

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोडपिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No.99/RPR/2023

निर्धारण वर्ष /Assessment Year: 2014-15

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| Smt. Laxmi Devi Chandwani Agrasen Chowk Bilaspur, Chhattisgarh-495 001. | V s | Income Tax Officer Ward-1(1), Bilaspur Chhattisgarh-495 001 |
| PAN: AGMPC 8368H | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| निर्धारिती की ओर से /Assessee by | : | Shri S.R. Rao, Adv. |
| राजस्व की ओर से /Revenue by | : | Shri Satya Prakash Sharma, Sr. DR |
| सुनवाई की तारीख / Date of Hearing | : | 21/08/2023 |
| घोषणा की तारीख/ Date of Pronouncement | : | 15/09/2023 |

आदेश / O R D E R

Per Arun Khodpia, AM :

The captioned appeal is filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 20.02.2023 u/s 250 of the Income Tax Act, 1961 for AY 2014-15, arises from the order of Ld. Assessing Officer u/s 271B of Income Tax Act, 1961 dated 24.09.2022. The grounds of the appeal raised by the assessee are as under:

“1. That the order of the Ld. Commissioner of Income Tax (Appeals) is arbitrary, bad in law & facts.

2. That the Ld. CIT(Appeals) has erred in law & facts in confirming the levy of penalty U/s 271B imposed by Learned Assessing Officer.”

2. The brief facts of the case are that the assessee who is an individual, was engaged in the business of trading of cloth on retail basis, tailoring & stitching. The return of income was filed by the assessee on 06.02.2015 declaring total income of Rs.1,84,760/-. Subsequently, the return was revised by the assessee on 23.03.2016/- The case was reopened u/s 147 of the Income Tax Act and finalised accepting the return income. During the course of assessment proceedings AO noticed that the appellant has shown turnover of Rs.1,30,00,000/- but has failed to get accounts audited as per provisions of section 44AB of the I.T. Act. Accordingly, AO initiated penalty proceedings u/s 271B of the I.T. Act, thereafter, penalty order u/s 271B was passed on 24.09.2022 imposing penalty of Rs.65,000/- (0.5% of total turnover of Rs.1,30,00,000/-).

3. Aggrieved by the penalty order, assessee preferred an appeal before the Ld. CIT(A), NFAC, but was unsuccessful. Dissatisfied with the findings of the Ld. CIT(A), the assessee preferred an appeal before the ITAT, hence, the case is before us for adjudication.

4. At the outset, the Ld. AR of the assessee submitted that the assessee was under bonafide belief that she was not liable to maintained the books of accounts as she was declaring her income u/s 44Ad of the Act. This fact was observed by the Ld. Assessing Officer also in his order at para 2.3 that the assessee has neither maintained any books of accounts viz. sale/purchase bills and vouchers, details of debtors/creditors etc. nor has get its audited account. It was the further submission of the Ld. AR that

since it was the first year of business of trading of Small Retail Trader business, the assessee was under bonafide belief that in case of retail business, regular books of accounts are not required to be maintained and audited. If the net profit is shown 8% of Turnover no audit is also required. It was the submission that the assessee has offered its profit at 9.38% on total turnover in the present case that to when the turnover is more than 1,00,00,000/- and paid tax thereon. It is submitted that the estimate of profit at 30% of the turnover as proposed by the Ld AO, after explanation of assessee was finally accepted, thus, the Ld. AO accepted such contention of the assessee and have assessed income of the assessee on the return income so offered by the assessee. However, penalty u/s 271B was initiated on the assessee, wherein the Ld. AO observed that the assessee was required to file prescribed audit in forms specified u/s 44AB of the IT Act, 1961, which she has not done. It was the submission of the Ld. AR that since it was a proven fact that under bonafide belief the assessee has not maintained any books of account the penalty for not getting the books of accounts audited cannot be imposed on the assessee, to support this contention Ld Ar place his reliance on the judgment of Hon'ble Allahabad High Court in the case of *CIT vs. Bisauli Tractors reported in [2008] 299 ITR 219 (All)* wherein the Hon'ble High Court has held that – section 271B is not attracted in case where no account has been maintained and instead recourse u/s 271A can be taken. It was the submission of the Ld. AR that since it is the fact that there were books of account maintained by the assessee which was observed by Ld. Assessing Officer also, therefore, in

terms of judgment of Hon'ble Allahabad High referred (supra) penalty imposed u/s 271 was bad in law and is liable to be deleted.

5. The Ld. Sr DR, on the other hand, placed his reliance on the order of the Ld. AO and Ld. CIT(A).

6. We have heard the rival contention, perused the materials available on record, and judicial pronouncement placed before us. Admittedly the assessee's turnover was of Rs.1,30,00,000/- which is much more than the prescribed limit for which books of accounts u/s 44AA, 44AB r.w.s. 44AD of the Income Tax Act are to be maintained and to be audited, therefore, the assessee was a defaulter for not maintaining the books of account. Further, on perusal of the order of Ld. CIT(A), wherein it was observed that the appellant was under the misbelief that if the income declare is above 8% of gross profit, then he is not required to get its accounted audited. However, as per section 44AB of the I.T. Act every person is required to get its accounted audited if his total sales, turnover or gross receipts as the case may be in business exceeds 1 Cr., failing to do so, the assessee would be penalized under section 271B of the Income Tax Act. The appellant failed to submit any reasonable cause for failure to comply the provision of section 44AB of the Act, therefore, the penalty imposed by the assessee was confirmed by the Ld. CIT(A). The fact in the present case which has been observed by the Ld. AO and also apparent from the records that assessee because of her bonafide belief may be wrong has not maintained any books

of account and, therefore, it was impossible to get the accounts audited which were not even ever prepared/maintained. The ratio of law as interpreted by the Hon'ble Allahabad High Court in the case of CIT vs. Bisauli Tractors (supra) on which the assessee placed reliance wherein the Hon'ble High Court has concluded that the penalty u/s 271B of the Income Tax Act is not attracted in case where no account has been maintained instead recourse u/s 271A can be taken. Since, the Ld. AO appreciated the fact that assessee has not maintained any books of account but have not initiated any penalty proceedings u/s 271A for non - maintaining to books, instead the Ld. AO proposed to initiate the penalty proceedings u/s 271B of the Act for not getting the books audited which is very impractical thinking of the Ld AO when the books of accounts are not available, how the audit of the same can be conducted. In such circumstances, respectfully following the principal of law as observed by the Hon'ble Allahabad High Court in the case of CIT vs. Bisauli Tractors (supra), we are of the considered opinion that the penalty u/s 271B for not getting the books of account audited is impossible to be imposed when it is an evident fact that there was no books of account maintained by the assessee.

7. In the result, we are inclined to set aside the order of the Ld. CIT(A) and deleted the penalty imposed by the Ld. Assessing Officer. Consequently, the appeal of the assessee is allowed.

Order pronounced in the court on 15.09.2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 15/08/2023

Pramod Kumar, Sr. PS (on tour)

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur