

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos. 111 to 114/Jodh/2023
Assessment Years: 2011-12 to 2014-15**

Sh. Kheraj Ram, C/o Rajendra Jain Advocate, 106, Akshay Deep Complex, 5 th B Road, Sardarpura, Jodhpur. [PAN: AKWPR3396N] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle-1, Jodhpur. (Respondent)
---	------------	--

Appellant by	Sh. Rajendra Jain, Adv.& Smt. Raksha Birla, CA.
Respondent by	Ms. Nidhi Nair, Sr. DR

Date of Hearing	19.12.2023
Date of Pronouncement	21.12.2023

ORDER

Per: Bench:

A batch of four appeals of the same assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals) Udaipur-2, [in brevity the 'CIT (A)'] order passed u/s 250 of the Income Tax Act 1961, [in brevity the Act] for A.Ys. 2011-12 to 2014-15. The impugned orders were emanated from the order of

the Id. Dy. Commissioner of Income Tax, Central Circle-1, Jodhpur, (in brevity the AO) order passed u/s 271(1)(b) of the Act.

2. At the outset, all the appeals are common and have a same nature of fact. Therefore, all the appeals are taken together, heard together and disposed of together. For the sake of convenience, **ITA No. 111/Jodh/2023** is taken as the lead case.

ITA No. 111/Jodh/2023

3. The assessee has taken the following grounds which are reproduced as below:

“1. That on the facts and in the circumstances of the case, the Id CIT(A) grossly erred in upholding the validity of order of imposition of penalty by Id AO.

2 That on the facts and in the circumstances of the case, the Id CIT(A) grossly erred in sustaining the penalty of Rs 10,000/- u/s 271(l)(b) of the Act.

3. That on the facts and in the circumstances of the case, the Id CIT(A) grossly erred in not considering the submission in right perspective and judicious manner while confirming the penalty u/s 271(l)(b) of the Act,

4. That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.”

4. Brief fact of the case is that the assessee filed the return and computing profit and gains on presumptive basis u/s 44AD of the Act. The assessment was completed u/s 153A r.w.s. 143(3)/144 of the Act. The assessee was asked to produce the documents related to the capital account and the statement of affairs for the impugned assessment year. The assessee placed that the return was filed u/s 44AD and assessee has availed the presumptive scheme. So, the documents were not able to file before the ld. AO. The ld. AO initiated the penalty proceeding for noncompliance of the documents under section 271(1)(b)/274 of the Act. Finally, the penalty was levied amount to Rs.10,000/- u/s 271(1)(b). Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the penalty order. Being aggrieved assessee filed an appeal before us.

5. The ld. AR submitted the assessment order related to assessment year 2013-14, order passed on dated 31.12.2018. The relevant paragraph is duly reproduced as below:-

“6. During the assessment proceedings, the assessee was asked to furnish the capital account and statement of affairs for

the year. However, the assessee did not furnish the same stating that the books of accounts are not being maintained being an individual declaring income u/s 44AD of the IT Act, 1961. However, on perusal of the details filed, including computation of income, it was seen that the assessee is in possession of assets which 'are not ascertainable from, the ITR and is also having income relatable to such assets in different years of the block period i.e. A.Y, 2011-12 to A.Y. 2017-18 Accordingly, approval u/s 142(1)(iii) was sought from the Joint Commissioner of Income Tax, Central Range. Jodhpur to requisition the statement of all assets and liabilities from the assessee for the A.Y. 2013-14, which was granted vide Letter No. 957 dated 03/12/2018 of the Jt. CIT, Central Range. Jodhpur. Accordingly, notice u/s 142(1)(iii) dated 03/12/2018 was issued to the assessee to furnish the statement of assets and liabilities for the AY 2013-14. However, the assessee failed to furnish such statement till the finalization of this assessment order. Therefore, penalty proceedings u/s 271(l)(b) are being initiated-for failure; on part of the assessee to comply with the provisions of Sec.142(1)(iii) of the Income Tax Act, 1961.”

5.1 The ld. AR placed that as the assessee filed the return u/s 44AD, hence, the relevant documents are not maintaining by the assessee during the filing of the

return. The Id. AR further placed the documents are not available due to the assessee is availing the presumptive scheme. Therefore, the penalty proceeding u/s 271(1)(b) is unjustified as non-availing the documents.

6. The Id. DR vehemently argued and relied on the order of the revenue authorities. The Id. DR invited our attention in appeal order page 7. The relevant para is reproduced as below:

“4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the penalty order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The facts remains that in this case notice u/s 142(1)(iii) was issued to the appellant 1 time by the AO but the appellant did not provide any justification as to why such information could not be furnished to the AO even though, it was statutorily required to be furnished u/s 142(1)(iii) of the Income tax Act, 1961. Therefore, for non-compliance the AO imposed penalty of Rs. Rs. 10,0007- u/s 271(1)(b) of the Income tax Act, 1961.

The appellant has discussed some decisions which were not on the issue of penalty u/s 271(1)(b) but on validity of assessment made under section 153A. Therefore, the reliance on these decisions by the appellant is found to be misplaced.

The appellant explained that because of reasonable cause i.e. medical problem with the Authorized Representative, compliance could not be made. However, no such evidence was furnished before the AO during assessment proceedings or during appellate proceedings. Appellant has not filed any reply to the notice issued to the appellant during assessment proceedings.

It is correct that inconvenience is caused to the Assessing Officer by non compliance of the appellant prejudice is also caused to the final outcome investigation remain inconclusive because of non-compliance by the appellant. The enquiries could not be completed because of non compliance by the appellant. The reason for non-compliance by the appellant is found to be vague and without of the case the appellant is entitled not for relief from levying penalty u/s 271(1)(b). Consequently, the penalty levied by the AO u/s 271(1)(b) of the Act is confirmed.”

7. We heard the rival submission and considered the relevant documents available in the record. The assessee already availing the provision u/s 44AD in presumptive scheme, therefore, assessee is getting immunity to maintaining the documents and details and also for maintaining the books of account u/s 44AA of the Act. During hearing, the Id. AR invited our attention in the order of the Co-ordinate Bench of the Jodhpur in the case of **Sh. Achala Ram Jat vs. DCIT, C.C.**

in **ITA 50 to 52/Jodh/2023** date of order **17.08.2023**. The relevant paragraph is duly reproduced as below:

“7. We found that the submission made by the ld. AR are realistic and when the assessment was completed u/s 143(3) r.w.s153C of the Act, the penalty u/s 271(l)(b) of the Act cannot be imposed. Considering the facts, circumstances and the ratio of judicial decisions, we set-aside the order of the CIT(A) and direct the Assessing officer to delete the penalty and allow the grounds in favour of the assessee.

8. In the result, the appeal filed by the assessee is allowed.

ITA Nos 51 & 52/Jodh/2023, A.Y 2012-13 & 2013-14.

9. As the facts and circumstances in these appeals are identical to ITA No. 50/JODH/2023, for the A.Y 2011-12 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis mutandis for this appeal also. Accordingly, grounds of appeal of the assessee are allowed.”

7.1 We find that the assessee has proper reason for non submission of documents before the ld. AO during assessment proceeding as the assessee is availing the presumptive scheme. So, the penalty u/s 271(1)(b) is unjustified. In our considered view, the penalty order is quashed and appeal of the assessee **ITA No. 111/Jodh/2023** is allowed.

8. As our observation in the **ITA No 111/Jodh/2023** is *mutatis mutandis* applicable to **ITA No. 112 to 114/Jodh/2023** and will be followed accordingly.

9. In the result, the appeals of the assessee bearing **ITA Nos. 111 to 114/Jodh/2023** are allowed.

Order pronounced in the open court on 21.12.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order