

IN THE INCOME TAX APPELLATE TRIBUNAL ALLAHABAD “SMC”
BENCH, ALLAHABAD

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.23/Alld/2023
(निर्धारण वर्ष / Assessment Year: 2013-14)

Mohd Aslam 53, Kaithana, Phulpur, Allahabad, Uttar Pradesh- 212402.	बनाम/ Vs.	Commissioner of Income Tax (Appeals)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AONPA6681E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri S. K. Yogeshwar	
Revenue by:	Shri A. K. Singh (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 14/09/2023
घोषणा की तारीख /Date of Pronouncement: 04/10/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 18.01.2023 for AY. 2013-14 wherein the Ld. CIT(A) has confirmed the penalty order of the AO imposing the penalty u/s 271B of the Income Tax Act, 1961 (hereinafter “the Act”) to the tune of Rs.55,660/-.

2. At the outset, the Ld. AR of the assessee brought to my notice that the impugned order of the Ld. CIT(A) is an ex-parte order. And the Ld. CIT(A), taking note that the assessee did not file any response to the notices issued, dismissed the appeal ex-parte qua assessee. Further, it has been brought to my notice that in the assessee’s case assessment u/s 143(3) of the Act was completed on 17.02.2016 *inter-alia* making certain additions. The Ld. CIT(A) noted that the assessee’s actual business receipt was to the tune of Rs.1,11,51,920/- whereas the assessee had shown in his books only Rs.27,29,000/-.



ITA No.23/Alld/2023
A.Y. 2013-14
Mohd. Aslam

Therefore, the AO noted that the assessee's gross receipt exceeded Rs.1 crore and therefore, according to him, the assessee ought to have filed audit report u/s 44AB of the Act. And since the assessee failed to file audit report, the AO initiated penalty u/s 271B of the Act. And even though the assessee filed reply, the AO did not accept the same and levied the penalty of Rs.55,660/- (0.5% x of Rs.1,11,51,920/-) by order dated 14.03.2019. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same by passing the ex-parte order. Aggrieved, the assessee is before this Tribunal.

3. I have heard both the parties and perused the records. It is noted that the AO while framing the assessment u/s 143(3) of the Act on 17.02.2016 noted that the assessee's turnover was more than Rs. 1 crore (Rs.1,11,51,920/-) and since assessee did not file audit report u/s 44AB of the Act, he has levied penalty u/s 271B of the Act of Rs.55,660/-. According to the Ld. AR, the AO erred in taking note that the assessee's trading receipt was more than of Rs.1 crore i.e. (Rs.1,11,51,920/-) whereas according to him, the AO did not appreciate the fact brought to his notice that Rs.13,82,000/- (amount received in instalment) was sale consideration of assessee's truck to one Shri Narendra Prasad Shukla on 01.10.2012. In order to support the aforesaid contention the assessee had filed Form-23 (*Certificate of registration from Transport Department of Uttar Pradesh*) regarding his *Truck no. UP70-BT-3727* and contended that he has sold it to Shri Nagendra Prasad Shukla in the year under consideration and have received sale consideration in instalments totalling Rs.13,82,000/-



ITA No.23/Alld/2023

A.Y. 2013-14

Mohd. Aslam

which was deposited in his account. Thus, according to assessee, this amount cannot be part of trading/business receipt and if this amount is subtracted, then assessee's trading receipt will be less than Rs.1 crore, and in such an event, no penalty is leviable u/s 271B of the Act. However, since the documents furnished before this Tribunal as noted (supra) to support the aforesaid claim is not legible, for the interest of justice and fair play, I am inclined to set aside the impugned order of the Ld. CIT(A) and restore the matter back to the file of the AO for verification of the documents regarding assessee's claim of sale of truck on 01.10.2012 for Rs.13,82,000/- to Nagendra Prasad Shukla. And thereafter, AO to decide whether the assessee's turnover would breach the threshold limit of Rs. 1 crore and if the assessee's claim is found to be correct meaning the assessee's turnover does not breach Rs.1 crore, then, no penalty to be levied. The assessee is directed file relevant documents/written submission and request for hearing, if he desires, in accordance to law and AO to decide the issue/penalty in accordance to law.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 04/10/2023.

(ABY T. VARKEY)
JUDICIAL MEMBER

Allahabad दिनांक Dated : 04/10/2023.
Vijay Pal Singh, (Sr. PS)



ITA No.23/Alld/2023
A.Y. 2013-14
Mohd. Aslam

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) , Allahabad
4. CIT
5. DR -

By order
Assistant Registrar