

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

मजनीय श्री महावीर सिंह, उपध्यक्ष एवं
मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.1555/Chny/2023**
(निर्धारण वर्ष / **Assessment Year: 2013-14**)

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|---|----------------------|---------------------------------------|
| Shri Suresh No.256, Old MIG New Housing Unit, Thanjavur – 613 005. | बनाम/ Vs. | ITO., Ward-1, Thanjavur. |
| स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. BRXPS-9355-M | | |
| (पीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी की ओरसे/ Appellant by | : | Shri V. Karthick Krishnan (CA) – Ld. AR (Virtual Mode) |
| प्रत्यर्थी की ओरसे/ Respondent by | : | Shri D. Hema Bhupal (JCIT) –Ld. Sr. DR |

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| सुनवाई की तारीख/ Date of Hearing | : | 19-03-2024 |
| घोषणा की तारीख / Date of Pronouncement | : | 19-03-2024 |

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by confirmation of penalty u/s 271B for Rs.1,00,233/- vide impugned order dated 26.10.2023, the assessee is in further appeal before us.

2. From case records, it emerges that the assessee was assessed u/s 147 r.w.s. 144B on 28.03.2022. It transpired that the assessee deposited certain cash in the bank accounts but the assessee did not file return of income. Accordingly, the case was reopened. The assessee earned commission income from security

services. The assessee submitted that the provisions of Sec.44AD would not apply and audit requirement was not applicable to the assessee. The assessee produced confirmation letter from CISB Facility Services Pvt. Ltd. confirming that the assessee was responsible for manpower employed at ATM located at certain locations. It was stated by the assessee that the cash was deposited and subsequently withdrawn for salary reimbursements. The assessee commission of 5% on cash deposit of Rs.200.46 Lacs. However, rejecting the same, taking help from the provision of Sec.44AD, Ld. AO estimated commission of 8% and framed the assessment. At the same time, Ld. AO levied impugned penalty of Rs.1 Lacs u/s 271B for failure to get its accounts audited u/s 44AB. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

3. From the fact it emerges that the assessee has estimated his income @5% of cash deposit whereas Ld. AO has estimated the same @8% of cash deposit. There is no finding that the cash deposit, in its entirety, constitute business turnover of the assessee. It also emerges that the assessee has not maintained any books of accounts and income determination is on pure estimation. Considering this fact, there would be no question of levy of penalty for alleged default u/s 44AB. This is not a fit case of levy of penalty. By deleting the same, we allow the appeal of the assessee. No other ground has been urged before us.

4. The appeal stand allowed.

Order pronounced on 19th March, 2024.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

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

चेन्नई Chennai; दिनांक Dated : 19-03-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF