart from that the assessee returned Rs. 43,040/- u/s. 44AD. In the penalty proceeding the assessee contended that in the revised computation was accepted and there is no question of levying penalty u/s. 271B. The Id. AO not considered the explanation of the assessee and contended that the assessee is liable for penalty u/s. 271B of the Act and thereby directed to pay a penalty of Rs. 1,50,000/- u/s. 271B of the Act.

5. Aggrieved from the order of the order of the assessing officer for levy of penalty u/s. 271B of the Act, assessee preferred an appeal before the Commissioner of Income Tax, (Appeals) contending that the assessee has not taken delivery of any of the commodities and entire transactions were mark-to-mark speculative transaction in MCX. The Id. Assessing Officer has proceeded on basis that the turnover of derivative more than Rs.

20,47,47,660.00 whereas total difference of positive and negative outcome of speculative transaction result is in negative. Hence, when the turnover of the assessee is less than the threshold limit provided under section 44AB, then the assessee is not required to get its books of account audited in terms of section 44AB of the Income Tax Act and consequently the penalty provision of section 271B of the Income Tax Act is not attracted. However, the Id. CIT(A) has not considered the arguments and the appeal of the assessee was dismissed vide order dated 03.01.2023.

6. As the assessee did not find any favour from the order of the Id. CIT(A) the assessee has preferred this appeal before the tribunal.

7. The Id. AR appearing on behalf of the assessee has placed their written submission to support the grounds raised in this appeal is extracted in below;

“Your honour, the facts with evidence in this case are as under:-

The Grounds of Appeal are as under:-

The imposition of a penalty u/s 271B of Rs, 1,50,000 is bad in law and facts.

1. The Ld. AO passed the order imposing penalty of Rs. 1,50,000/- as per order page no.1 of the order. In the assessment order u/s 147 r.w.s 143(3) page no. 2 the Ld. AO stated as under:-

2.2 As per the details available it has been noticed that turnover on account of the commodities transaction are above the prescribed limit and the assessee was liable to get his books of account audited as per requirement of section 44AB of the Act but he failed to do so, hence penalty proceedings u/s 271B of the Act are also initiated.

2. The Id. CIT Appeal passed the order mentioning detailed facts and the submission of the assessee as appearing in the order from page no. 3 to 16. While confirming the penalty order, the Ld. AO mentioned the provisions on page no. 16 to 18 and finally on the grounds appearing on page no. 19 as under:-

- a) The Ld. AO had not allowed the carry forward of loss of Rs. 1,94,031/ Hence it is undisputed fact that these transactions are non-delivery based intra day transactions and classified as speculative transaction.
- b?? However, from the perusal of the statement filed, it is evident that the same mentions purchases and sale transactions done on different dates, indicating delivery and also rebutting the claim of the appellant that these are intra day. Hence, it is not auto-proved that the transaction done by the appellant was speculative in nature. In this regard, the A.O has also observed that turnover on account of commodities transaction being above the prescribed limit and the assessee was liable to get his books of account audited as per requirement of section 44AB of the Act; but he failed to do so.
- c) In the instant case, it is clear that Appellant cannot at this stage state that the transaction is speculative without bringing an iota of evidence on record, when the transaction statement mentions 'sale' and also 'purchases' and that too on different dates. It is a statutory obligation upon the assessee to get his accounts audited so that correct books, of accounts can be maintained So that correct income for the purposes of filing its return of Income. Hence, appellant has failed to establish any reasonable cause owing to which appellant failed to discharge its statutory obligation.
- d) Keeping in view, the overall facts and circumstances of the case as emanating from material on record, I am of the considered view that the AO has rightly invoked the provisions of section of 271-B of the Act and imposed the penalty. In view of the discussion above, the penalty of Rs.1,50,000/- imposed under section 271-B

of the Act is upheld. All the grounds of appeal nos. 1 to 5 are dismissed.

SUBMISSION OF THE ASSESSEE

FACTS IN BRIEF

1. The Ld. AO while passing the scrutiny assessment under section 147 r.w.s 143(3) of the IT Act has given the finding that the turnover of the assessee in respect of Commodities transactions are more than prescribed limit and the assessee was liable to get his books of account audited as per requirement of Section 44AB of the Act but he failed to do so. Hence initiated proceeding for levy of penalty under section 271B of the Act.
2. Your honor, the Ld. AO has proceeded on basis that the turnover of the assessee in respect of Commodities transactions are more than prescribed limit whereas total difference of positive and negative outcome of speculative transactions is only Rs. 5,38,001. The Global report showing both positive and negative outcome of speculative transactions was submitted to the Ld. AO on 7.6.2019 Kindly see covering letter at page no. 1 of the Paper book and Global Report at 2-4 of the Paper Book. These details were furnished in compliance of notice u/s 142(1) (Paper Book Pno 5-6). Kindly see at point no. 1 of the page no. 6 of the Paper Book wherein the Ld. AO asked for following information:

In connection with pending re-assessment proceedings u/s 147/148 for the A.Y. 2013-14, you are requested to furnish following details information:-

1. Furnish the reconcile the MCX transaction as per CIB report and details filed in Global report of Nirmal Bang Commodities Pvt. Ltd. and MCX (Metal & Energy).
2. As per profit and loss account only purchase is shown as net loss of Rs.1,94,031/- no sale is declared. Hence, purchase is stock, which would come as closing stock, how it will be a net loss. Please explain it.
3. Furnish the reconcile the transaction of Nirmal Bang Commodities Pvt. Ltd. and MCX (Metal & Energy) with profit and loss account.

3. The assessee suffered loss in the above MCX commodity transactions as appearing in the PB page no. 3 of the paper book which was confirmed by the Ld. AO in the assessment order. Kindly see page no. 7-8 of the paper book point no. 2.1 wherein the Ld. AO had not allowed the carry forward of loss of Rs. 1,94,031/-. Hence it is undisputed fact that these transactions are non-delivery based intraday transactions and classified

as speculative transaction. The details of the speculative transactions carried out by the assessee during the year under consideration is as under :--

Account Code:- R1730003		Account Name:- Anirudh Baheti HUF		
S.No.	Scrip Name	Profit/Loss	Profit	Loss
1	ZINC F 301112	-7769.00		-7769.00
2	SYOREFIDR F 200912	-3220.60		-3220.60
3	SYOREFIDR F 191012	-17181.30		-17181.30
4	SYOREFIDR F 170812	2415.60	2415.60	
5	SYBEANIDR F 191012	3584.09	3584.09	
6	SILVERMIC F 310812	-3418.61		-3418.61
7	SILVERMIC F 301112	-7719.03		-7719.03
8	SILVERMIC F 300612	-4689.33		-4689.33
9	SILVERMIC F 300413	-1134.03		-1134.03
10	SILVERMIC F 28022013	810.32	810.32	
11	SILVERM F 310812	31557.30	31557.30	
12	SILVERM F 301112	28141.46	28141.46	
13	SILVERM F 300612	-7660.03		-7660.03
14	SILVERM F 280213	3462.09	3462.09	
15	SILVER F 051212	728.38	728.38	
16	SILVER F 050912	-14987.82		-14987.82
17	SILVER F 050712	277.56	277.56	
18	NICKELM F 310812	-3017.02		-3017.02
19	NICKELM F 310712	-163.22		-163.22
20	NICKELM F 290612	79.06	79.06	
21	NICKEL F 310812	-2226.85		-2226.85
22	NICKEL F 290612	-3335.78		-3335.78
23	NICK F 280912	477.50	477.50	
24	MENTHAOIL F 311012	1625.11	1625.11	
25	MENTHAOIL F 310812	575.39	575.39	
26	MAIZE F 200912	3263.98	3263.98	
27	MAIZE F 170812	-1838.79		-1838.79
28	LEADMINI F 310712	368.70	368.70	
29	LEAD F 301112	-16627.00		-16627.00
30	KAPASSRNR	-50960.50		-50960.50
31	KAPASSRNR F 300413	11672.76	11672.76	
32	KAPAS F 300413	-533.52		-533.52
33	JEERAUNJHA F 200912	609.08	609.08	
34	JEERAUNJHA F 170812	1806.38	1806.38	
35	GOLDM F 051212	836.79	836.79	
36	GOLDM F 051012	266.55	266.55	
37	GOLDM F 050912	-2587.53		-2587.53

38	GOLDM F 050712	-574.46		-574.46
39	GOLDM F 040812	-2726.72		-2726.72
40	GOLD F 051212	-3640.13		-3640.13
41	CRUDEOIL F 200812	4923.84	4923.84	
42	CRUDEOIL F 191012	-3730.47		-3730.47
43	CRUDEOIL F 190912	-5266.30		-5266.30
44	CRUDEOIL F 190712	-65394.32		-65394.32
45	CRUDEOIL F 190612	20445.68	20445.68	
46	CRUDEOIL F 181212	-16143.01		-16143.01
47	CRUDEOIL F 151112	-11401.94		-11401.94
48	COPPERM F 310812	-12371.73		-12371.73
49	COPPERM F 301112	5415.63	5415.63	
50	COPPERM F 290612	13973.35	13973.35	
51	COPPER F 310812	-7802.60		-7802.60
52	COPPER F 301112	17199.60	17199.60	
53	COPPER F 290612	-14865.40		-14865.40
54	COPPER F 280213	-12345.40		-12345.40
55	COCUDAKL F 200912	-16749.77		-16749.77
56	COCUDAKL F 200712	2694.32	2694.32	
57	COCUDAKL F 200612	-11366.67		-11366.67
58	COCUDAKL F 170812	8887.52	8887.52	
59	CHARJDDDEL F 1910102	-832.71		-832.71
60	CARDAMOM F 151012	-1840.78		-1840.78
61	CARDAMOM F 150912	5887.14	5887.14	
62	{SERVICE TAX}	-11234.76		-11234.76
63	*Trunover*	-16755.28		-16755.28
64	*Stamp*	-1903.59		-1903.59
	TOTAL	-194030.82	171985.18	-366016.00
			538001.18	

Sum of Total Profit / Loss

Total Loss

171985.18

Total Profit

366016.00

Sum of Total Profit / Loss

538001.18

4. From the above table it is clear that if the total some of the negative and positive outcome of the speculative transactions is taking into consideration the it would be only Rs. 5,38,001. Though the turnover in case of speculative transactions is not defined in the income tax Act for the purpose of section 44AA and 44AB of the Act and however, the guidance note on tax audit under section 44AB of the Income Tax Act issued by the Institute of chartered Accountant of India (ICAI) is relevant on this point.

5. Your honour, ITAT, JAIPUR, Jurisdictional Tribunal in case of Santosh Kumar v. ITO in ITA No. 1093/JP/2019, A.Y. 2010-11 on dated 3 July, 2020 (Paper book Page no. 14 to 18) deleted the penalty in the similar circumstances by following the decision in case of Shri Rajjak Ahmed Khan v. ITO in ITA No. 1181/JP/2019 vide Order, dated 13-1-2020 : 2020 TaxPub(DT) 1410 (Jp-Trib) has considered an identical issue in para 5 as under :--

'We have considered the rival submissions as well as the relevant material on record. The limited dispute in the case in hand is whether the provisions of section 44AB are applicable in the case of the assessee when the assessee has done the share trading in intraday segment and some of the transactions are delivery based transactions to the extent of Rs. 53,498. There is no dispute regarding the turnover in respect of the transactions of the shares which are delivery based. However, the dispute is regarding the turnover in respect of the intraday transactions carried out by the assessee. The assessing officer has taken the total value of the transactions at Rs. 2,43,62,720 in the intraday non-delivery based trading segment. There is no quarrel that the transactions carried out by the assessee in intraday non-delivery based segment are speculative transactions as per section 43(5) of the Act. This fact is also accepted by the learned Commissioner (Appeals) in his finding in para 2.3 as under :--

'Ground No. 01 and 02 are being taken up together which are interrelated. I have perused the facts of the case, the penalty order and the submissions of the appellant. It is seen that the assessing officer imposed penalty under section 271B for not getting the accounts audited. There is no dispute as to the fact that the turnover of the assessee is more than the limit prescribed under section 44AB and the assessee has not got his accounts audited. Assessee has taken plea that these transactions of stock related to intraday activities/non-delivery based transactions. Therefore, the same did not require audit under section 44AB.

Assessee claimed that the transactions are non delivery based and daily difference (by ignoring the signs) be taken as turnover. This plea cannot be accepted as it is applicable for transaction of derivatives whereas assessee transacted in cash securities where non delivery based transactions are classified as speculative transactions as per section 43(5) of the Income Tax Act, 1961. Accordingly assessee is liable to get his accounts audited. Looking to these facts, penalty under

section 271B imposed by the assessing officer is confirmed. These grounds of appeal are dismissed.'

Once these transactions are non-delivery based intraday transactions and classified as speculative transaction as per the provisions of section 43(5) of the Income Tax Act, then the turnover in respect of these transactions has to be determined as per the Guidance Note issued by the Institute of Chartered Accounts of India. For ready reference, we reproduce the relevant part of the Guidance Note in para 5.14 as under:-

'Guidance Note on Tax Audit under section 44AB of the Income Tax Act, 1961.

5.14. The turnover or gross receipts in respect of transactions in shares, securities and derivatives may be determined in the following manner :--

(a) Speculative transaction : A speculative transaction means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips. Thus, in a speculative transaction, the contract for sale or purchase which is entered into is not completed by giving or receiving delivery so as to result in the sale as per value of contract note. The contract is settled otherwise and squared up by paying out the difference which may be positive or negative. As such, in such transaction the difference amount is 'turnover'. In the case of an assessee undertaking speculative transactions there can be both positive and negative differences arising by settlement of various such contracts during the year. Each transaction resulting into whether a positive or negative difference is an independent transaction. Further, amount paid on account of negative difference paid is not related to the amount received on account of positive difference. In such transactions though the contract notes are issued for full value of the purchased or sold asset the entries in the books of account are made only for the differences. Accordingly, the aggregate of both positive and negative differences is to be considered as the turnover of such transactions for determining the liability to audit vide section 44AB.'

The turnover has not been defined in the Income Tax Act and particularly in respect of the speculative transactions in shares and securities. Therefore, the Guidance Note of ICAI is a relevant and proper guidance for determining the turnover in respect of such speculative transactions. As it is clear from the Guidance Note issued by the ICAI that the turnover in respect of non-delivery based speculative transactions including stock and shares has to be determined by taking the aggregate of both positive and negative differences arising from such transactions and as an outcome of settlement of such contracts during the year. We find that the assessee has produced the details of the speculative transactions as well as delivery based transactions and also given the computation of the turnover as under :-

<i>Intraday Positive or favorable differences (sheet enclosed for this)</i>	<i>109092.10</i>
<i>Intraday Negative or unfavorable differences (sheet enclosed for this)</i>	<i>152689.69</i>
<i>Sale of delivery based transactions</i>	<i>53498.9</i>
	<i>315280.69</i>

There is no dispute regarding the delivery based transactions of shares to the tune of Rs. 53,498.90. We have verified the computation of the turnover in respect of intraday non-delivery based transactions and the positive and negative differences of these speculative transactions given in the above table.

Therefore, by taking the aggregate of the positive and negative differences as well as the turnover of the delivery based transactions, the total turnover of the assessee comes to Rs. 3,15,280.69. Hence, when the turnover of the assessee is less than the threshold limit provided under section 44AB, then the assessee is not required to get its books of account audited in terms of section 44AB of the Income Tax Act and consequently the penalty provision of section 271B of the Income Tax Act is not attracted. Even otherwise, when this issue of 'turnover' is a debatable issue and the assessee has claimed this turnover as Rs. 3,15,280.69 if computed in terms of the Guidance Note of ICAI, then the said explanation of the assessee would be regarded as reasonable and bona fide as per the provisions of section 273B of the Income Tax Act and consequently no penalty under section 271B is leviable. Accordingly, the penalty levied under section 271B is deleted.'

6. ITAT, JAIPUR, Jurisdictional Tribunal in case of Santosh Kumar v. ITO in ITA No. 1093/JP/2019, A.Y. 2010-11 on dated 3 July, 2020 deleted the penalty as under:-

“Thus, in the above case on identical issue the Tribunal has considered the guidance note of ICAI in respect of the tax audit under section 44AB of the Act wherein the turnover or gross receipt in respect of speculative transactions has been considered as some total of positive and negative outcome of the speculative transactions. This Tribunal in a subsequent decision dated 17-2-2020 in case of *Shri Sanjay Prakash v. ITO* in ITA No. 1052 to 1054/JP/2019 :[2020 TaxPub\(DT\) 1418](#) (Jp-Trib) has again considered the said this issue and by following the earlier decision accepted the contention of the assessee that turnover in respect of the speculative transactions shall be positive and negative differences of the transactions and not volume of the speculative transactions. Accordingly in view of the consist view taken by this Tribunal the turnover of the assessee would not exceed the limit as provided under section 44AB, the penalty levied under section 271B is deleted.

In the result, the appeal of the assessee is allowed.”

7. In view of the decision of the Tribunal as well as Hon'ble High Court few of which are given below, we request that the value of the sale transaction of commodity through MCX without delivery cannot be considered as turnover for the purposed of section 44AB as the transactions carried out by the assessee would not fall under the ambit of turnover for the purpose of section 44AB.

Banwari Sitaram Pasari HUF Vs ACIT 29 Taxmann 137 (Pune-ITAT)
Growmore Exports Ltd. Vs ACIT 72 TTJ 691 (Mum-ITAT)
CIT Vs Growmore Exports Ltd. Appeal No. 18 to 20 of 2001 (Mombay-HC)

So your honor is requested kindly to allow the appeal and delete the penalty.”

8. In addition to the written submission filed by the Id. AR of the assessee, he has vehemently submitted that the assessee has undertaken transaction on MCX without taking any actual delivery

of shares, securities and in commodity and transaction and therefore, are to be considered net profit/loss as income of the assessee. The gross value of purchase of sales is not required to be considered as turnover the assessee. The Id. AO has not disputed the amount of loss/profit offered by the assessee and the computation relied upon by the Id. AR of the assessee to justify that although the commodity transactions are exceeding the limit of maintaining and obtaining the report of Chartered Accountant u/s 44AB of the Act is not applicable considering the fact of the cash on hand to support this transaction. The Id. AR of the assessee has relied upon a chart is reproduced as under:-

NIKMAL BANG COMMODITIES PVT.LTD.
Client Global Net Outstanding (Options Contract) F.Y.: 2012-2013
Date From: 30/03/2012 To: 28/03/2013
Account Code : R1730003
Account Name : ANIRUDH BAHETI HUF
Add : D 552 BAHETI MARGKABIR MARGBANI PARKJAIPUR 302016 RAJASTHAN INDIA

Scrip Code	Scrip Name	* Expiry Dt	Purchase Qty	Purchase Value	Purchase Avg	Sales Qty	Sales Value	Sales Avg	Net Qty	Net Value	Profit/Loss	
ZINCG3011	ZINC F 301112	5000.00	11/30/2012	10.00	5071010.00	101.422000	10.00	5063241.00	101.264820	0.00	7769.00	-7769.00
SYOREF2009	SYOREFDR F 200912	1.00	9/20/2012	90.00	7070260.40	785.584489	90.00	7067039.80	785.226644	0.00	3220.60	-3220.60
SYOREF1910	SYOREFDR F 191012	1.00	10/19/2012	40.00	3113166.80	778.291700	40.00	3095985.50	773.996375	0.00	17181.30	-17181.30
SYOREF1708	SYOREFDR F 170812	1.00	8/17/2012	10.00	780267.00	780.267000	10.00	782682.60	782.682600	0.00	-2415.60	2415.60
SYBEAN1910	SYBEANDR F 191012	1.00	10/19/2012	10.00	384557.68	3845.576800	10.00	388141.77	3881.417700	0.00	-3584.09	3584.09
SILVRM3108	SILVERMIC F 310812	1.00	8/31/2012	86.00	4657082.46	54152.121628	86.00	4653663.85	54112.370323	0.00	3418.61	-3418.61
SILVRM3011	SILVERMIC F 301112	1.00	11/30/2012	75.00	4610832.49	61475.099913	75.00	4602913.46	61372.179483	0.00	7719.03	-7719.03
SILVRM306	SILVERMIC F 300612	1.00	6/30/2012	23.00	1260114.99	54787.608239	23.00	1255425.66	54583.724278	0.00	4689.33	-4689.33
SILVEG3004	SILVERMIC F 300413	1.00	4/30/2013	1.00	60679.10	60679.100500	1.00	59545.07	59545.066900	0.00	-1134.03	1134.03
SILVRM2602	SILVERMIC F 28022013	1.00	2/28/2013	1.00	58529.78	58529.778200	1.00	59340.10	59340.097700	0.00	-810.32	810.32
SILVEG3108	SILVERM F 310812	5.00	8/31/2012	68.00	18476531.07	54342.738454	68.00	18508088.38	54435.554056	0.00	-31557.30	31557.30
SILVER3011	SILVERM F 301112	5.00	11/30/2012	34.00	10181066.94	59888.629032	34.00	10299208.39	60054.167024	0.00	-28141.46	28141.46
SILVER3006	SILVERM F 300612	5.00	6/30/2012	63.00	17103900.21	54298.095906	63.00	17096240.19	54273.778365	0.00	7660.03	-7660.03
SILVER2802	SILVERM F 280213	5.00	2/28/2013	4.00	1274641.17	63752.058400	4.00	1278103.26	63905.162825	0.00	-3462.09	3462.09
SILVEF0912	SILVER F 091212	30.00	12/5/2012	1.00	1821710.72	62390.337200	1.00	1872439.09	62414.636400	0.00	-728.38	728.38
SILVEG0509	SILVER F 050912	30.00	9/5/2012	31.00	18266889.63	55354.211009	31.00	18251901.81	55308.793373	0.00	14987.82	-14987.82
SILVEF0507	SILVER F 050712	30.00	7/5/2012	32.00	32474660.05	54661.104222	32.00	32474937.61	54661.393344	0.00	-277.56	277.56
NICKMCM08	NICKELM F 310812	1.00	8/31/2012	22.00	1924986.69	874.994859	22.00	1921971.67	873.623486	0.00	3017.02	-3017.02
NICKMCM06	NICKELM F 301212	1.00	7/31/2012	7.00	644166.61	920.238014	7.00	644003.39	920.004843	0.00	163.22	-163.22
NICKG2806	NICKELM F 280612	1.00	6/29/2012	4.00	369775.46	924.438650	4.00	369854.32	924.636300	0.00	-79.06	79.06
NICKG1918	NICKEL F 310812	250.00	8/31/2012	7.00	1507201.05	861.257743	7.00	1501973.20	859.985257	0.00	2226.85	-2226.85
NICKF2906	NICKEL F 290612	250.00	6/29/2012	6.00	1509915.63	913.937067	6.00	1507934.83	911.715217	0.00	3335.78	-3335.78
NICKG12806	NICKEL F 280912	250.00	9/28/2012	1.00	201411.20	965.644800	1.00	211888.70	967.554800	0.00	-477.30	477.30
NICKG1031	NEMTHAOH F 310112	1.00	10/31/2012	5.00	2141961.30	1189.978300	5.00	2143580.31	1190.881340	0.00	-1625.11	1625.11
NEMTHAOH F 310812	NEMTHAOH F 310812	1.00	8/31/2012	1.00	481644.25	1037.900700	1.00	482219.64	1039.496000	0.00	-575.39	575.39
MAZEF12806	MAZEF F 280912	10.00	9/28/2012	30.00	451567.70	1505.892533	30.00	452034.74	1506.772467	0.00	-326.98	326.98
MAZEF12802	MAZEF F 280212	10.00	8/17/2012	30.00	462809.52	1545.231767	30.00	461753.17	1549.102467	0.00	1836.79	-1836.79
MAZEF12801	MAZEF F 300812	1.00	7/31/2012	1.00	620265.69	104.265610	1.00	620451.30	104.434300	0.00	-368.70	368.70
MAZEF12800	MAZEF F 301112	1.00	11/30/2012	1.00	658000.00	115.128730	1.00	658000.00	115.128730	0.00	16627.00	-16627.00

30	KAPASF3004	KAPASSRNR F 300413	40.00	4/30/2012	3.00	1008734.00	103.915600	3.00	1507773.50	100.518233	0.00	50960.50	-50960.50	
31	KAPAS3004	KAPAS F 300413	1.00	4/30/2013	5.00	5418312.70	1128.815146	24.00	54	35.46	31.246971	0.00	-11672.76	11672.76
32	JBERAF2009	JBERAUNJHA F 200912	3.00	9/21/2012	3.00	469420.40	15647.346800	3.00	1111493.26	1111.493260	0.00	533.52	-533.52	
33	JBERAF1708	JBERAUNJHA F 170812	3.00	8/17/2012	3.00	477821.66	15927.388800	3.00	470029.49	15667.649500	0.00	-609.08	609.08	
34	GOLDMG051	GOLDM F 051212	100.00	12/5/2012	1.00	310296.54	31029.633800	1.00	311133.32	31113.332300	0.00	-1806.38	1806.38	
35	GOLDMG051	GOLDM F 051012	100.00	10/5/2012	3.00	944711.69	31490.389567	3.00	944978.23	31499.274400	0.00	-836.79	836.79	
36	GOLDMG050	GOLDM F 050912	100.00	9/5/2012	4.00	1193048.93	29826.223300	4.00	1190461.40	29761.535100	0.00	-266.55	266.55	
37	GOLDMG040	GOLDM F 040812	100.00	7/5/2012	3.00	881802.25	29393.408367	3.00	881227.80	29374.259867	0.00	-2587.53	-2587.53	
38	GOLDMG040	GOLDM F 040812	100.00	8/4/2012	18.00	5323738.45	29576.324700	18.00	5321011.73	29561.176283	0.00	574.46	-574.46	
39	GOLDC0512	GOLD F 051212	100.00	12/5/2012	1.00	3135570.27	31355.702700	1.00	3131930.14	31319.301400	0.00	2726.72	-2726.72	
40	CRUDEG2008	CRUDEOIL F 200812	100.00	8/21/2012	27.00	13251387.48	4907.921289	27.00	13256311.32	4909.744933	0.00	3640.13	-3640.13	
41	CRUDEG1910	CRUDEOIL F 191012	100.00	10/20/2012	5.00	2436765.47	4873.530940	5.00	2433035.00	4866.070000	0.00	4923.84	4923.84	
42	CRUDEG1905	CRUDEOIL F 190912	100.00	9/20/2012	7.00	3556933.48	5081.333543	7.00	3551667.18	5073.810257	0.00	3730.47	-3730.47	
43	CRUDEG1907	CRUDEOIL F 190712	100.00	7/20/2012	46.00	21680451.69	4713.141672	46.00	21615057.37	4698.925515	0.00	5266.30	-5266.30	
44	CRUDEG1906	CRUDEOIL F 190612	100.00	6/20/2012	34.00	15837475.36	4658.080968	34.00	15857921.04	4664.094424	0.00	65391.32	-65391.32	
45	CRUDEG1812	CRUDEOIL F 181212	100.00	12/19/2012	1.00	484772.71	4847.727100	1.00	468629.70	4686.297000	0.00	-20445.68	20445.68	
46	CRUDEG1511	CRUDEOIL F 151112	100.00	11/16/2012	17.00	8012201.71	4713.059829	17.00	8000799.77	4706.352806	0.00	16143.01	-16143.01	
47	COPPEM3108	COPPERM F 310812	1.00	8/31/2012	77.00	8120117.95	421.824309	77.00	8107746.23	421.181622	0.00	-11401.94	-11401.94	
48	COPPEM3011	COPPERM F 301112	1.00	11/30/2012	29.00	3153783.45	435.004890	29.00	3159201.08	435.751872	0.00	12371.73	-12371.73	
49	COPPEM2906	COPPERM F 290612	1.00	6/29/2012	21.00	2165074.73	412.395186	21.00	2179018.08	415.056776	0.00	-5415.63	5415.63	
50	COPPEF3108	COPPER F 310812	1000.00	8/31/2012	25.00	10513126.60	420.525064	25.00	10505324.00	420.212960	0.00	-13973.35	13973.35	
51	COPPEG3011	COPPER F 301112	1000.00	11/30/2012	12.00	5138923.80	429.910317	12.00	5176123.40	431.343617	0.00	7802.60	-7802.60	
52	COPPEF2906	COPPER F 290612	1000.00	6/29/2012	46.00	19658358.50	414.312141	46.00	19043493.10	413.988980	0.00	17199.60	-17199.60	
53	COPPEF2802	COPPER F 280213	1000.00	2/28/2013	3.00	1321398.60	441.466200	3.00	1312053.20	437.351067	0.00	14865.40	-14865.40	
54	COCUDF2009	COCLDAKL F 200912	20.00	9/20/2012	130.00	2174326.13	1672.558562	130.00	2157576.36	1659.674123	0.00	12345.40	-12345.40	
55	COCUDF2007	COCLDAKL F 200712	20.00	7/20/2012	30.00	359952.64	1169.842133	30.00	353646.96	1178.823200	0.00	16749.77	-16749.77	
56	COCUDG2004	COCLDAKL F 200412	20.00	6/20/2012	20.00	237934.19	1139.670950	20.00	216567.52	1082.837600	0.00	2694.32	2694.32	
57	COCUDF1708	COCLDAKL F 170812	20.00	8/17/2012	150.00	2371433.35	1580.303700	150.00	2379343.07	1586.228713	0.00	-11366.67	11366.67	
58	CHARJF1910	CHARJDEL F 191012	1.00	10/19/2012	10.00	442786.41	4427.664100	10.00	441933.70	4419.337000	0.00	8887.52	8887.52	
59	CARDAG1510	CARDAMOM F 151012	1.00	10/15/2012	3.00	803545.52	1011.818400	3.00	801704.74	1005.682467	0.00	832.71	-832.71	
60	CARDAG1308	CARDAMOM F 130912	1.00	9/15/2012	5.00	806590.97	1213.181940	5.00	801204.74	1005.682467	0.00	1840.78	-1840.78	
61	Service	SERVICE TAX	0.00		0.00	11234.76	0.000000	0.00	612478.11	1224.956220	0.00	5887.14	5887.14	
62	Remover		0.00		0.00	16735.28	0.000000	0.00	0.00	0.000000	0.00	11234.76	-11234.76	
63	Stamp		0.00		0.00	16735.28	0.000000	0.00	0.00	0.000000	0.00	16735.28	-16735.28	
	Total					30119260.78			302914238.96			19033.59	-19033.59	

9. Per contra, the Id. Sr. DR relied on order of the authority below and vehemently argued that in the details furnished by the assessee, the transactions of purchase sales of commodity such as zinc, silver, gold, crude, copper etc. is already reflected and the assessee is indulged into purchase and sale of these commodity. Based on these facts she supported the order of the authority below and submitted that the assessee failed to get the books of accounts audited for which the Id. CIT(A) has confirmed the finding

of the Assessing Officer and thereby support the finding of Id. CIT(A) and reiterated, and relied upon the following finding of Id. CIT(A).

“7.1. "The assessee suffered loss in the above MCX commodity transactions as appearing in the PB page no 3of the paper book which was confirmed by the Ld.AO in the assessment order. Kindly see page no. 7-8 of the paper book point no. 2.1 wherein the Ld. AO had not allowed the carry forward of loss of Rs. 1,94,031/ Hence it is undisputed fact that these transactions are non-delivery based intra day transactions and classified as speculative transaction"

7.2 However, from the perusal of the statement filed, it is evident that the same mentions purchases and sale transaction done on different dates, indicating delivery and also rebutting the claim of the appellant that these are intra day. Hence, it is not auto-proved that the transaction done by the appellant are speculative in nature. In this regard, the A.O has also observed that turnover on account of the commodities transaction being above the prescribed limit and the assessee was liable to get his books of account audited as per requirement of section 44AB of the Act, but he failed to do so.

8. In the instant case, it is clear that Appellant cannot at this stage state that the transaction is speculative without bringing an iota of evidence on record, when the transaction statement mentions sale and also purchases and that too on different dates. It is a statutory obligation upon the assessee to get his accounts audited so that correct books of accounts can be maintained so as to disclose correct income for the purposes of filing its return of Income, Hence, appellant has failed to establish any reasonable cause owing to which appellant failed to discharge its statutory obligation.

9. Keeping in view, the overall facts and circumstances of the case as emanating from material on record, I am of the considered view that the AO has rightly invoked the provisions of section of 271-B of the Act and imposed the penalty. In view of the discussion above, the penalty of Rs.1,50,000/- imposed under section 271B of the Act is upheld. All the Grounds of appeal nos. 1 to 5 are dismissed.”

10. We have heard the rival contentions and perused the material placed on record and also carefully gone through the orders of

lower authorities. It is not disputed by both the parties that the amount offered in the return of income by the assessee on account of these MCX transaction. Thus, we have also persuaded the statement as submitted by the assessee where in the calculation of loss of Rs. 1,94,031/-. On careful perusal of profit and loss computation submitted by the assessee, we are of the view that the assessee has entered into multi commodity exchange transaction for which the delivery is not undertaken and only the speculative transactions of this commodity were undertaken. These are derivate transaction in future and options of buying and selling of commodities on the exchange for which only the profit/loss is required to be considered while calculating the turnover in the books of accounts of such transaction and not on the basis of value of purchase and sales but are made only for the amount of difference. The similar view is given by the Institute of Chartered Accountant of India to their members and the same is extracted here in below:-

“the method of computing the turnover in such cases through ‘Guidance Note on Tax Audit’. The following is the relevant extract for the said purpose:

Keeping in view the distinct features of an F and O transaction, the ICAI has prescribed that the turnover in such transactions should be computed as the sum of the following:

- (i) The total of favourable and unfavourable differences;
- (ii) Premium received on sale of options;
- (iii) Difference in respect of any reverse trades entered into

Each transaction comprising “buy” and “sell” is to be considered as an independent transaction and the turnover in respect of each such transaction must be computed separately. The total turnover during a financial year would be the turnover of all such independent transactions for that financial year.

11. The issue involved in the present scenario is the legal sanctity of guidance note issued by ICAI, for which we would like to place our reliance on the decision in the case of Punjab Stainless Industries and Pact Securities and Financials Ltd. wherein it was held that the Hon'ble Apex Court has recognized ICAI as an expert body of accountants and the guidance note on tax audit issued by them can be relied upon in the absence of any statutory provision for computation of turnover in such cases. In light of facts and circumstances of the case that the assessee has entered into the transaction of purchase and sale of commodity on the exchange without taking any delivery of the items being the crude, zinc etc. Thus, based on these set of facts and after considering the guidance note of the Institute of Chartered Accountant of India we are of the considered view that the levy of penalty in this case is not correct and assessee has correctly offered the profit/loss while filing the return of income (which is not in dispute by the either

party) and considering the nature of transaction undertaken by the assessee turnover is to be computed net of purchase and sales of such commodity transactions and considering the fact that this transactions are not exceeding the limit as prescribed u/s 44AAB of the Act. Based on these observation we are of the view that the assessee is not required to get his books of audited and consequently not liable for penalty u/s. 271B of the Act and therefore, the penalty levied by lower authorities is hereby quashed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 06/03/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/03/2023

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Anirudh Baheti HUF, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 3(2), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 28/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar