

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

BEFORE N.K. BILLAIYA, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 2706/Del/2019

Asstt. Year: 2014-15

Ram Kumar Dhiman, B-145, Opp. Nehru Place, Kalkaji, New Delhi. PAN AIEPD2121R	Vs.	AO, Ward-26(4) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Shyam Sunder Mangla, CA
Department by :	Shri Vivek Kumar Upadhyay, Sr. DR
Date of Hearing	02/11/2023
Date of pronouncement	02/11/2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 06.02.2019 of the Ld. Commissioner of Income Tax (Appeals)-27, New Delhi ("**CIT(A)**") whereby he confirmed the penalty of Rs. 1,50,000/- imposed by the Ld. ITO Ward-26(4), New Delhi ("**AO**") under section 271B of the Income Tax Act, 1961 (**the "Act"**) for failure to get the accounts audited for the Assessment Year ("**AY**") 2014-15.

2. It is a recalled matter.

3. Briefly stated, the assessee individual e-filed his return for AY 2014-15 on 14.03.2016 declaring income of Rs. 2,19,900/-. The Ld. AO completed the assessment on total income of Rs. 84,65,42,912/- under section 143(3)

of the Act. During the assessment proceedings the Ld. AO initiated penalty proceedings under section 271B of the Act for failure to get accounts audited.

4. Consequently, show cause notice dated 14.06.2017 was issued. The assessee responded by sending reply on 18.06.2017 through e-mail. It was stated therein that the assessee has filed return declaring salary amounting to Rs. 3,00,000/-. He invested in the shares and incurred a heavy loss during the year. Due to that he did not claim any adjustment for the same in the computation, a copy of which was enclosed. It was also stated that he had no business during the year except investment in the shares. The said activity is not covered under section 44AB of the Act. Therefore penalty under section 271B is not attracted. He requested for dropping the penalty proceedings.

5. The submission of the assessee was not acceptable to the Ld. AO. According to him the statement of the assessee that he had no business during the year is incorrect as the assessee himself in his letter dated 24.12.2016 had admitted that sale of shares included the shares sold from opening stock. He noted that the turnover exceeded one crore rupees but the accounts were not got audited, hence, the provisions of section 44AB were attracted. The Ld. AO therefore imposed the impugned penalty under section 271B of the Act vide order dated 22.06.2017.

6. The appeal before the Ld. CIT(A) did not succeed. The Ld. CIT(A) confirmed the penalty observing as under:-

"4. The appellant has primarily taken the plea that in derivative transactions, under the provisions of section 44AB only the profit/loss is considered for turnover, therefore, provision u/s 271B are not applicable to the appellant. The same plea was taken by the appellant during the penalty proceedings u/s 271B before the AO. I have gone through the provision of section 44AB which have been reproduced by the AO in the penalty order also. There is no separate provision to consider only profit/loss as turnover in derivative transactions under section 44AB including the proviso or explanation. In these circumstances, the plea of the appellant cannot be accepted. As the turnover of the appellant is more than the prescribed limit in section 44AB, the appellant was required to get his accounts audited. As the appellant has

not got his accounts audited, the AO has rightly levied penalty u/s 271B for violation of provision of section 44AB. Therefore, the penalty levied by the AO of Rs.1,50,000/- u/s 271B is confirmed and the appeal of the appellant is dismissed.”

7. Dissatisfied, the assessee is in appeal before the Tribunal challenging the confirmation of the impugned penalty.

8. The Ld. AR submitted that quantum appeal of the assessee pertaining to AY 2014-15 is pending before the Ld. CIT(A). However, the Ld. CIT(A) has decided the penalty appeal first even though the quantum appeal is still pending. Since the quantum of sale is yet to be decided in first appeal, it is urged that the penalty matter be restored to the file of the Ld. CIT(A) for decision afresh after the quantum appeal is decided by him. The Ld. Sr. DR had no objection thereto.

9. On the facts and in the circumstances of the case of the assessee, we deem it fit in the interest of justice, to restore the matter back to the file of the Ld. CIT(A) to dispose of the penalty appeal in accordance with law after the quantum appeal subjudice before him is decided. Of course he shall afford reasonable opportunity of hearing to the assessee. We order accordingly,

10. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 2nd November, 2023.

sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMEBR**

Dated: 02/11/2023

Copy forwarded to-

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	