

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.6436/Del/2018
निर्धारणवर्ष/Assessment Year:2014-15

Ankit Aggarwal B-131, Derawal Nagar, New Delhi. PAN No.AIEPA0091P	<u>बनाम</u> Vs.	ACIT Circle 36(1), E-2 Block, Civic Centre, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	None
Revenue by	Shri Kanv Bali, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	19.03.2024
उद्घोषणाकीतारीख/ Pronouncement on	27.05.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-12, New Delhi dated 20.06.2018 for the AY 2014-15 in sustaining the penalty levied u/s 271B of the Act.

2. In spite of issue of notice none appeared on behalf of assessee nor any adjournment was sought. The notices issued on various dates returned un-served. The notice issued fixing the date of hearing on 19.03.2024 returned un-served with the endorsement of

the postal authorities that the addressee left. Therefore, we dispose of the appeal on hearing the Ld. DR.

3. The Ld. DR submits that the Assessing Officer levied penalty u/s 271B of the Act for failure to get accounts audited in connection with business of F&O (derivatives) trading by the assessee. Ld. DR submits that during the financial year relevant to AY 2014-15 the assessee entered into derivative trading transactions in F&O to the extent of Rs.2,82,75,480/- and the assessee did not get its accounts audited as stipulated u/s 44AB of the Act and no reasonable cause was explained as to why the assessee did not get his accounts audited and, therefore, the Assessing Officer rightly levied penalty u/s 271B of the Act.

4. We have heard the Ld. DR, perused the orders of the authorities below.

5. The Ld. CIT(Appeals) considering the submissions of the Assessee and the averments of the AO sustained the penalty observing as under: -

“7. Decision

7.1 The Assessing Officer has levied penalty under section 23111 for nature of the assessee to get transactions in F&O segment his books of accounts audited for conducting of shares during the year and

incurring loss on account of derivative on account of l of the limit prescribed for getting the tax audit done under section 44AB of the Act.

7.2 The appellant on the other hand has contended that he had entered in 1 & transactions as an investor and had also not cleaned the loss arising therefrom while filing his return of income. The appellant has further contended that no expenditure had been incurred by him or was claimed in conducting F&O transactions since he treated the same to be the part of an investment activity.

7.3 The Assessing Officer has made out a case of F&O transactions being in business activity and levied the penalty for non conduct of audit under section 44AB by receiving information from M/s Android and Company for the volume of transactions which was reported by them to be Rs. 2.8 crores.

7.4 The contention of the appellant that he was under the bona fide belief that the transactions done by him in F&O segment were as an investor and had also not claimed the loss arising there from in his return of income.

7.5 The A.R. during the course of appellate proceedings has referred to a number of decisions to contend that bona fide belief can be held to be a reasonable cause under section 273B of the Act.

7.6 I have gone through the assessment order, the penalty order and the written and oral arguments of the appellant and find that the appellant could not substantiate the plea taken by him and the fact remains that the turnover of the assessee exceeded the limit of Rs.1 cr. The assessee was under legal obligation to get his accounts audited u/44AB of the IT Act. The assessing officer has clearly mentioned that the documents detailing transactions carried out in F&O segment were available with the assessee those were produced by the assessee during the course of assessment proceedings. These facts clearly indicate that assessee was having full knowledge of facts about the turnover.

7.7 In view of above facts and in the circumstances the penalty levied by the Assessing Officer is held to be justified and, hence, confirmed.”

6. On careful perusal of the order of Ld.CIT(A), we do not find any valid reason to interfere with the findings especially the findings of the lower authorities have not been rebutted with evidences before us. Hence, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the assessee.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 27.05.2024

**Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 27.05.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi