

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.383/Nag./2022**  
(Assessment Year : 2017-18)

Jamnadas Steels Pvt. Ltd.  
247, Shri Vallabh Building  
Daraskar Road, Itwari, Nagpur 440 002  
PAN – AACCJ1894Q

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-5, Nagpur

..... Respondent

Assessee by : Shri Himesh Damble  
Revenue by : Shri Surjit Kumar Saha

Date of Hearing – 18/06/2024

Date of Order – 20/06/2024

**ORDER**

**PER V. DURGA RAO, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 21/09/20022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2017-18.

2. The assessee has raised following grounds in this appeal:-

*“1. That, the Penalty order framed by Ld. A.O. u/s. 271B and upheld by the Hon'ble Ld. CIT(Appeals) is illegal, unjustified and bad in law.*

*2. That in the facts and circumstances of the case & in law, the Ld. CIT (Appeals) failed to appreciate that the Assessee did its utmost to get its books of Accounts Audited but all its efforts were in vain.*

*3. That, in the facts & Circumstances of the case & in law, the Ld. CIT (Appeals) failed to appreciate the fact that the no-compliance from auditor is a reasonable and genuine cause for not filling audit report.*

*4. The Assessee craves leave to, add to alter, amend, modify, substitute, delete and / or rescind any of the ground/grounds of the appeal on or before the final hearing of the appeal."*

3. Facts in brief are that the assessee is engaged in the business of trading of Iron & Steel and filed its return of income for the year under consideration on 31/10/2017, declaring total loss of ₹ (-) 50,78,813. The case was selected for scrutiny under CASS. The assessee did not furnish audited book of account during the assessment proceedings and could not satisfactorily explain the claim of loss in the absence of books of account and was found to have violated the provisions of section 44AB of the Income Tax Act, 1961 ("*the Act*"). The assessment order passed under section 143(3) of the Act on 26/11/2019, the assessee did not file any appeal challenging the said order passed under section 143(3) of the Act. Subsequently, the Assessing Officer issued notice and imposed penalty under section 271B of the Act. Against the penalty order passed by the Assessing Officer, the assessee carried the matter before the learned CIT(A) and submitted that the Chartered Accountant of the assessee company not given No Objection Certificate and hence, he was not able to file the audited books of account. The learned CIT(A) considering the explanation of the assessee passed a detailed order. The relevant portion of the learned CIT(A)'s order is reproduced below:—

*"4.1 I have carefully considered the order u/s 271B, the grounds of appeal preferred by the appellant, the written submissions of appellant and the statement of facts of the appellant in Form 35.*

*4.2 Appellant has preferred four grounds of appeal, three of which challenge the imposition of penalty u/s 271B.*

*4.3 The assessing officer in the order u/s 271B has recorded that the appellant has not preferred any appeal against order u/s 143(3). Assessing officer has also recorded that appellant did not furnish any evidence in support of its*

*contention that Its chartered accountant was not giving an NOC. Assessing officer has further recorded that the basic purpose behind section 44AB, is to get first hand expert opinion on business transaction before computing income or loss by the revenue. Moreover, appellant has returned loss which has bearings on future income and resultant revenue. Hence correctness and completeness of books is not only in interest of business of the appellant, but has great importance for revenue also. It is quite difficult to believe that a company having turnover of more than Rs. 21 crores would not ensure that tax audit report u/s 44AB was prepared within the specified date*

*4.4 The language of the Act leaves no room for ambiguity with regard to date of filing audit report u/s 44AB. The provisions of section 44AB have been enacted to ensure that tax audit is completed by the specified date and the audit report is furnished by that date irrespective of the fact that the return of income has been furnished or not by that date. However, the return whenever furnished shall be accompanied by a copy of the audit report and proof of filing the same by the specified date. In this case the Tax audit was not completed within the specified date, neither was the audit report furnished within the specified date.*

*4.5 In view of the above discussion, these grounds of appeal are dismissed."*

Aggrieved, the assessee carried the matter before the Tribunal.

4. Before us, the learned Authorised Representative ("*the learned A.R.*") submitted that the concerned Chartered Accountant did not give No Objection Certificate, therefore, the assessee was not able to file the audited report before the Assessing Officer. He further submitted that in preceding years, the assessee filed its audited report regularly without fail and, therefore, the conduct of the assessee is always complying with the provisions of Income Tax Act and Income Tax Rules promptly. He accordingly prayed that the penalty imposed be deleted.

5. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. In the present case, the assessee is carrying on business of trading in Iron & Steel and the turnover of the company is ₹ 21,72,80,969, and the loss has been claimed to the extent of ₹ 50,78,813. The assessee did not file audited books of account

filed before the Assessing Officer and the explanation given by the assessee is that the Chartered Accountant has not given No Objection Certificate and this was neither proved before the Assessing Officer / learned CIT(A) nor before us. Therefore, keeping in view the facts and circumstances of the case and the turnover of the assessee as well the business loss of the assessee company, the assessee ought to have been filed audited books of account in accordance with the provisions contained in section 44AB of the Act. Therefore, we see no infirmity in the order passed by the Assessing Officer imposing penalty under section 271B of the Act and we hold that the same was rightly confirmed by the learned CIT(A). Thus, the grounds of appeal raised by the assessee are dismissed.

6. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 20/06/2024

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 20/06/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur