

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 159 & 160/Rjt/2021 & 311/Rjt/2022  
(निर्धारण वर्ष / Assessment Years : 2014-15, 2016-17 & 2015-16)

<b>Nano Agro Science Co.op. Society Ltd.</b> Plot No.1384, Lodhika GIDC, Metoda Dist. Rajkot	<b>बनाम/ Vs.</b>	<b>The Income-tax Officer</b> Ward-1(2)(2), Rajkot
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAABN0532G</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mehul Ranpura, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri B. D. Gupta, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	13/04/2023
घोषणा की तारीख /Date of Pronouncement	21/04/2023

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant three appeals at the instance of the assessee are directed against the order dated 05.10.2021 (for A.Ys. 2014-15 & 2016-17) & 20.10.2022 (2015-16) passed by the National Faceless Appeal Centre, Delhi, (in short ‘NFAC) arising out of the penalty order dated 04.03.2020 (2014-15),

05.03.2020 (for A.Ys. 2016-17 & 2015-16) passed by the Learned ITO, Ward-1(2)(2), Rajkot under Section 271B of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Years. 2014-15, 2016-17 & 2015-16; respectively, whereby and whereunder, the penalty imposed under Section 271B of the Act against the assessee has been confirmed.

2. Since, the issues involved in these appeals are relating to the same assessee and common in nature, these are heard analogously and are being disposed of by a common order for the sake of convenience.

3. ITA No. 159/Rjt/2021 for A.Y. 2014-15 is taken as the lead case.

4. The brief facts leading to this case is this that the assessee, co-operative society dealing in business of trading of fertilizers and seeds filed its return of income on 29.11.2014 declaring total income of Rs.Nil for the year under consideration, which was processed under Section 143(1)(a) of the Act on 28.05.2014. However, no scrutiny assessment has been made by the department. During the course of assessment proceedings, it appears from the records that assessee has shown total turnover of Rs.1,95,40,949/- in its return of income. In terms of the provision of law, the assessee is, therefore, required to furnish audit report alongwith e-return on or before the due date i.e. 30.11.2014. However, it was noticed that the assessee has not submitted the audit report duly signed by the Authorized Accountant in spite of having mandatory provision to upload 3CD report alongwith return. In that view of the matter, for non furnishing of audit report in the form of 3CD report within the due date, the penalty of Rs.1,50,000/- under Section 271B of the Act has been imposed by the ITO,

which was, in turn, confirmed by the First Appellate Authority. Hence, the instant appeal before us.

5. It is the case of the assessee that accounts were audited by the Chartered Accountant as early as on 08.08.2014 duly signed by him and the same was handed over to the appellant for filing of return of income and to upload audit report electronically. However, the AR failed to punch the audit report while uploading the return. Though, the AR ought to have uploaded the audit report but inadvertently the same could not be uploaded. The appellant, therefore, was prevented by sufficient and reasonable cause in filing the audit report within the time allowed under Section 139(1) of the Act. Since default not being malafide, neither there is any loss of revenue, the ultimate prayer before us was deletion of penalty imposed by the authorities below. In fact, the technical default committed by the assessee has no bearing with any loss of Revenue, taxpayer public at large, therefore, should not be penalized as was the argument advanced by the Ld. AR before us. Reliance were placed on several judicial pronouncements including Hon'ble ITAT Jaipur Bench in the case of Prabhulal Sah vs. ITO, reported in 52 TTJ (Jp) 137, the order passed by the Hon'ble Apex Court in the case of Hindustan Steel Co. Ltd. vs. State of Orissa, reported in 83 ITR 26 and the order passed in case of Mohan Trading Co. vs. UOI 156 ITR 134 (MP) and so on. Ld. DR further relied upon the orders passed by the authorities below. Ld. DR further relied upon the judgment passed by the Hon'ble Kerala High Court in the case of Metro Agencies vs. DCIT, reported in [2014] 45 taxmann.com 97 (Kerala).

6. We have heard the rival submissions made by respective parties and we have also perused the relevant materials available on record and considered the case laws relied upon by respective parties.

7. We have considered the judgment passed by the Hon'ble Hon'ble ITAT Jaipur Bench in the case of Prabhulal Sah (supra), the fact whereof is delay in getting the accounts audited within time specified due to fault of assessee's Accountant. The Hon'ble Bench was of the view that the assessee had a reasonable cause and his conduct not being fraudulent or contumacious; penalty under Section 271B of the Act, therefore, was found to be not justifiable. Surprisingly, in the order impugned, we find that the Commissioner noted that the facts of the case quoted by the appellant were different from the facts of the present case and therefore, the judgment quoted by the appellant cannot be applied. But, we find that the Ld. CIT(A) failed to observe that the assessee before us is in a better footing. The accounts got audited by the Chartered Accountant on 08.08.2014 duly signed by him and the same was though handed over by the Ld. AR, the same was not uploaded inadvertently by him. Therefore, it is not a case as of Hon'ble Jaipur Bench that there is a delay in getting the accounts audited. In that view of the matter, though the accounts audited by the Chartered Accountant within the stipulated time merely because the same was not uploaded inadvertently by the Ld. AR, which is neither incurring any loss to the Revenue or beyond the control of the assessee, the penalty imposed under Section 271B of the Act is not found to be just and proper. Such reasonable cause should have been appreciated by the authorities below while imposing penalty under Section 271B of the Act.

8. We would like to note that we have further considered the judgment passed by the Hon'ble Kerala High Court as relied by the Ld. DR in the case of Metro Agencies vs. DCIT (supra) where the assessee firm was maintaining proper documents for conducting its partnership business but not got the accounts audited within prescribed period is also having a different set of facts that of the assessee's case in hand as we have already discussed hereinabove and we repeat and reiterate the observation made by us in this aspect as above.

9. We have further considered the judgment passed by the Hon'ble Apex Court in the case of Hindustan Steel Co. Ltd. (supra) wherein similar view has been taken.

10. We are inspired by the essence of the ratio laid down by the Hon'ble Apex Court in the case of Hindustan Steel Co. Ltd. (supra) to this effect that in a penalty proceeding being a quasi-criminal proceeding unless the party acts deliberately in defiance of law, guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation, penalty cannot be imposed. It is a discretionary power on the part of the authorities below to impose penalty which should be exercised judicially and on a consideration of all the relevant factors cantering the issue. Refusing to impose the penalty in a case of minimum penalty prescribed can be said to be justified if it is due to any technical or venial breach of the provisions of law or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute which is applicable to the case in hand. In the case in hand, the failure in uploading the audit report, which is merely a technical one and that too without finding any element of malafide intention of the assessee or deliberate violation of statutory condition. Therefore, respectfully relying upon the judgment passed by different High Courts and the Apex Court, we do not find any justification in imposing the

impugned penalty of Rs.1,50,000/- under Section 271B of the Act. Thus, taking into consideration the entire aspect of the matter, we with the above observation delete the penalty.

11. In the result, assessee's appeal is allowed.

12. The decision in ITA No. 159/Rjt/2021 for A.Y. 2014-15 shall apply mutatis mutandis in other two ITA Nos. 160/Rjt/2021 & 311/Rjt/2022.

13. In the result, assessee's all three appeals are allowed.

**This Order pronounced on 21/04/2023**

Sd/-

(ANNAPURNA GUPTA)

**ACCOUNTANT MEMBER**

Ahmedabad; Dated 21/04/2023

S. K. SINHA

*True Copy*

Sd/-

(MADHUMITA ROY)

**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

By order/आदेश से,

Deputy/Asstt. Registrar  
ITAT, Rajkot