

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री मनोमोहन दास, न्यायिक सदस्य का समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM AND
HON'BLE SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ **ITA Nos.1199 & 1200/Chny/2023**
(निर्धारण वर्ष / **Assessment Years: 2013-14 & 2014-15**)

Shri Balasingam Somasundaram, 34, 35 Tatabad 1 st Street, Dr.Sivanandha Colony, Coimbatore-641 012.	बनाम / Vs.	Assistant Commissioner of Income Tax, Central Circle-1 Coimbatore.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. BAKPS-6990-L		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P.Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of Hearing	:	28.02.2024
घोषणा की तारीख / Date of Pronouncement	:	06.03.2024

आदेश / ORDER

Per Manomohan Das, JM:

This set of two appeals by the assessee are directed against the orders of the learned Commissioner of Income-Tax, (Appeals), Chennai -20 [CIT(A) dated 26-09-2023 in respect of the levy of penalty under section 271B of the Income-Tax Act, 1961 which pertains to the Assessment Years [AYs] 2013-14- & 2014-15.

2. The grounds of appeals of the assessee are as under:

“1. The Order of the Learned Commissioner (Appeals) is illegal and void of legal reasoning.

2. The Learned Commissioner (Appeals) erred in not properly considering and appreciating the replies and objections submitted by the Appellant including various binding precedents .

3. The Learned CIT(A) erred in not understanding the very fundamental that once the appellant does not maintain books of accounts, the offence is complete and therefore, getting them audited also does not arise. [Relying on 222 ITR 691 (Gau)].

4. Without prejudice to the generality of the foregoing grounds, the Learned Commissioner (Appeals) erred in not following the decisions cited, including the jurisdictional Tribunal decision rendered in ITA No. 3279/Chny/2018 dated 27/03/2019, despite mentioning them in the Order passed under Section 250.

5. Without prejudice, the Learned Commissioner (Appeals) affirmed and confirmed the levy of penalty under Section 271B of the Act, merely on the reason that the said penalty is higher when compared to that of Section 271A, which reasoning is extraneous, irrelevant and hence, illegal.”

3. The facts involved in both the appeals are common except the Assessment years. Hence, first we take up the appeal in ITA No.1199/Chny/2023 for adjudication.

4. The brief facts of the case are that the assessee is engaged in the business of Real Estate and assessed to income tax. A survey operation under section 133A was conducted at the business premises of the assessee on 13-08-2018. During the course of the survey, it was noticed that the assessee deposited cash to the tune of Rs. 7,83,18,750/- and also invested a sum of Rs. 60,33,000/-. Therefore, notice under section 148 of the Act was issued to the assessee for assessing the escaped income. The assessee in response, filed the return of income for the AY 2013-14 on 16-04-2021 admitting total income of Rs. 36,30,130/-. Thereafter, notice under

section 143(2) was issued to the assessee on 03-12-2021 in response to which the assessee submitted the details. It was the submission of the assessee that he has not maintained proper books of account and accordingly he estimated his income @ 4% on the gross receipts of Rs. 9,07,14,781/-. The Id. AO, after considering the submissions of the assessee observed that the assessee was subjected to tax audit under section 44AB of the Act on the basis of its gross receipts. Also, the Id. AO estimated the total income of the assessee at 8% of the gross receipts and accordingly made addition of Rs.45,20,661/- to the total income of the assessee. Subsequently, penalty proceedings under section 271B initiated against the assessee for failure to get the accounts audited under section 44AB of the Act and vide order dated 26-09-2022, Ld. A.O levied a penalty of Rs. 1,50,000/- upon the assessee.

5. Being aggrieved, the assessee filed appeal before the Id. CIT(A), Chennai. The Id. CIT(A) vide order dated 26-09-2023 dismissed the appeal of the assessee.

6. Being aggrieved, the assessee filed the present appeal before the Tribunal.

7. Heard the representatives of both the parties and perused the materials on record.

8. The Ld. AR submitted that the assessee did not maintain books of accounts and in similar cases the Hon'ble Chennai Tribunal and the Hon'ble Gauhati High Court decided the issue in favour of the assessee. On the other hand, the Ld. DR supported the order of the Id. CIT(A).

9. We have carefully considered the submissions of both the parties and perused the materials on record. The Id. CIT(A), after considering the case of the assessee, observed that the case of the assessee could be considered as a case of non-production of books of accounts and not getting the books of accounts audited u/s 44AB rather than a case of non-maintenance of books of accounts. The Id. CIT(A) observed that the assessee did not maintain proper books of account. The Id. CIT(A) further observed that there is a difference between non-maintenance of books accounts and not maintaining proper books of accounts. Not maintaining proper books of accounts means books of accounts are maintained but not as expected to be maintained as per applicable rules.

10. We observe from the copy of the written submissions which was placed before the Id. CIT(A) that the assessee did not maintain books of accounts for AYs 2013-14 and 2014-15. The Ld. AR also submitted that the assessee did not maintain books of accounts for the AYs. 2013-13 and 2014-15.

11. We observe that the maintenance of books accounts is a must as per section 44AA of the Act so as to enable the Income-Tax Authorities to assess the income of an assessee correctly and for this purpose it can be said that books of account must be a proper books of accounts. Otherwise, the purpose of the Act will not be fulfilled. We observe that the assessee did not submit before the Id. AO that he maintained books of accounts which is not in a proper form. Hence, the assessee's submission before the Id. AO that he did not maintain proper books of account will carry the meaning that books of account were not maintained by the assessee.

12. On the issue of non-maintenance of books of account, we observe that the Hon'ble Chennai Tribunal vide order dated 27-03-2019 in the case of Shri Natesan Ravi vs. Asst. Commissioner of Income Tax (Appeal No. 3279/Chny/2018) decided the similar issue in favour of the assessee. The Hon'ble Tribunal while deciding the issue considered the cited decision of the Hon'ble Guwahati High Court. The Hon'ble Guwahati High Court in the case of Surajmal Parsuram Todi vs. Commissioner of Income Tax [1996] 222 ITR 691 (Gau) held that "maintenance of accounts is envisaged under section 44AA and on failure to do so the assessee shall be liable to be penalized under section 271A. Even after maintenance of books of account the obligation of the assessee does not come to an end. He is required to do something more, i.e. by getting the books of account audited by an

accountant. But when a person commits an offence by not maintaining the books of account as contemplated by section 44AA, the offence is complete. After that there can be no possibility of any offence as contemplated by section 44AB and, therefore, the imposition of penalty under section 271B was held to be erroneous.

13. The case in our hands is similar. The assessee did not maintain books of account. As he did not maintain books of account, no question for producing the books of account before the Tax Authority will arise. The assessee violated section 44AA of the Act and for this action, penalty is levied u/s. 271A of the Act. However, the Tax authorities levied penalty u/s 271B of the Act due to non-submission of books of account. As no books of accounts were maintained by the assessee he could not produce books of account before the Tax authority and therefore, no question will arise for production of books of account.

14. In view of the aforesaid discussion, it is our considered opinion that penalty imposed by Ld. A.O u/s 271B of the Act is erroneous. Accordingly, we direct Id. AO to delete the impugned penalty. The reasons given by us in the preceding paragraphs shall *mutatis mutandis* apply to appeal in ITA No.1200/Chny/2023 as well. Therefore, for the similar reasons, we direct the Assessing Officer to delete penalty levied in this appeal also.

15. In the result, both the appeals of the assessee are allowed.

Order pronounced on 06th March, 2024.

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(MANOMOHAN DAS)
न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई / Chennai; दिनांक / Dated 06.03.2024
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF