

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'H': NEW DELHI)**

**BEFORE SHRI KUL BHARAT JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No:- 787/Del/2020  
(Assessment Year: 2015-16)**

Sh. Taranjeet Singh Alagh, C-25, Shopping Complex, Vasant Vihar, New Delhi-110057.	Vs.	The Income Tax Officer, Ward-33(2), New Delhi.
<b>PAN No:</b> AAAPA0852A		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : None  
**Revenue by** : Shri Gurpreet Shah Singh, Sr. DR

**Date of Hearing** : 07.06.2023  
**Date of Pronouncement** : 20.06.2023

**ORDER**

**PER KUL BHARAT, JM**

This appeal by the Assessee is directed against the order of Commissioner of Income Tax (Appeals)-34, New Delhi vide order dated 17.09.2019 for Assessment Year 2015-16. The Assessee has raised the following grounds of appeal:

- "1. That the Learned Assessing Officer has failed to appreciate the legal & factual position involved in the appellant's case.
2. That the assessment order is replete with prejudicial observations which are either unfounded or not sunceptible to any adverse conclusion.
3. That the authority below has failed to appreciate the legal and factual position involved in the Appellant's case.

4. *That no opportunity was afforded to the appellant to lead evidence on the issues involved.*
5. *That the provisions of section 271B are not attracted in the facts and circumstances of this case.*
6. *That the order is against law and facts of the case and merits to be cancelled."*

2. At the time of hearing, no one attended the proceeding. It is seen from the record that no one attended the hearing. The notices sent by the Registry have been duly served and the acknowledgment due has been placed on record. Under these facts, the appeal is taken up for hearing in the absence of assessee and materials available on records.

2.1 Apropos to the grounds of appeal, however, it is seen from the record that a letter dated 24.03.2023 has been placed on record. The contents of the same are reproduced as under for the sake of clarity:

24<sup>th</sup> March, 2023

**Before the Income Tax Appellate Tribunal,  
Delhi Bench H, New Delhi .**

**In the matter of Assessment Year 2015/16 appeal case of S.Taranjit Singh Alagh  
against penalty order under section 271B Of the Income Tax Act.**

<b>APPEAL NO.</b>	<b>ITA 787/DEL/2020</b>
<b>PAN :-</b>	<b>AAAPA0852A</b>

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That the appellant filed his return declaring taxable income of Rs.295400/- for the above year.

That the case was later taken up for scrutiny on the basis of CASS for not reporting the transactions relating to equity, future & options. The notices were duly complied with and the assessment was framed on returned income ignoring the capital loss of Rs.4538988/- which was not claimed by the appellant in his return of income. The appellant was treating the transactions in equity, future & options as investment transactions.

That the Assessing Officer initiated penalty proceedings under section 271A for non maintaining the books of accounts as well as under section 271B for not complying with the provisions of section 44AB of the Act and get the accounts audited.

That after the submissions were made in response to penalty proceedings, the assessing officer dropped the proceedings initiated under section 271A of the Act for non maintainance of books of accounts since the same were not required to be maintained as the appellant had not any business income from the said transactions, but imposed penalty under section 271B inspite of appellant submissions duly filed. The appellant's reply was not considered before levy of the penalty under section 271B.

That the appellant preferred an appeal before the learned Commissioner of Income Tax (Appeals) but the submissions made were not considered and accordingly appeal was dismissed.


That the Honourable Tribunal shall kindly appreciate that if the appellant was not treated in default under section 271A for non maintenance of books of accounts, how the provision of section 271B are attracted since in absence of books of accounts no audit report could have been obtained . It is a case of **impossibility of performance** where it is expected to get the accounts audited without books of accounts.

That the appellant was under bonafide belief that he was not required to obtain the audit report since the transactions were in the nature of investments and he had incurred capital loss on his investments. He had no malafide intention in not obtaining the audit report. The appellant's case get support from the judgement of Hon'ble Income Tax Appellate Tribunal in the case of Mr.Chander Prakash Batra Vs ITO Ward 26 (3) (ITAT No.4305/DEL/2011 ) wherein in the same circumstances of the case the Hon'ble ITAT cancelled the penalty order under section 271B of the Act.

In view of submissions made above it is requested that the penalty order may kindly be cancelled.

It is prayed accordingly.

Enc: Penalty order under section 271A of  
the Income Tax Act

  
(H.R Sood)  
A.R for the Appellant

3. On the other hand Ld. DR supported the orders of the authorities below.
4. We have heard the Ld. DR and perused the material available on record. The contention of the assessee is that the assessment was framed on returned income ignoring the capital loss of Rs. 45,38,988/- it was not claimed by the assessee in his return of income. The Assessing Officer initiated the penalty proceedings U/s 271A of Income Tax Act, 1961 (hereinafter referred to as "the Act") for non maintaining the books of accounts, as well as U/s 271B of the Act for not complying with the provisions of section 44AB of the Act. After considering the submissions of the assessee, the penalty proceedings initiated U/s 271A of the Act was dropped but the penalty U/s 271B of the Act was imposed and same was sustained by the Ld. CIT(A). It is further submitted that the appellant was not treated in default U/s 271A of the Act for non-

maintenance of books of accounts, than how the provision of Section 271B of the Act would be attracted in the absence of books of accounts.

4.1 We have given our thoughtful consideration to the present appeal, admittedly, the penalty was initiated U/s 271A of the Act for non-maintenance of books of accounts as well as U/s 271B for not complying with the provisions of section 44AB of the Act regarding the auditing of the account. The penalty for non-maintenance on books of accounts was dropped but the penalty for not getting the accounts audited is sustained. We find merits into the contentions of the assessee that if he was not guilty of non maintaining of books of accounts, the presumption would be that he shall not required to maintain the books of accounts. Under these undisputed facts, imposing penalty for non auditing of books of accounts is not justified. Therefore, we hereby direct the Assessing authority to delete the penalty.

7. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open court on 20<sup>th</sup> June, 2023.

**Sd/-**  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Dated: 20/06/2023.  
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI