

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 336/MUM/2023
(Assessment Year: 2014-15)**

Easow Thomas,

202, A Shivshankar, Malang Road
NR Patripul, Kalyan (West) - 421301
[PAN: AEUPT7705H]

.....

Appellant

**Commissioner of Income Tax
(Appeal)-1 Thane,**

101, Madhav Baug Apt. Opp.
Bank of Maharashtra,
Gaushala Road, Shivaji Path,
Kalyan (West) – 421301

Vs

.....

Respondent

Appearance

For the Appellant/Assessee : None
For the Respondent/Department : Ms. Richa Gulati

Date : 16.05.2023
Conclusion of hearing : 24.05.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 19.12.2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 07.12.2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. For the Assessment Year 2014-15, the Appellant filed return of income which was selected for scrutiny. During assessment proceedings, the Appellant submitted details of purchase/sale of shares during the relevant previous year. Since the Assessing Officer was of the view that the aggregate turnover of the share transactions carried out by the Appellant exceeded the prescribed limit, the Appellant was under obligation to get the accounts audited in terms of section 44AB of the Act. Therefore, the Assessing Officer initiated penalty proceedings under Section 271B of the Act and vide order, dated 29/06/2017, levied penalty of INR 58,808/- under section 271B of the Act on the Appellant.
3. The appeal preferred by the Appellant against the penalty order, dated 29/06/2017 under Section 271B of the Act was also dismissed by the CIT(A).
4. Being aggrieved, the Appellant has preferred the present appeal.
5. When the appeal was taken up for hearing, none was present on behalf of the Appellant. We have heard the Learned Departmental Representative who supported the penalty order and relied upon the order passed by the CIT(A), and perused the material on record.
6. We find that the Appellant is a retired Navy Officer who around 65 years of age during the relevant previous year. For the Assessment Year 2014-15, the Appellant had offered to tax his pension and interest income aggregating to INR 1,20,000/- in his return of income. On perusal of the assessment order, dated 07/20/2016, passed under section 143(3) of the Act. We find that the Assessing Officer has accepted the returned income of INR 1,20,000/- without making any addition/disallowance. Therefore, the Assessing Officer

has accepted that the Appellant had no source of income apart from pension and interest income. As there was no income/loss under the head 'profits and gains of business or profession', it could not be said that the provisions of Section 44AB of the Act were applicable and as a sequel thereto, penalty under Section 271B of the Act was not leviable. [*Commissioner of Income-tax, Hisar Vs. Market Committee, Sirsa: 210 Taxman 20 (Punjab & Haryana)*]. Further, in the facts and circumstances of the present case, we are of the view that the Appellant, in any case, had a reasonable cause in terms of Section 273B of the Act, as the Appellant was a senior citizen who did not have requisite knowledge and was, therefore, dependent upon the advice of the professional/broker who did not guide him properly. In view of the aforesaid, the penalty of INR 58,808/- levied under Section 271B of the Act is deleted.

7. In result, the present appeal preferred by the Appellant is allowed.

Order pronounced on 24.05.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.05.2023
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai