

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 878/Kol/2023
Assessment Year: 2014-15

Sushma Devi Bihani 18/1B, Hindustan Road Gariahat Kolkata - 700029 [PAN : AEOPB5488B]	Vs	Assessing Officer, NFAC, Delhi
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri B.K. Agarwal, A/R
Revenue by :	Shri Sallong Yaden, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 17/10/2023
घोषणा की तारीख /Date of Pronouncement: 16/11/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") dt. 28/06/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2014-15.

2. Sole grievance of the assessee is that the Id. CIT(A) erred in confirming the penalty u/s 271B of the Act at Rs. 82,885/- levied by the Assessing Officer for not getting the books of accounts audited u/s 44AB of the Act.

3. At the outset, the Id. Counsel for the assessee submitted that the turnover of the assessee is only Rs. 65,42,350/- and the same is duly supported by the contract notes and it is not the case of the totaling of favourable and unfavorable difference of the transactions carried out during the period but, in all six transaction of purchase and six

transaction of sale. Therefore, since the turnover is less than Rs.1 Crore, no penalty is leviable u/s 271B of the Act.

3.1. On the other hand, the ld. D/R vehemently argued supporting the orders of both the lower authorities and also referring to the guidelines given by the ICAI with regard to the turnover in respect of transactions in shares, securities and derivatives.

4. We have heard rival contentions and perused the material available on record.

5. We notice that the assessee is an individual and in the profit and loss account, she has disclosed the purchases under National Spot Exchange Limited (NSE) at Rs.64,37,250/- and sales at Rs.65,42,350/-. Complete details of the purchase and sales are filed. There are in all six transactions carried out on six dates and on each of these dates, there is a transaction of purchase and sale. Against the total purchase of Rs.64,37,250/- sales is Rs.65,42,350/- and the net difference is Rs.1,05,100/-. Perusal of the orders of the revenue authorities indicates that the Assessing Officer took information from National Spot Exchange Limited, which communicated that during the year purchases of assessee is Rs. 82,29,750/- and sales is Rs.83,47,350/- and the total of both is Rs.165,77,100/-. Both the lower authorities have stuck to this figure of total turnover based on which the assessee is held to be liable to pay penalty u/s 271B of the Act since turnover is exceeding Rs.1 Crore and no auditor report has been procured u/s 44AB of the Act.

6. We notice that as per the guidelines given by the ICAI, where in case of derivatives, futures and transaction where transactions are

completed without actual delivery then in such case turnover is calculated by adding of total of favorable and unfavorable difference. For instances on a particular day, assessee makes transactions of purchase of Rs.1 Crore and sale of Rs.1,00,02,000/- and the transaction is squared off at the end of the day. In this case Rs.2,000/- will be taken part of the turnover and similar method will be applied for other transactions carried out during the year. However, in the instant case, if the above stated method is adopted, the turnover would be Sales minus Purchase i.e., Rs.1,05,100/- as referred *supra*. Assessee has filed complete details of purchase and sale with the contract notes. The figures available at National Spot Exchange Limited vary on some occasions where the transactions at the end of the year are not accounted by the assessee. Even if the details filed by the National Spot Exchange Limited is considered, the sale figure is only Rs.83,47,350/-. When we co-relate this figure with the contract notes, we find that this figure is not total of favourable and unfavorable but they are merely total of transactions of sale.

7. We, therefore, under the given facts and circumstances of the case are of the considered view that either we adopt the sales figure declared by the assessee at Rs. 65,42,350/- or we consider the sales figure as per the information provided by National Spot Exchange Limited at Rs.83,47,350/-, sales turnover is less than Rs.1,00,00,000/- which is the limit applicable for the year under appeal exceeding which the assessee is required to get its books of accounts audited u/s 44AB of the Act. Since the turnover of the assessee is less than Rs.1 Crore, there is no requirement of getting the books of accounts audited

u/s 44AB of the Act. We, therefore, set aside the finding of the ld. CIT(A) and delete the penalty of Rs.82,885/-.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 16th November, 2023 at Kolkata.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 16/11/2023

Sd/-

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
 आयकर अपीलीय अधिकरण
 ITAT, Kolkata