

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.74/Bang/2023 : Asst.Year 2017-2018

Sri.Dummi Shivraj Deepak Prop : Dummi Stores Mallikarjuna Complex Shantha Talkies Road Near Bus Stand, Honnali (T) Davangere - 577 217. PAN : BZDPD7483B.	v.	The Income Tax Officer Ward - 1 Davangere.
(Appellant)		(Respondent)

Appellant by : Ms.Sunaina Bhatia & Sri.Ravishankar S.V. Advocate

Respondent by : Ms.Matta Padma, Addl.CIT-DR

Date of Hearing : 25.04.2023	Date of Pronouncement : 26.04.2023
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 13.12.2022 passed u/s 250 of the I.T.Act. The relevant assessment year is 2017-2018.

2. The solitary issue that is raised is whether the CIT(A) is justified in confirming the penalty imposed u/s 271B of the I.T.Act amounting to Rs.1,50,000.

3. The brief facts of the case are as follows:

The assessee an individual carrying on the business of dealing in mobile currency / mobile recharge. For the assessment year 2017-2018, the assessee filed the return of income on 20.11.2017 by declaring income of Rs.3,45,520.

The Assessing Officer completed the assessment u/s 143(3) of the I.T.Act on 18.12.2019 accepting the income returned by the assessee. However, the A.O. initiated penalty u/s 271B of the I.T.Act for failure to comply with the provisions of section 44AB of the I.T.Act, as the assessee-company has not filed tax audit report before the due date of filing of the return of income. In response to the notice issued for imposing penalty, the assessee submitted that he was under the bonafide belief that only gross commission is to be considered as turnover for the purpose of section 44AB of the I.T.Act. It was further submitted that as the gross commission did not cross the threshold limit as per section 44AB of the I.T.Act, the assessee did not get the books of account audited. However, the Assessing Officer rejected the contention of the assessee and imposed the penalty of Rs.1,50,000 u/s 271B of the I.T.Act.

4. Aggrieved, the assessee filed appeal before the first appellate authority. The CIT(A) confirmed the penalty imposed u/s 271B of the I.T.Act. The CIT(A) held that the wrong advice by a Tax Practitioner to the assessee cannot be a ground for not getting the books of account audited, as mandated under the provisions of section 44AB of the I.T.Act.

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned AR by referring to the additional ground, submitted that the assessee had not maintained books of account during the

year or at the time of filing of the return. Therefore, imposition of penalty u/s 271B of the I.T.Act is bad in law. In this context, the learned AR relied on the judgment of the Hon'ble Gauhati High Court in the case of Surajmal Parsuram Todi v. CIT reported in (1996) 222 ITR 691 (Gau) and the judgment of the Hon'ble Allahabad High Court in the case of CIT v. Bisauli Tractors reported in (2008) 299 ITR 219 (All.). The learned AR further submitted that there is reasonable cause as mandated u/s 273B of the I.T.Act, since the assessee was under the bonafide belief that only the gross commission is to be considered as turnover for the purpose of section 44AB of the I.T.Act. In this context, the learned AR relied on the order of ITAT Delhi Benches in the case of Anoop Kumar Beri v. ACIT reported in (2006) 152 Taxman 66 (Delhi) and the order of the ITAT Cuttack Bench in the case of Sabita Panda v. ITO in ITA Nos.421 & 142/Ctk/2016 (order dated 08.03.2018).

6. The learned Departmental Representative supported the orders of the A.O. and the CIT(A).

7. We have heard rival submissions and perused the material on record. Admittedly, the assessee had got the books of account audited for the first time for the relevant assessment year. Prior to the relevant assessment year, the assessee was under the bonafide belief that only the gross commission receipts are to be taken as turnover for the purpose of audit. It was only during the course of assessment proceedings, the A.O. insisted for the books of account to be

furnished and the same was directed to be audited. The assessee is in the business of mobile currency / mobile recharge vouchers. On identical facts, the Cuttack Bench of the Tribunal in the case of Sabita Panda v. ITO (supra) had held that when the assessee is under bonafide belief that the entire payment for the purchase of recharge coupons is not to be included as part of the turnover for the purpose of provisions of section 44AB of the I.T.Act. the same constitute a `reasonable cause' as mandated u/s 273B of the I.T.Act for not getting the books of account audited. The relevant finding of the Cuttack Bench of the Tribunal in the case of Sabita Panda v. ITO (supra), reads as follows:-

“16. We also find from the income tax returns for the assessment years 2012-13 and 2013-14 filed by the assessee that the assessee has shown business income from the sale of recharge vouchers and not shown as turnover. We also on perusal of the order of the Delhi Bench of the Tribunal in the case of Anoop Kumar Beri (supra) find that the assessee was under bonafide belief that receipts from commission were not to be included for the purpose of determining the obligation of audit under section 44AB and same constituted a reasonable cause for not getting the accounts audited. In the present case, the income shown by the assessee is from the commission on sale of recharge vouchers, which alone can be treated as assessee's turnover. Therefore, respectfully following the decision in the case of Anoop Kumar Beri (supra), we are of the considered opinion that the default committed by the assessee in not presenting the audit report is exonerable and we do not find any mala fide on the part of the assessee in this way. Hence, we delete the penalty imposed u/s.271B of the Act.”

8. A similar view has also been held by the Delhi Bench of the Tribunal in the case of Anoop Kumar Beri v. ACIT (supra). Moreover, in the instant case, the audit report has been furnished on 15.05.2019, i.e., prior to the completion of the assessment (Assessment order u/s 143(3) of the I.T.Act was

completed on 18.12.2019). Therefore, the A.O. had the benefit of audit report in completing the assessment. In such circumstances, the Cochin Bench of the Tribunal in the case of Attinkara Electronics v. ITO in ITA No.601/Coch/2018 (order dated 01.03.2019) had held that there is no loss to the exchequer and the default is only venial breach and deleted the penalty imposed u/s 271B of the I.T.Act. For the aforesaid reasoning and the judicial pronouncements, cited supra, we delete the penalty imposed u/s 271B of the I.T.Act. It is ordered accordingly.

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

Order pronounced on this 26th day of April, 2023.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 26th April, 2023.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-NFAC Delhi
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore