

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1864/Del/2022
(Assessment Year : 2015-16)

Sunny Walia Plot No.141, Pratap Nagar, New Delhi – 110 064	Vs.	ITO Ward – 49(4) New Delhi
PAN No. AAVPW 2884 P		
(APPELLANT)		(RESPONDENT)

Assessee by	-None-
Revenue by	Shri Anuj Garg, Sr. D.R.

Date of hearing:	15.01.2024
Date of Pronouncement:	15.01.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee against the first appellate order of the Ld. Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)' in short) dated 30.06.2022 arising from the assessment order dated 28.12.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2015-16.

2. The captioned appeal has been filed by the assessee against the imposition of penalty of Rs.1,50,000/- under section 271B of the Act alleging that assessee has not

filed tax audit report in terms of provisions of section 44AB of the Act despite the total value of transactions made in derivative segment of Rs.46,55,36,733/- which exceeds the limit prescribed for audit of the books of account under section 44AB of the Act.

3. When the matter was called for hearing none appeared for the assessee, matter was accordingly proceed *ex parte*.

4. As per the case records, the assessee is *inter alia* engaged in derivative segment of stock market and is also engaged in trading transaction in stock market. As per records, the assessee contends that the Revenue authority have wrongly adopted sale value as turnover for the purposes of section 44AB of the Act whereas as per para 5 of the Guidance Note of Tax Audit under section 44AB of the Act issued by ICAI, turnover in respect of speculation business is to be reckoned as only which may be positive or negative difference for independent transactions. As per the difference of positive and negative, the turnover works out to Rs.12.58 lakhs only whereas the Assessing Officer has wrongly considered turnover to be total sale proceed of transaction done at a whopping figure of 6.5 crore and consequently, imposed penalty under misconception of facts.

5. We find that the issue is squarely covered in favour of the assessee by the decision of Co-ordinate Bench in *Parag Jain vs. ITO ITA No.278/Del/2022* order dated 23.05.2023.

6. In accord with the guidance note issued by ICAI, the turnover of the assessee for the purposes of section 44AB stands lower than the threshold limit prescribed for audit purposes. Consequently, the reasonable cause exists for non-compliance of

provision of section 44AB of the Act. The penalty imposed under section 271B is consequently reversed and cancelled.

7. In the result, appeal of assessee is allowed *ex parte*.

Order was pronounced in the open court on 15.01.2024

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 15.01.2024

*Priti Yadav, Sr. PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI