

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.136/Ind/2023
(Assessment Years:2014-15)

Raj Kumar Wadhvani 196, New Sindhi Colony Berasia Road, Bhopal	Vs.	ITO, NFAC Delhi
(Appellant / Assessee)		(Revenue)
PAN: AAOPW 3538K		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	06.11.2023	
Date of Pronouncement	09 .11.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 29.03.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi arising from penalty order passed u/s 271B of the Act for A.Y.2014-15. The assessee has raised following grounds of appeal:

"01. That the id CIT-Appeals, NFAC, Delhi has either not appreciated or overlooked to consider assessee's Written Submissions before sustaining penalty of Rs. 1,02.303/- u/s 271B which deserves to be deleted.

02. That Appellants actual Turnover as per his Memoranda Books of Accounts was below the limit of Tax Audit. His acceptance of Additional Turnover (to avoid litigation) for the purposes of Assessment of the relevant year on the basis of entries in the Seized Documents does not constitute accounts of the Appellant maintained

in the regular course of Business and on that basis alone, Penalty cannot be levied/ sustained in the hands of the Appellant.

03. That the Appellant is an illiterate and uneducated person and does not comprehend complex law of Income Tax. The Advocate hired by him did not ever advise him to maintain Books of Accounts and get them Audited and as such for the lack of advice on the part of the Advocate, Appellant should not be penalized u/s 271B.

04. Notwithstanding and without prejudice to the above, on the facts and in the circumstances of the case, Penalty of Rs. 1,02,303/- levied by the Id. A.O. and sustained by the Hon'ble CIT-Appeals, NFAC, Delhi is arbitrary, contrary to facts on record and therefore unlawful.

05.Ld. A.O. has erred on facts and law in levying Penalty u/s 271B & sustained by the Hon'ble CIT-Appeals, NFAC, Delhi in-spite of there being a reasonable cause u/s 273B for not getting the books audited. Therefore, above Penalty deserves to be deleted."

2. The assessee filed return of income for the year under consideration on 28.03.2016 declaring total income of Rs.2,46,520/- and disclosed turnover of Rs.14,46,290/-. Thereafter a search and seizure action was carried out in case of M/s. Kalyan Grain Merchant wherein various incriminating documents were found revealing the suppression of turnover by the assessee and consequential business income. The AO issued notice u/s 148 of the Act dated 11.05.2018. In response to the said notice the assessee filed return of income on 24.05.2018 disclosing gross turnover of Rs.2,04,60,631/- and income from business of Rs.16,36,851/-. The assessment was completed u/s 143(3) r.w. section 147 on 30th November 2019 on the total income of Rs.16,31,850/-. The AO also initiated proceedings u/s 271A as well as u/s 271B of the Act for default on the part of the assessee to maintain books of account u/s 44AB and get the same audited u/s 44AB of the Act respectively. The AO levied penalty u/s 271B @ 0.5% of the gross turnover amounting to Rs.1,02,303/- vide order dated 16.09.2021. The assessee challenged the order of the AO before the Ld. CIT(A) but could not succeed.

3. Before the Tribunal Id. AR of the assessee has submitted that in the original return of income the assessee has declared turnover of Rs.14,46,290/- and therefore, as per provisions of section 44AA of the Act

the assessee was not required to maintain books of account and consequently there was no audit of the books of account of the assessee. He has further submitted that the AO after considering the explanation and reply of the assessee has dropped the penalty proceedings u/s 271A of the Act vide order dated 16.09.2021 placed at page no.54 of the paper book.

4. Thus, Ld. AR has submitted that when the explanation and reply of the assessee was accepted by the AO in the proceedings u/s 271A of the Act then the same cannot be rejected in the proceedings u/s 271B of the Act which is only consequential to the default of non-maintenance of the books of account. Thus, the Ld. AR has submitted that when the assessee was not maintaining the books of account then the penalty u/s 271B for getting same audited report is not justified and liable to be deleted.

5. On the other hand, Ld. DR has relied upon the orders of the authorities below.


6. We have considered the rival submissions as well as relevant material on record at the outset, we note that as a result of search and seizure action in case of M/s. Kalyan Grain Merchant the AO issued notice u/s 148 of the Act for assessing the income escaped from assessment on account of suppression of turnover and consequential business income. Based on the seized material the assessee has declared the turnover of Rs.2,04,60,631/- in the return of income filed in response to notice u/s 148 of the Act. Since the assessee has not maintained the books of account therefore, the AO initiated proceedings u/s 271A as well as u/s 271B of the Act. In the proceedings u/s 271A the assessee filed its


reply placed at page no.51 of the paper book and the relevant part of the reply para 3 as under:

“03. As a matter of fact, by virtue of section 44AA(2)(iv) assessee was required to maintain such book of accounts and other documents which may enable the assessing officer to compute his total income in accordance with the provisions of this Act. In compliance with the above law assessee has maintained memorandum books of accounts from which Total Income could have been calculated. These books of accounts were produced during the course of assessment proceedings before your predecessor and he has examined the same. According to these books of accounts assessee's turnover was Rs. 14,46,290 on which assessee calculated his total income @ 8% which came to Rs. 251520. However, on the basis of certain papers/documents which were seized in a search operation conducted at the office of M/s Kalyan Grain Merchants, it was concluded by your predecessor that assessee's actual turnover worked out to Rs. 2,37,12,982/- i.e., assessee had unrecorded Turnover of Rs. 2,22,66,692/- But the papers seized were not conclusive proof of sale/turnover having being made by the assessee. The Contention of the assessee is that the seized documents cannot be treated as books of account. Also, no evidence is brought on record during the course of Assessment. Assessee also submits that he has kept and maintained memorandum books of accounts and other documents as may enable the assessing officer to compute his total income in accordance with the provisions of the Act. In order to avoid litigation and buy peace of mind, assessee opted to agree to learned AO and pay Taxes on the enhanced turnover without anticipating that he would be Show Caused as to why Penalty u/s 271A should not be imposed on him for Non Maintenance of Books of Accounts on regular basis.”

7. Accepting the said reply of the assessee the AO dropped the proceeding u/s 271A vide order dated 16th September 2021 placed at page no.54 of the paper book as under:

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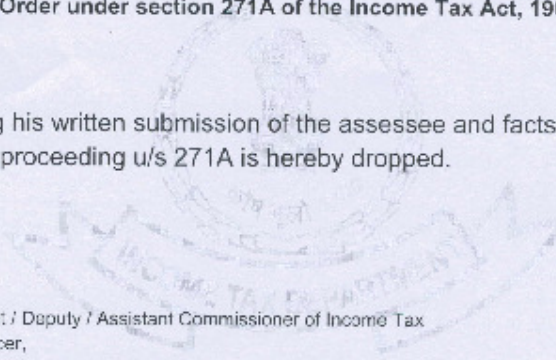
 **GOVERNMENT OF INDIA**
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National Faceless Assessment Centre
Delhi


Faceless Penalties India

1.	PAN	AAOPW3538K
2.	Name of the assessee	RAJ KUMAR WADHWANI
3.	Address of the assessee	196 NEW SINDHI COLONY,, BERASIA ROAD, , BHOPAL 462001, Madhya Pradesh , India
4.	Assessment Year	2014-15
5.	Status	Individual
6.	Amount of Penalty	Rs. 0
7.	Date of Order	16/09/2021
8.	DIN	ITBA/PNL/F/271A_1/2021-22/1035649878(1)

Order under section 271A of the Income Tax Act, 1961

Considering his written submission of the assessee and facts of the case, the penalty proceeding u/s 271A is hereby dropped.



Additional / Joint / Deputy / Assistant Commissioner of Income Tax
Income-tax Officer,
National Faceless Assessment Centre,
Delhi

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in

8. Since the assessee has not maintained the books of account for the year under consideration therefore, the question of getting the books of account, audited as per the provisions of section 44AB does not arise.

The assessee has admittedly made default to the provisions of section 44AB for not maintaining the books of account and therefore, the assessee cannot be penalized for the default in not getting the books of account audited as there cannot be any audit for non-existing books of account. The AO has also dropped the penalty proceeding u/s 271A and consequently the penalty levied u/s 271B is not justified. Accordingly in the facts and circumstances of the case when the assessee has not maintained books of account for the year under consideration and the AO initiated the proceedings u/s 271A then the assessee cannot be penalized for default u/s 44AB because no audit can be done of non-existing books of account. Hence, the penalty levied by the AO u/s 271B is deleted.

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

Order pronounced in the open court on 09.11.2023

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 09.10.2023

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*