

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

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

ITA No.641/PUN./2023  
Assessment Year 2018-2019

Ajit Narayan Patil, Plot No.29A, Sham Society, Near Crusher, Karveer, Kolhapur – 416 012 Maharashtra PAN ABQPP6656A	vs.	The ACIT, Central Circle, C.S.No.622/623, 1 <sup>st</sup> Floor, Office Unit F-1/A&B, Shriram Heights, Kolhapur – 416 003. Maharashtra
Appellant		Respondent

For Assessee :	Shri Kishor Phadke
For Revenue :	Shri Ramnath P Murkude

Date of Hearing :	11.09.2023
Date of Pronouncement :	28.09.2023

**आदेश / ORDER**

**PER SATBEER SINGH GODARA, JM :**

This assessee's appeal, for assessment year 2018-2010, arises against the CIT(A), Pune-11, Pune's Din and Order No. ITBA/APL/S/250/2023-24/1052080708(1), dated 13.04.2023, involving proceedings u/s. 271AAB 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 ground raised herein that both the learned lower authorities have erred in law and on facts in levying sec.271AAB penalty of Rs.15,67,734/- in issue, learned counsel invited our attention

to the CIT(A)'s detailed discussion having rejected his arguments as under :

“6. I have considered the facts of the case and the submissions made by the appellant. It is an undisputed fact that during the search operation unaccounted cash receipts were found by the search team. For the year under consideration the cash receipts were quantified at Rs. 51,55,500/-, which were not recorded in the books of accounts. This fact was admitted by the appellant in the statement recorded u/s 132(4) of the Act. It was also admitted that such unaccounted cash receipts were not deposited in the bank account as admitted by Shri Sandeep Patil, Manager of the appellant. The relevant portion of the statement recorded u/s 132(4) of the appellant has been reproduced by the Assessing Officer in the penalty order and it can be seen from the reply to Q. No. 17 that the appellant agreed with the statement given by Shri Sandeep Patil and also with the fact that cash collection is not shown in the regular books of accounts. With regards to the specific cash amount received for the year under consideration, it can be seen from the Q. No. 18 of the statement wherein the month-wise and item-wise chart for cash collected was prepared at the time of search. In reply to Q. No. 18, the appellant has categorically admitted that the cash amount of Rs.51,55,500/- was not recorded in the books of accounts and also not deposited in the bank account. Subsequently, during the assessment proceedings, the Assessing Officer found arithmetic mistakes and the cash amount was revised to Rs. 52,25,780/- to which appellant had agreed.

7. The only argument of the appellant is that the said cash receipts were recorded in the receipt books maintained in the regular course of business and subsequent to the search the receipts were included in the books of accounts which were not written prior to the search operation. The appellant has accordingly argued that since the receipts were recorded in “other document” maintained in the normal course of business, therefore, the said receipts should not be considered as undisclosed income even though no books of accounts were written by him. The said argument of the appellant cannot be accepted. It is an undisputed fact that these cash receipts were not recorded in the books of accounts by the appellant. The appellant wants to take advantage of its own wrong. He was required to maintain day-to-day books of accounts which was not done by him. In fact, admittedly, the cash receipts were not deposited in the bank account as well and when such malpractice was found during the search, the assessee wants to take a plea that since no books of accounts were maintained and since these receipts have been subsequently included in the books of accounts, no penalty should be levied. Such an argument cannot be accepted because acceptance of such argument can lead to undesirable results wherein taxpayers may not maintain regular books of accounts and at the end of

*the year they may include cash receipts in the regular books as per their own will. And if caught during the year, they may take a plea that since they were not maintaining regular books, no penalty should be levied.*

8. *In the present case, it is an admitted fact that in earlier assessment years, such cash receipts were not being deposited in bank account or recorded in the books of accounts by the appellant. Since, all the cash receipts found recorded in the receipt books were not included in the books of accounts in earlier years, therefore, it cannot be said that such receipt books are part of regular books of accounts and can be considered as "other documents maintained during the normal course of business" for the purposes of Explanation (c) to sec. 271AAB. Considering the totality of facts of the case, I am of the considered opinion that the provisions of sec. 271AAB of the Act are applicable to the facts of the present case and the Assessing Officer has rightly levied the penalty.*

9. *The appellant has taken an alternate argument that he has mistakenly disclosed income on gross receipt basis instead of offering the income embedded in such gross receipts. The appellant has accordingly requested to levy the penalty on the income portion. This argument of the appellant cannot be accepted at this stage because in the return filed, the appellant himself has offered additional income on the basis of unaccounted cash receipts discovered during the search. The said additional income was accepted by the Assessing Officer with minor enhancement and the quantum proceedings have thus become final. Therefore, at this stage, the appellant cannot take an argument that this additional income is on higher side and penalty should be reduced by estimating the income on gross receipts. The request of the appellant is beyond the scope of present appeal because the finalised assessed income cannot be altered at this stage. Accordingly, this alternate plea of the appellant cannot be accepted.*

10. *In view of the above discussion, the penalty of Rs. 15,67,734/- levied by the Assessing Officer u/s 271AAB of the Act is upheld. The grounds no. 1 and 2 raised by the appellant are DISMISSED.*

3. Mr. Phadke has next filed the assessee's brief synopsis reading as under :

***"I-Facts***

1. *Appellant has challenged the penalty of Rs. 15,67/734 levied u/s 271AAB for AY 2018-19. The said penalty is levied*

*for alleged undisclosed income for AY 2018-19 amounting to Rs. 52,25,780. The alleged undisclosed income is worked out on the basis of professional receipts for services relating to LAB + PELVIS + PROCEDURE.*

2. *Search was initiated in appellant's case on 6/12/2017. During the course of search, Appellant admitted that receipts related to LAB + PELVIS + PROCEDURE were not included in the TALLY based final accounts. The admission of operadi for above was for various earlier years prior to 31/3/2017.*

3. *Appellant, without appreciating the legality, also admitted same operandi for current year i.e for the period from 1/4/17 to 6/12/17. Now this period is covered under the definition of "specified period" u/s 271AAB.*

4. *During the course of search, RECEIPTS REGISTER maintained by the office staff of the Appellant was found in which, each and every receipt was duly recorded. As per Rule 6F of I-T Rules, a professional doctor is required to maintain daily register of cases, format of which is prescribed in form 3C of the I-T Rules.*

5. *Printouts of some months of current year, taken from EXCEL based RECEIPT REGISTER, were seized in search. Format of the said seized RECEIPTS REGISTER matches with the prescribed form 3C. In fact some extra information is also stated in the said RECEIPTS REGISTER like, expenses incurred from time to time, banking of receipts and CASH given to the Appellant by the staff members, who were actually maintaining the RECEIPTS REGISTER in EXCEL on computer.*

6. *Appellant's TAX AUDIT REPORT (page-24 of Paper-Book -1) also carries a mention of the 'Daily Case Register' at Sr. No. 7 of clause 11c of the TAR.*

7. *While replying the various questions during search, Appellant has repeatedly informed search party that, track of day-to-day receipts is maintained in the said RECEIPTS REGISTER maintained by the office staff of the Appellant (PI refer to Questions-Answers of search statements, copies of which are given at Page-49 to 51 & 79 to 81 of paper-Book).*

8. Now, key issue is, whether, receipts regularly included in the prescribed RECEIPTS REGISTER, fall under the meaning of "UNDISCLOSED INCOME" as so defined in clause (c) of section 271AAB(1A) of ITA, 1961. Issue of such income has different meaning than the completed years. Concept of undisclosed Income" has different meanings in different sections like 158B(b), 271(1)(c), etc.

9. Appellant has taken a stand that, each and every receipt issued is included in the said RECEIPTS REGISTER. In fact, entries in the final TALLY books take place on the basis of the said RECEIPTS REGISTER only. For each day, one single entry is made in final TALLY books based on daily summary of receipts entered into Excel based RECEIPTS REGISTER (instead of entering each receipt by itself, since, such an exercise becomes too tedious).

## **II - Submissions**

10. RECEIPTS REGISTER is a sub-part of the regular books of the account, since, daily summary of all cash receipts is made in the said EXCEL based RECEIPTS REGISTER. As per section 271AAB(1A), undisclosed income is understood as such income, represented by some cash / bullios, etc. or by some document/transaction, etc, AND which is not recorded in books of account or other document maintained in normal course of professional activity. Since, RECEIPTS REGISTER is a stepping stone/sub-part of regular books of account, there is no any undisclosed income at all. After all, definition of books of account u/s 2(12A) is inclusive & expands to all related logical records.

11. RECEIPTS REGISTER is 'other documents' - Appellant also submits that, at best, the daily RECEIPTS REGISTER could be understood as "other documents" maintained in normal course of profession, since, the said RECEIPTS REGISTER was a mandatory part of records to be kept by the professional doctor. Even by this analogy, it transpires that, the receipts for LAB + PELVIS + PROCEDURE do not fit into the meaning of "undisclosed income" referred to in clause (c) of Explanation to section 271AAB(1A).

12. No irregularity till 06/12/2017 - Appellant further submits that no any irregularity crept into the maintenance of receipts / receipts books or RECEIPTS REGISTER. No any

*receipts were hidden from regular business premises. No any duplicate / parallel RECEIPTS REGISTER was maintained. Each and every receipt was entered into the RECEIPTS REGISTER. Irregularity in earlier years crept in only when, in the final TALLY books (and for past years), receipts related to LAB + PELVIS + PROCEDURE were kept away. Such a point was never reached in specified period. In any case, the RECEIPTS REGISTER aptly falls in the meaning of 'other documents' referred to clause (c) of Explanation to section 271AAB(1A). As such, with utmost respect, it is submitted, penalty u/s 271AAB is incorrectly levied."*

4. The Revenue has strongly supported both the learned lower authorities action imposing the impugned sec.271AAB penalty in question as having not recorded in the corresponding books of account.

5. We have given our thoughtful consideration to the foregoing vehement rival stands. There could be hardly any dispute that the impugned penal provision i.e., 271AAB gets attracted in an instance of sec. 132 search action if the concerned assessee is found not to have recorded it's undisclosed income in the books of account or other prescribed documents. The assessee's sole plea before us (in light of the foregoing synopsis) that once he had duly maintained all the relevant entries in the receipt register; which is in the nature of 'other documents' maintained in normal course of medical profession, he is out of the purview of the impugned penal provision. Mr. Phadke sought to buttress the point that although the assessee's receipts

register does not amount to his regular books of account, the same indeed forms a 'sub-part' of the regular books of account wherein tally, summary of all cash receipts are made in an excel sheet strictly based on the receipts register. Learned counsel quoted stricter interpretation of a penalty provision in the income tax law in light of Commissioner of Customs (Imports), Mumbai vs. Dilip Kumar And Co. & Ors. [2018] 9 SCC 1 (SC) (FB) and prayed for deleting the impugned penalty.

5.1. All these assessee's arguments fail to evoke our concurrence. We make it clear first of all that the assessee's professional activity i.e., "medical profession", indeed forms a 'specified business' under Rule 6F(1) of the Income Tax Rules, 1962 wherein sub-rule (2)(i); followed by Explanation (b) thereto prescribes 'cash book' as a record of all cash receipts and payments. Rule 6F (3) further envisages that in addition to the foregoing sub-rule (2), a person carrying on medical profession, shall, in addition to the foregoing books of account and other documents, keep and maintain - (i) a daily case register in Form no.3C as well. We invited assessee's attention to this clinching rule applicable in the case of medical professionals. He could hardly dispute that the corresponding so-called loose papers found and seized during the course of search have failed to satisfy the rigor of Rule 6F(2) r.w.(3) of the Income Tax Rules, 1962 wherein all the prescribed details

have to be maintained by a medical professional. We wish to make it clear for the sake of completeness that although the assessee claims to have recorded all the receipts in his so called 'sub-books', page 24 schedule 11(c)(7) of his tax audit report is his incomplete 'daily cash register' which does not even fall Rule 6(2) Explanation much less the necessary condition in sub-rule (3) in above terms. This clinching factual position leads us to an irresistible conclusion that both the learned lower authorities have rightly levied the impugned penalty on account of assessee's failure to record his undisclosed income in the prescribed books of account. The assessee's instant sole substantive ground as well as main appeal fails therefore. We affirm both the lower authorities action imposing the impugned sec.271AAB penalty. Ordered accordingly.

6. This assessee's appeal is dismissed in above terms.

Order pronounced in the open court on 28.09.2023.

**Sd/-**  
**(DR.DIPAK P.RIPOTE)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Pune; Dated 28<sup>th</sup> September, 2023.

VBP

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Pune-11, Pune.
4. The Pr. CIT (Central), Pune.
5. DR, ITAT, "A" Bench, Pune.
6. Guard File.

BY ORDER

// True Copy //

Senior Private Secretary  
ITAT, Pune.