

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.458/Ahd/2023
Assessment Year: 2012-13**

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| Sureshchandra Jayantilal Desai, 1,Devsatya Bungalows, Opp. Pritamnagar Akhada, Ellisbridge, Ahmedabad - 380 006 [PAN – ADWPD 8508 K] | Vs. | The Income Tax Officer, Ward – 5(3)(1), Ahmedabad. |
| (Appellant) | | (Respondent) |
| Assessee by | Shri Pritesh Shah, AR | |
| Revenue by | Shri Ravindra, Sr. DR | |
| Date of Hearing | 28.11.2023 | |
| Date of Pronouncement | 05.01.2024 | |

ORDER

This appeal is filed by the assessee against order dated 22.05.2023, passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal :-

- “1. The learned CIT(A), National Faceless Appeal Centre (NFAC) erred in law and on facts in not granting the adequate opportunity of submission and being heard, such opportunity should have been granted to me.
2. The learned CIT(A) erred in law and on facts in confirming the penalty of Rs.1,50,000/- imposed by Assessing Officer under Section 271B of the Income Tax Act, 1961, such penalty is requested to be deleted.”

3. The assessee is an individual filed return of income under Section 139(1) of the Income Tax Act, 1961 for Assessment Year 2012-13 on 29.09.2012 declaring total income at Rs. Nil. Subsequently, on the basis of information, notice under Section 148 of the Act was issued to the assessee on 22.03.2019. In response,

the assessee filed his return of income on 27.04.2019 declaring total income of Rs. Nil. Accordingly, notice under Section 143(2) of the Act was issued to the assessee. Notice under Section 142(1) of the Act was issued and the assessee furnished his reply. Accordingly, order under Section 143(3) read with Section 147 of the Act was passed on 10.12.2019 assessing total income of Rs.57,88,187/-. During the assessment proceedings, the Assessing Officer observed that the assessee has shown gross receipt at Rs.3,12,66,248/- in the return of income. However, the assessee did not get the books of account audited. Since the assessee failed to get his books of account audited, penalty proceedings under Section 271B of the Act was separately initiated for non-audit of books of account. The Assessing Officer was satisfied that the assessee failed to get his account audited under Section 44AB of the Act despite having receipt/turnover more than the limit prescribed. Hence, penalty proceedings under Section 271 of the Act were initiated. Show cause notice under Section 274 read with section 271B of the Act was issued on 10.12.2019 asking the assessee to show cause why order imposing penalty under Section 271B of the Act should not be made. However, no compliance was made and subsequent show cause notice dated 10.05.2021 issued to the assessee. The assessee furnished his reply dated 27.09.2021 and after taking into account the reply the Assessing Officer observed that the assessee committed default under Section 271B of the Act without any reasonable cause and thus levied penalty of Rs.1,50,000/-.

4. Being aggrieved by the Penalty Order under Section 271B of the Act, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee maintains his books of account properly and the same was audited by the Tax Auditor. The Tax Auditor report was uploaded on 28.09.2012 by the Chartered Accountant of the assessee and thereafter income tax return was filed on 29.09.2012. In the submission of additional evidences due to mistake the Tax Audit Report of A.Y. 2011-12 was enclosed instead of tax audit report of A.Y. 2012-13. The Ld. AR pointed out that the Tax Audit Report of A.Y. 2012-13 dated 28.09.2012 in the online scrutiny assessment submission filed on 05.12.2019 such Tax Audit Report was uploaded.

But the Assessing Officer has not mentioned and only observed that the assessee did not get the books of account audited. Therefore, the Ld. AR submitted that the assessee's tax auditor confirmed that he has uploaded the tax report to the Income Tax website but the same does not seem to be seen in the Income Tax Website. The Ld. AR further submitted that all the additional evidences alongwith Tax Audit Report dated 28.09.2012 was not taken into account by the CIT(A).

6. The Ld. DR submitted that since the said report was not there before the CIT(A), the matter may be remanded back to the CIT(A). The Ld. DR relied upon the Penalty Order, Assessment Order and the Order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has wrongly submitted Tax Audit Report for A.Y. 2011-12 but as per statutory obligation he has obtained Audit Report dated 28.09.2012 for A.Y. 2012-13 and has uploaded the same on 05.12.2019. The same was very much before the Assessing Officer as well as before the CIT(A) but both the Authorities have ignored the same and also ignored the additional evidences related to response to notice as well as actual Audit Report for A.Y. 2012-13. Therefore, the CIT(A) was not right in confirming the penalty under Section 271B of the Act. The contention of the Ld. DR does not sustain as all the relevant documents were before the CIT(A) as well as before the Assessing Officer. Therefore, appeal of the assessee is allowed.

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

Order pronounced in the open Court on this 5th January, 2024.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 5th January, 2024

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad