

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.998/Del/2023
(Assessment Year: 2017-18)**

Ved Singh,
Mother Dairy Milk Shop No.426,
Opp. Daryaganj Police Station,
Delhi Gate, Central Delhi,
Delhi – 110 002.

vs.

ITO, Charkhi Dadri,
Haryana.

(PAN : COCPS3647R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Kishan Kumar Gupta, CA
REVENUE BY : Ms. Maimun Alam, Sr. DR

Date of Hearing : 15.01.2024
Date of Order : 19.01.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 17.03.2023 for the assessment year 2017-18.

2. Grounds of appeal taken by the assessee read as under :-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law as well as on facts on confirming the actions of Learned AO in levy the penalty of Rs.1,09,807/- u/s 271B of the income tax act,1961.

2. That the Ld. CIT(A) has been erred in law as well as on facts on treated the deposited cash into current account and transaction with mother dairy fruit & vegetable private limited exceeding Rs.1 crores formed part of sales consideration for getting compulsory requirement of tax audit u/s 44AB of the income tax act,1961 by assessee for A.Y.2017-18.

3. That the Ld. CIT(A) has been erred to not consider about the facts of commission income fixed by mother dairy fruit & vegetable private limited on each and every supply of milk and dairy products by assessee while confirming of action of Ld. A.O in levy the penalty of Rs.1,09,807/- u/s 271B of the income tax act,1961.while the assessee already disclosed the net income of Rs.1,64,871/- from mother dairy milk & dairy products transaction mother dairy fruit & vegetable private limited to assessee for getting the tax audit u/s 44AB separately after onwards of assessment proceeding concluded in the year 2019 on cash deposited during demonetization period from 08.11.2016 to 30.12.2016 by assessee.

4. That having regard to relied on cited case law of Hon'ble IT AT, Pune Bench in the matter of "Bablu Kumar Harinarayan Gupta Vs. ITO, Ward-1(2), Nashik" in ITA Nos.677 & 680/PU 12021 order dated 15.11.2022 for A.Y.2010-11 & 2012-13,wherein Ld. CIT(A) has been erred in law and on facts in confirming the levy the penalty of Rs.1,09,807/- by Ld.AO u/s 271B of the income tax act,1961 for A.Y.2017-18."

3. Assessee in this case was earning commission from selling products of Mother Dairy. Assessee claimed that assessee has earned only commission income of Rs.3,24,558/-. However, AO noted that assessee has made cash deposit in SBI on various dates amounting to Rs.2,74,40,000/-. Assessee claimed that this is sales on behalf of Mother Dairy. AO was of the opinion that assessee had failed to get his accounts audited. Hence, AO made penalty under section 271B of the Income-tax Act, 1961 (for short 'the Act') @ ½% of the total sales and the penalty figure came to Rs.1,09,707/-.

4. Before the ld. CIT (A), assessee contended that assessee is only a commission agent and earns only commission from selling products of Mother Dairy. However, ld. CIT (A) was not convinced that the assessee

was not required to get his books of account audited for the year under consideration and next assessment year assessee has got his accounts audited. The order of Id. CIT (A) in this regard may gainfully read as under:-

“ The issue was considered. The penalty order, written submission and relevant provisions of the Act were carefully perused. From the submission of the appellant, it is clear that the appellant is claiming only commission income of RS.3,24,558/- derived from the sale of dairy products on behalf of the M/s Mother dairy fruit & vegetable private limited. It is stated in the written reply of the appellant submitted during the course of the appellate proceedings that total transactions of the appellant with mother dairy during the year was to the tune of Rs.2,91,61,585. It is also seen that the receipts from sale are deposited in the bank account of the appellant. In view of these facts and circumstances, the Assessing Officer has rightly concluded in the course of the penalty proceedings u/s 271B that the gross turnover of the appellant from sale of dairy exceeded the prescribed limit for getting the account audited u/s 44AB of the Act. Moreover, the appellant has himself acknowledged that for the A Y 2019-20, tax audit u/s 44AB has been done in his own case. Therefore, the explanation of the appellant that he was not required to get his books of account audited for the current year does not hold any valid ground once it is clear that the turnover exceeded Rs. 1 crore during the relevant A. Y. 2017-18. This fact has been established from the written reply of the appellant. Hence, the explanation of the appellant that he was not required to get his books of account audited for the current assessment year is found to be contradictory to his own statement, because he has specifically stated that he became aware and got the books of account audited as per section 44AB for the AY 19-20.”

5. Against this order, assessee has filed appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee contended that assessee was only earning commission on sales from Mother Dairy products and assessee's income was only Rs.3,24,558/-. He further submitted that from the next year, Mother Dairy made it mandatory for its agents like the assessee to maintain

books of account, records and sales on their own. He submitted that this cannot be a reason to levy penalty u/s 271B of the Act. He submitted that assessee was under a bonafide belief that upto this financial year, sales belonged to Mother Dairy and sales & turnover was not of assessee and assessee's income was only commission income.

7. Ld. DR for the Revenue, on the other hand, relied upon the orders of the authorities below.

8. Upon careful consideration, we find that assessee has made cogent submissions. Assessee's commission income was only Rs.3,24,558/- and the deposits in the bank were sales on behalf of Mother Dairy. The assessee was under a reasonable/bonafide belief that he was not needed to get his accounts audited as transactions belonged to Mother Dairy. In these circumstances, we set aside the orders of the authorities below and delete the levy of penalty u/s 271B of Rs.1,09,807/-.

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

Order pronounced in the open court on this 19th day of January, 2024.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 19th day of January, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**