

**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.325/Nag./2023**  
(Assessment Year : 2017-18)

Shree Sai Marketing  
Plot no.23, Hudkeshwar Road  
Dhangoli Nagar, Nagpur 440 034  
PAN – ACJFS2667J

..... Appellant

v/s

Addl. Commissioner of Income Tax  
National Faceless Appeal Centre, Delhi

..... Respondent

Assessee by : None  
Revenue by : Shri Mrunmay Ramteke

Date of Hearing – 27/05/2024

Date of Order – 27/05/2024

**ORDER**

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

The present appeal has been filed by the assessee challenging the impugned order dated 26/07/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”] for the assessment year 2017-18.

2. In its appeal, the assessee has raised following grounds:-

*“1. Whether on the facts and circumstances of the case, the learned CIT(A) was justified in upholding the penalty under section 271B of the Act levied by the learned A.O.*

*2. Appellant craves leave to add or alter any other ground that may be taken at the time of hearing.”*

3. Facts in Brief:- The assessee is a partnership firm dealing in FMCG products. For the year under consideration, the assessee filed its return of income on 11/01/2018, declaring total income of ₹ 1,22,140. The audit report under section 44AB of the Act dated 25/10/2017 has been filed electronically on 10/01/2018, by the assessee. During the course of assessment proceedings, it was noticed by the Assessing Officer that the accounts were required to be audited and furnished under section 44AB of the Act on or before the specified date i.e., 07/11/2017 (extended date) in this case as the turnover of the assessee was at ₹ 6,34,24,968. Thus, according to the Assessing Officer, the assessee has violated the provisions of section 44AB of the Act and has made itself liable for levy of penalty under section 271B of the Act. The Assessing Officer treated the assessee's reply, which was filed in response to the notice issued by the Assessing Officer, being general in nature, hence, rejected. The Assessing Officer held that as per section 44AB of the Act which provides that the accounts should be audited and Audit Report should be filed on or before the specified date i.e. 30/09/2017 extended to 07/11/2017 in this case. Thus, the assessee was required to get its accounts audited and the same should be file electronically as per provisions of Section 44AB of the Act on/or before the specified date i.e., 07/11/2017. The Assessing Officer, however, found that the assessee got its accounts audited on 25/10/2017 and the audit report under section 44AB of the Act has been filed on 10/01/2018. Thus, the assessee has failed to furnish the Audit Report within the prescribed time limit i.e., 07/11/2017 as per provisions of Section 44AB of the Act. Thus, the violation of section 44AB of the Act renders the assessee liable for levy of penalty under section 271B of

the Act. In view of the above facts, I am of the opinion that the assessee firm has committed default under section 44AB of the Act. Accordingly, the Assessing Officer levied a maximum penalty of ₹ 1,50,000 against the total gross turnover of ₹ 6,34,24,968.

4. The learned CIT(A) confirmed the order passed by the Assessing Officer levying penalty so imposed by the Assessing Officer. The assessee being aggrieved is in further appeal before the Tribunal.

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 a partnership firm dealing in FMCG products and the total gross turnover is ₹ 6,34,24,968. It is not in dispute that the assessee has obtained audit report, however, there has been a delay in furnishing the same electronically. However, we find that the audit report dated 25/10/2017, was made available belatedly and in our view this is a technical violation. Since there is no loss of revenue to the Department, as such imposition of penalty under section 271B of the Act does not arise. Therefore, we quash the penalty order issued by the Assessing Officer levying penalty under section 271B of the Act which was subsequently confirmed by the learned CIT(A). Thus, all the grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 27/05/2024

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

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

**NAGPUR, DATED: 27/05/2024**

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