

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B" : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.546/PUN./2023
Assessment Year 2017-2018

Rupa Sanjay Nigade, Flat No.203, S.No.42, Shirniwas Greenland County Near Navle Hospital, Narhegaon, Pune - 411 041. Maharashtra. PAN AWTPN8731E	vs.	The Income Tax Officer, Ward - 6 (2), PMT Bldg., Shankar Seth Road, Pune - 411 037. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri M.K. Kulkarni
For Revenue :	Shri Shashank Deogadkar

Date of Hearing :	24.05.2023
Date of Pronouncement :	25.05.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2017-2018, arises against the National Faceless Appeal Centre [in short "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2022-23/1052246458(1), dated 21.04.2023, involving proceedings u/s. 271B of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance that both the learned lower authorities have erred in law and on facts in levying the impugned sec.271B penalty of Rs.71,732/-, we note that the NFAC's lower appellate discussion affirming the same reads as under :

4.1 Ground No 1 and 2 is directed against the imposition of penalty u/s 271B of the Act. The brief facts of the case is that the appellant is the owner of a proprietorship concern in the name and style of M/s Atharva Enterprises. The appellant filed the return of income for the A.Y 2017-18 declaring total income of Rs 3,57,730. The case was selected for scrutiny assessment. On perusal of the bank account statement the AO noticed that the appellant has deposited cash of Rs 68,03,500 in her bank account No 34654844121 in State Bank of India and Rs 75,11,630 in bank account no 2160/148 in Rajarshi Shahu Sahakari Bank Ltd. The total cash deposited amounted to Rs 1,43,15,130 through cash during the F.Y 2016-17 out of which cash of Rs 4,64,500 was deposited in old currency notes during the period of demonetization. The appellant did not comply to the notices issued during the course of assessment proceedings. AO found that the total entries in the bank accounts is Rs 1,48,11,055. In the absence of any evidences submitted by the appellant, the AO estimate the income of the appellant at Rs 5,74,662 [4% of Rs 1,43,46,555 (Rs 1,48,11,055- Rs 4,64,500)]. The AO initiated penalty proceedings u/s 271B of the Act as the gross receipts of the appellant exceeded Rs 1 crore. The AO did not accept the reply of the appellant as in the first part of the reply the appellant has raised the grounds taken in appeal against the order u/s 143(3) r.w.s 144 of the Act which has no relevance with the appeal proceedings and in the second part the appellant has

submitted that she does not maintain books of accounts and that it is a prerequisite condition that appellant has to maintain books of account for audit and therefore sec 271B is not applicable.

4.2 The AO held that the appellant was liable to maintain book of account u/s 44AA of the Act as the business income of Rs 447770 for A.Y 2016-17 exceeds Rs 1,20,000 and is falling within the three preceding years from the F.Y 2016-17 and hence she was liable to maintain books of accounts. Further her gross receipts was exceeding Rs 1 crore and therefore she was liable to get her accounts audited u/s 44AB of the Act. Therefore, AO imposed penalty of Rs 71,732 u/s 271B of the Act.

4.3 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. During the course of appellate proceedings, the appellant again in her submission cited the grounds of appeal against the order u/s 143(3) r.w.s 144 of the Act which has no relevance with the appeal proceedings and in the second part submitted that she does not maintain books of accounts and that it is a prerequisite condition that appellant has to maintain books of account for audit and therefore sec 271B is not applicable. This submission of the appellant is not tenable. According to section 44AA (2) of the act, in relation to any other persons engaged in any other profession or carrying on any business other than section 44AA (1), the requirement of compulsory maintenance of books of accounts applies if- either the income from business or profession exceeds Rs 1,20,000 or the turnover or gross receipts exceed Rs 10 Lakhs in any one of the three years immediately preceding the previous year. The AO has established that the appellant was liable to maintain book of account u/s 44AA of the Act as the business income of Rs 4,47,770 for A.Y 2016-17 exceeds Rs 1,20,000 and is falling within the three preceding years from the F.Y 2016-17 and hence she was liable to maintain books of accounts. Under section 44AB of the Act every person **Carrying on Business** shall, if his total sales, turnover or gross receipts, as the case may be, in business **exceed Rs.1 Crore** in any previous year, get his accounts of such previous year audited by a Chartered Accountant before the *specified date* and furnish by that date the report of such audit in the prescribed form, duly signed and verified, by such accountant and setting forth such particulars as may be prescribed. Failure to get the books of accounts audited will lead to imposition of penalty u/s 271B of the Act. The appellant's gross receipts exceeded Rs 1 crore during the year.

4.4 The claim of the appellant that since she is not maintaining any books of accounts she does not need to get her books of accounts audited and hence section 271B is not applicable is not correct and is based on wrong understanding

of the provisions of the Act. The appellant has not been able to also prove why she is not required to maintain books of account. Therefore, I find that the appellant has failed to offer any reasonable cause for non-imposition of penalty. In view of the above, the order of the AO levying penalty u/s 271-B of Rs.71,732/- of the Act is upheld. The appeal of the appellant on these ground are dismissed.

3. Learned counsel's sole substantive argument in the instant case is that the assessee had merely derived small amount of commission treated as business income of Rs.4,47,770/- and, therefore, the same nowhere exceeds the prescribed threshold limit of Rs.1 crore mandatory for the purpose of maintaining the books of account u/s.44AB of the Act. We find no merit in the assessee's instant solitary argument once it has come on record that the corresponding turnover of Rs.1 crore indeed gets satisfied in the instant case as per the CIT(A)'s detailed discussion (supra). We, therefore, reject the assessee's vehement arguments seeking to treat her net income only in the nature of commission as business turnover not requiring her to maintain books of account. We accordingly accept the Revenue's stand supporting the NFAC's above detailed discussion in entirety. The assessee fails in her sole substantive grievance. Ordered accordingly.

4. This appeal of the assessee is dismissed in above terms.

Order pronounced in the open Court on 25.05.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 25th May, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Pune.
4.	The CCIT, Pune.
5.	D.R. ITAT, Pune "B" Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.