

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 560/M/2024
Assessment Year: 2018-19**

Tejraj Dalichand Jain Flat No. 14, Nakshtra, Chandavarkar Road, Borivali (West)- 400092. PAN: AABPJ3476C	Vs.	National Faceless Assessment Centre ITO 25(2)(2) BKC, Mumbai.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Neelkanth Khandelwal, A.R.
Revenue by : Shri P.D. Chougule, (Addl. CIT), Sr. D.R.

Date of Hearing : 21 . 05 . 2024
Date of Pronouncement : 29 . 05 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed against the order of the Ld. CIT Appeal passed u/s 250 of the Income Tax Act ("Act" in short) vide order no. ITBA/NFAC/S/250/2023-24/1059124020(1) dated 28.12.2023 for assessment year 2018-19.
2. The following grounds of appeal have been raised:

*"The following grounds of appeal are independent of,
and without prejudice to, one another-*

1. *The Commissioner of Income-tax (Appeals) at the National Faceless Appeal Centre (NFAC) (hereinafter referred to as the CIT(A)) erred in upholding the action of the Assessing Officer in levying penalty of Rs 60,366 under section 271B of the Act.*
2. *The appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in levying the impugned penalty under section 271B inasmuch as the CIT(A) has not appreciated the facts of the case in its entirety.*
3. *The appellant further, contends that on the facts and in the circumstances of the case and in law, he is not required to get his books of account audited under section 44AB of the Act inasmuch as no business activity is undertaken by him in his personal capacity. The interest income received from various partnership firms in which he is a partner is chargeable under the head "profits and gains from business and profession" by virtue of deeming provisions of section 28(v) of the Act and hence, the CIT(A) ought not to have upheld the action of the Assessing Officer in levying the impugned penalty.*
4. *The appellant craves leave to add to, alter or amend the aforestated ground of appeal."*

3. There is only one ground of appeal involved in this case i.e. levy of penalty of Rs.16,366/- u/s. 271B of the Act. The facts of the case, in brief, are that the case was selected for complete scrutiny assessment under E- Assessment Scheme, 2019 on the following issues:-

Sr. No. Issues

- i. Deduction from income from other sources
- ii. Capital gains/ income on sale of property

The assessing officer, on perusal of the return of income and material available on record, found that the interest income received by the assessee from partnership firm was wrongly shown under the head of 'income from other sources' whereas, the same should have been shown under the head profit and gains from business and profession. Accordingly, the assessing officer recomputed the income as per the details given in the body of the assessment order. The assessing officer also initiated the penalty proceeding u/s. 271B of the Act for not getting the books of accounts audited u/s. 44AB of the Act as he found that the total turnover of the assessee under the head business income exceeded the limit of Rupees one crore. The AO then imposed a sum of Rs.60,366/- as a penalty u/s. 271B of the IT Act for failure to get the accounts audited u/s. 44AB of the Act at the rate of half percent of the total turnover of Rs.1,20,73,232/-.

4. Aggrieved by the penalty order, the assessee filed appeal before the Ld. CIT Appeal who confirmed the penalty order vide its order no. ITBA /NFAC/S/250/2023-24/1059124020(1) dated 28/12/2023 for the assessment year 2018-19.

5. Further aggrieved by the order of the Ld. CIT Appeal, this appeal has been preferred. During the course of hearing before us, the appellant referred to the deeming provision of section 28(5) of the Income Tax Act and stated that he was not carrying on any income from business or profession and has only received interest from the partnership firm and thus, his accounts was not liable to be audited u/s. 44AB of the Income Tax Act. The appellant also placed reliance on the decision of the High Court of Bombay in Perizad Zorabian Irani Vs. Principle Commissioner of Income Tax wherein the Hon'ble High Court has upheld that the petitioners remuneration from partnership cannot be treated as gross receipt under the head business and profession and accordingly, the petitioner was not required to get her account audited u/s. 44AB of the Income Tax Act.
6. The Departmental Representative, on the other hand, relied on the order of the Ld. CIT Appeal. We have considered the rival submissions and found that during the period under consideration the appellant has no business activities and therefore, had no business income except interest income from partnership firm and thus, following the decision of Hon'ble Bombay High Court (Supra), the appellant was not

liable to be audited u/s. 44AB of the Income Tax Act. The penalty imposed u/s. 271B of the Income Tax Act is, therefore, deleted.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 29.05.2024.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai, Dated: 29.05.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.