

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 573/Kol/2022**  
**Assessment Year: 2017-18**

Sudipta Sadhukhan (PAN: AREPS 0229 E)	Vs.	ACIT, Circle-23(1), Hooghly
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	14.03.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	21.04.2023
For the Appellant/ निर्धारिती की ओर से	Shri S. P. Dutta, A.R Sukanya Dutta, A.R
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals) –NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 19.08.2022 for the AY 2017-18.

2. The only issue raised by the assessee is against the confirmation of penalty of Rs. 1,50,000/- by Ld. CIT(A) as imposed by the AO u/s 271B of the Act by ignoring the fact that the assessee is not liable to audit u/s 44AB of the Act.

3. Facts in brief are that the assessee's total turnover during the year was Rs. 1,61,43,600/- which was enhanced by the AO to Rs. 3,38,47,120/-. During the assessment proceedings, the AO imposed a penalty on the assessee u/s 44AB of Rs. 1,50,000/- whereas as a matter of fact the assessee has filed return by offering higher profit/income than as provided u/s 44AB of the Act . The AO however did not accept the contentions of the assessee and imposed penalty.

3. The Ld. CIT(A) also affirmed the same.

4. After hearing rival contention and perusing the material on record particularly the provisions of Section 44AB of the Act which provides for the requirement of getting the accounts audited in certain cases by certain persons carrying on business or profession. Further section 44AB(a) of the Act provides that in case of a person carrying on business , if the total sales/ gross receipts as the case may be from the business exceed Rs. 1.00 crore in any previous year, then the person has to get the accounts audited .We also perused the proviso which has been introduced by Finance Act, 2017 w.e.f 01.04.2017 which provides that this section shall not apply to a person who has declared profit and gain in the previous year in accordance with provisions of Section 44AD(1) of the Act and his total sale/ turnover/ gross receipt of the said person does not exceed Rs. 2.00 crores in such previous year meaning thereby that if turnover of the assessee does not exceed Rs. 2.00 crores and he declares profit and gain in the previous year in accordance with provisions of Section 44AD(1) of the Act , then the provisions of Section 44AB of the Act are not applicable to that person. This is undisputed fact that the turnover of the assessee does not exceed two crores and the profit declared are in terms of provisions of Section 44AD(1) of the Act and therefore the assessee is not required to get the accounts audited u/s 44AB of the Act. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the penalty u/s 271B of the Act.

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

Order is pronounced in the open court on 21<sup>st</sup> April, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 21<sup>st</sup> April, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sudipta Sadhukhan, 9, Ashutosh Laha lane, Rishra, Serampore, Hooghly-712248
2. Respondent – ACIT, Circle-23(1), Hooghly
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata