

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.3/Jodh/2022
(ASSESSMENT YEAR- 2011-12)**

Jagdish Chandra Chhapparwal, House No.D-500/01, Nehru Road, Sanjay Colony, Bhilwara- Rajasthan-311001	Vs	ITO, Ward-5, Bhilwara, (Rajasthan)
(Appellant)		(Respondent)
PAN No. AHPPC6573N		

Assessee By	Shri Goutam Chand Baid, CA
Revenue By	Shri S.M.Joshi, JCIT DR
Date of hearing	20/03/2023
Date of Pronouncement	21/03/2023

ORDER

PER KUL BHARAT, J.M.:

The assessee has filed this appeal challenging the order dated 22.11.2021 passed by the Ld. CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi for the assessment year (“AY”) 2011-12.

2. The assessee has raised following grounds of appeal:-

1. *“That on the facts and in the circumstances of the case, Ld. CIT(A), NFAC erred in upholding the penalty imposed by the Ld. AO u/s 271F amounting to Rs. 1,50,000/-. While upholding the penalty so imposed for the name sack blind reliance has been placed on the judgement of Hon'ble Rajasthan High Court in the case of Bajrang*

Oil Mills vs Income Tax Officer [2007] 295 ITR 314 (Raj), without appreciating the fact that in such case it was held that levy of penalty under section 271B for non-compliance with section 44AB for the assessment year 1994-95 could not be sustained as the assessee was under a bonafide belief that it did not have to get its accounts audited. Necessary direction to delete the penalty u/s 271F imposed by Ld. AO and sustained by Ld. CIT(A) may kindly be issue.

2. *That on the facts and in the circumstances of the case, it is respectfully requested to issue necessary direction to award the cost of appeal to the assessee.*
3. *The appellant crave liberty to add, amend, alter, modify or delete any of the ground of appeal on or before its hearing before your Honour.”*

3. Facts giving rise to the present appeal are that the assessee filed its return of income for AY 2011-12 on 03.06.2011 declaring total income of Rs.1,57,240/-. Subsequently, the case was re-opened u/s 147 of the Income Tax Act, 1961 (“the Act”). During the course of assessment proceedings, it was noted by the Assessing Officer (“AO”) that the assessee had been engaged in speculative transactions. The accounts of these transactions were furnished during the assessment proceedings. It was further noted that qua speculative transactions, the assessee had made gross sales turnover of Rs.5,14,05,054/- and earned profit of Rs.1,15,566/-. Therefore, the assessee was liable to get his books of accounts audited u/s 44AB of the Act but no such books of

accounts were got audited. Hence, penalty proceedings u/s 271B of the Act was initiated. Thereafter, the AO imposed penalty of Rs.1,50,000/- u/s 271B of the Act.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, also sustained the penalty imposed u/s 271B of the Act by AO.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Apropos to grounds of appeal, Ld. Counsel for the assessee contended that the action of the authorities below is not justified and contrary to the facts. Ld. Counsel for the assessee submitted that the authorities below failed to appreciate the facts that the assessee had declared capital gain. He further contended that surplus arising out of sale and purchase consideration was not a business receipt but the gains. He submitted that the issue being debatable and the assessee under the bonafide belief, treated the transactions as falling under the head "capital gain". Therefore, under these facts, no penalty u/s 271B of the Act ought to have been levied. He placed reliance on the decision of the Hon'ble Rajasthan High Court rendered in the case *Bajrang Oil Mills vs ITO* [2007] 295 ITR 314 (Raj.). He also placed reliance on the decision of

the Tribunal in the case of *Smt. Anju Haldia vs ITO in ITA Nos. 883 to 885/JP/2013 [AYs 2005-06, 2007-08 & 2008-09]* order dated 11.02.2016.

7. On the other hand, Ld. JCIT DR opposed these submissions and supported the orders of the authorities below.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. Ld.CIT(A) while dismissing the appeal, has infact considered part of the judgement. However, Hon'ble High Court in the case of *Bajrang Oil Mills vs ITO* (supra) in clear terms, has held as under:-

56. *“We are further of the opinion that failure to comply with such procedural provisions with which we are concerned, under a bona fide belief that the assessee is not required to act in a particular manner under the statute and which does not affect its rights and obligation otherwise arising under the statute ; nor by raising of objection, he obtains any advantage to which he is not otherwise entitled to ; or where fulfilment of such requirement, the assessee becomes entitled to certain benefits of the statute which requires strict compliance with the requirement of law in the manner prescribed breach remains a venial and technical breach for which the penalty is not leviabale merely because if it is lawful to do so.”*

Therefore, respectfully following the above-mentioned binding precedents, we direct the AO to delete the penalty imposed u/s 271B of the Act to the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 21/03/2023

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Amit Kumar

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar
Jodhpur Bench