

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “B” BENCH, BENGALURU**

**Before Shri George George K., Judicial Member
and
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No. 67/Bang/2023 (Assessment Year: 2018-19)		
Ms. Meena Jain L/R of Late Ashok Kumar Jain No. 30/31, 1st Floor M.M. Lane, Chickpet Cross Bengaluru 560002 PAN – AGPPJ6030L	vs.	The Income Tax Officer-5(2)(1) BMTC Building, 80 Feet Road Koramangala Bengaluru 560095
(Appellant)		(Respondent)

Assessee by:	Smt. Suman Lunkar, CA
Revenue by:	Shri Gudimella VP Pavan Kumar, JCIT

Date of hearing:	23.03.2023
Date of pronouncement:	23.03.2023

ORDER

Per: George George K., J.M.

This appeal at the instance of assessee is directed against the CIT(A)'s order dated 13.12.2022 passed under Section 250 of the Income Tax Act, 1961 (the Act). The relevant assessment year is 2018-19.

2. The solitary issue raised in the appeal is whether the CIT(A) is justified in confirming the penalty imposed under Section 271B of the Act.

3. The brief facts of the case are as under: -

The assessee is an individual who is engaged in the business of cheque discounting and finance. For AY 2018-19 return of income was filed on 30.08.2018 declaring total income of Rs.23,17,010/-. The assessment was

completed under Section 143(3) of the Act vide order dated 16.04.2021 assessing the total income of the assessee at 1,65,98,550/- as against the returned income of Rs. 23,17,010/-.

4. The Assessing Officer (AO) initiated penalty proceedings under Section 271B r.w.s. 274 of the Act stating that the assessee's turnover was Rs.148,64,73,069/- and was liable to get his accounts audited and having failed to do so, why penalty under Section 271B of the Act ought not to be imposed. The assessee filed reply to the show cause notice for imposition of penalty under Section 271B of the Act on 26.04.2021 stating that he had preferred appeal against the assessment order completed and therefore the penalty proceedings may be kept in abeyance till disposal of the appeal. The AO, however, was of the view that the assessee had committed default under Section 271B of the Act and penalty of Rs.1,50,000/- is to be levied for not getting the accounts audited. The relevant findings of the AO for imposing the penalty under Section 271B of the Act read as follows: -

“6. Considering the facts and circumstances of the case and material available on records, I am satisfied that the Assessee has committed default u/s. 271B of the I.T. Act. Therefore, in my opinion, this is a fit case for levying of penalty u/s. 271B of the I.T. Act. As per provisions of section 271B of I.T. Act, Penalty will be one-half per cent of total sales, turnover or gross receipts, etc., or Rs.1,50,000, whichever is less. In this instant case Assessee had achieved turnover of Rs.1148,64,73,069/- during the year under consideration, therefore, penalty u/s 271B of I.T. Act is calculated as under: -

- 0.5% of total turnover of Rs.1,48,64,73,069/- = Rs.74,32,365/-*
- or*
- Rs. 1,50,000/- whichever is less.*

7. Accordingly, penalty of Rs.1,50,000/- is hereby levied for not getting the accounts audited as required under Section 44AB of the I.T. Act for AY 2018-19 for which the Assessee is directed to pay the penalty amount as per the notice of demand and challan enclosed.”

5. Aggrieved by imposition of penalty under Section 271B of the Act the assessee preferred appeal before the first appellate authority. Before the first appellate authority it was submitted that the assessee had received only commission and interest income and both the receipts totalling together is only Rs.92,22,002/-. Therefore it was contended that since the turnover was less than the prescribed limit for tax audit, provisions of Section 44AB of the Act is not applicable. Hence the penalty provision under Section 271B of the Act does not arise on the facts of instant case. The CIT(A), however, rejected the contention of the assessee and confirmed imposition of penalty under Section 271B of the Act. The relevant findings of the CIT(A) reads as follows: -

“6. DECISION: I have considered appellant's submissions. In this case, penalty has been levied by the Assessing Officer worth Rs. 1,50,000/- u/s 271B of the Income Tax Act. Appellant had done the cash discounting business of Rs. 1,48,64,73,069/-. Since, the turnover was over 1 crore, the Assessing Officer had initiated penalty u/s 271B of the Income Tax Act, 1961.

6.1 During the course of penalty proceeding before the Assessing Officer, the appellant stated that it has filed appeal before Commissioner of Income Tax (A) and hence penalty may be kept in abeyance.

6.2 Now before me, in the appellate proceeding, it has been stated that no proper opportunity was provided to the appellant and the turnover was below the limit of audit purpose.

6.3 The contentions of the appellant are not correct as the Assessing Officer has provided the appellant the opportunity u/s 271B and the appellant submitted reply and secondly, the turnover of the appellant is above Rs. 1 Crore. Hence, the Assessing Officer is justified in the levy of penalty u/s 271B.

6.4 Hence, penalty of Rs. 1,50,000/- is confirmed and the appeal of the assessee is dismissed.”

6. Aggrieved by confirmation of penalty under Section 271B of the Act, the assessee preferred the present appeal before the Tribunal. The assessee has filed two sets of paper books, one enclosing the case laws relied on and the other enclosing financial statements, copies of notices issued for imposition of

penalty, copy of response filed by the assessee, etc. The learned A.R. by relying on the guidance note on tax audit under Section 44AB of the Act submitted that the interest, commission and brokerage receipt alone need to be taken as gross turnover of the assessee and if that is to be taken as turnover the same is only Rs.92,22,002/-. It was submitted that the assessee was not liable to get audited the books of account, since the turnover was below the prescribed limit. Therefore, the learned A.R. contended that penalty cannot be imposed in this case. In this context the learned A.R. relied on the following judicial pronouncements: -

- i) Prem Prakash Gupta vs. ITO (2015) 55 taxmann.com 291 (Jaipur Trib.)
- ii) Manoj S. Gugale vs. ITO (2017) 80 taxmann.com 193 (Pune Trib.)
- iii) Saching Marotrao Rangari vs. ACIT (2022) 143 taxmann.com 318 (Rajkot Trib.)

7. The learned D.R. supported the orders of the AO and CIT(A).

8. We have heard the rival contentions and perused the material on record. The assessee has placed P&L Account for the relevant year ending, i.e. 31.03.2018 at page 31 of the paper book. On perusal of the same it is clear that the assessee has received cheque discounting commission and interest, both totalling to Rs.92,22,002/-. The guidance note on tax audit under Section 44AB of the Act is placed on record from pages 58 to 60 of the paper book. The guidance note clearly mandates that interest, commission and brokerage has to be taken as turnover in the case of money lending business and Chit business. Admittedly, the assessee is in the business of cheque discounting and finance. The gross turnover in the case bill discounting/finance would be commission/interest received. During the previous year assessee has received commission of only Rs.57,47,973/- along with interest income of Rs.34,74,029/-. Therefore, the gross turnover of the assessee is only Rs.92,22,002/-. As the turnover of the assessee was less than the prescribed limit fixed for tax audit, provisions of Section 44AB of the Act are not

applicable to the assessee. When the provisions of Section 44 AB of the Act are not applicable to the facts of the case, levy of penalty under Section 271B of the Act does not arise. In taking the above view we are fortified by the above judicial pronouncements relied by the assessee. It is ordered accordingly.

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

Order pronounced in the open Court on 23rd of March, 2023.

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Bengaluru, Dated: 23rd of March, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Bengaluru*
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By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru

n.p.