



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.187/CTK/2022

Assessment Year : 2012-13

Bijaya Kumar Rout, At/PO: Dall Mill Lane, Bajrakabati Road, Dist: Cuttack	Vs.	Income Tax Officer, Ward 2(3), Cuttack
PAN/GIR No.ADUPR 8768 F		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Sarangi, CA
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 19 /04/2023
Date of Pronouncement : 19/04/2023

ORDER

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi, dated 31.10.2022 in Appeal No.ITBA/NFAC/S/250/2022-23/1046528073(1) for the assessment year 2012-13.

2. Shri S.K.Sarangi, CA appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is an individual, who is deriving income from contract work and purchase and sale of land etc. It was the submission that the assessee had not been maintaining its books of account. It was the submission that the turnover of the assessee in the

immediately preceding assessment year being Asst.Year 2011-12 was only Rs.4,50,000/- and in the assessment year 2012-13, the turnover of the assessee was determined at Rs.1,67,21,935/-. It was the submission that for the assessment year immediately succeeding being assessment year 2013-14, the turnover was Rs.41,90,150/-. It was the submission that as the assessee's turnover was never expected to cross the prescribed limit, the assessee had not maintained its books of account and was disclosing its income on estimate basis. It was the submission that the Assessing Officer on account of non-maintenance of books of account had estimated the income of the assessee at 8% of the total turnover representing the deposits in the bank account of the assessee. It was the submission that the deposits in the bank of the assessee were not entirely income. There was also advance received by the assessee in respect of sale of property, which had not been taken place, and also had also been returned. It was the submission that on account of non-maintenance of books of account, the Assessing Officer had levied the penalty u/s.271B of the Act. Ld AR placed reliance on the decision of Hon'ble Allahabad High Court in the case of CIT vs S.K.Gupta & Co., 322 ITR 0086 (All), wherein, the Hon'ble High Court had confirmed the cancellation of penalty levied u/s.271A & 271B on the ground that reasonable cause for not getting the accounts audited as no accounts were maintained. Ld AR also placed reliance on the decision of the Co-ordinate bench of Cochin Tribunal in the case of K.V.Ramachandran

vs DCIT 58 SOT 0264 (Cochin), wherein, the Co-ordinate Bench has categorically held that when the books of account were not maintained and the Id CIT(A) deleted the penalty u/s.271A, there was no justification for levying penalty u/s.271B for not getting books of account audited. It was the prayer that the penalty levied by the AO and confirmed by the Id CIT(A) is liable to be deleted.

4. In reply, Id Sr DR submitted that the assessee has prepared the profit and loss account. It was the submission that consequently, the assessee was expecting to maintain its books of account. It was the submission that the penalty as levied by the AO and confirmed by the Id CIT(A) is liable to be confirmed.

5. I have considered the rival submissions. A perusal of the assessment order shows that the Assessing Officer has estimated the income of the assessee at 8% of the total turnover in the absence of corroborative documents. Therefore, it is an accepted fact that the Assessing officer has recognized that the assessee is not maintaining its books of account. Once it is accepted that the assessee is not maintaining its books of account, then there is no question of levying penalty u/s.271B of the Act for not getting its accounts audited. In any case, it is also accepted fact that the turnover of the assessee for the immediately preceding and succeeding assessment year never crossed the limits, where the assessee was liable to get its books of account audited. This being so, on the basis of reasonable cause

submitted by the assessee, the penalty levied u/s.271B of the Act is deleted.

6. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 19/04/2023.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 19/04/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Bijaya Kumar Rout, At/PO:
Dall Mill Lane, Bajrakabai Road, Dist:
Cuttack
2. The Respondent: Income Tax Officer, Ward
2(3), Cuttack
3. The CIT(A)-, NFAC, Delhi
4. Pr.CIT-,
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack