

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 3098/Mum/2024
Assessment Year 2012-13

Piramal Enterprises Limited, Piramal Ananta, Agastya Corporate Park, Kamani Junction, Mumbai PAN : AAACN4538P (Appellant)	vs.	Income Tax Officer-7(3)(3), Ground Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai. (Respondent)
---	-----	--

For Assessee :	Shri Ronak Doshi a/w. Shri Priyank Gala,
For Revenue :	Shri Yogendra T. Wakare, Sr.DR

Date of Hearing :	07-08-2024
Date of Pronouncement :	08-08-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 25-04-2024 passed by the Ld. Commissioner of Income Tax (Appeal)-57, Mumbai (in short 'Ld.CIT(A)'), confirming the penalty of Rs.1,50,000/- levied by the AO u/s. 271B of the Income Tax Act, 1961 ('the Act') and it relates to AY. 2012-13.

2. Ld.AR submitted that the assessee had earned dividend income of Rs. 38.95 crores and claimed the same as exempt. The only income of the assessee during the year was the dividend income. Besides the above, the assessee has declared marginal amount of Rs.19,716/-

towards Provision written back. The above said dividend income was claimed as exempt u/s. 10(34) of the Act. Hence, there was no receipt taxable under the Act and hence there was no requirement to get its accounts audited u/s.44AB of the Act. However, the AO took the view that the main activity of the assessee is investment activity and hence, dividend income was considered as 'business receipts' by the AO. Accordingly, the AO has levied the penalty of Rs.1,50,000/- u/s 271B of the Act for not getting its accounts audited u/s 44AB of the Act.

3. The Ld A.R placed his reliance on the decision rendered by the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Market Committee, Sirsa [2012] 25 taxmann.com 384 (Punjab & Haryana). In the above said case, the Hon'ble High Court held that the provisions of section 44AB of the Act would not be applicable, when there was no income, which would fall under the head profits and gains of business or profession after claiming exemption u/s. 10 of the Act. Accordingly, Ld.AR prayed that the impugned penalty be deleted.

4. The Ld.DR, on the contrary, supported the orders passed by the Ld.CIT(A).

5. We heard the parties and perused the record. Admittedly, the only income earned by the assessee is dividend income and the same is claimed as exempt u/s. 10(34) of the Act. The AO also accepted the claim of the assessee in the assessment order dt. 10-03-2015 passed u/s. 143(3) of the Act. The question as to whether the provisions of section 44AB of the Act will be applicable when the assessee has claimed its income as exempt u/s. 10 of the Act came to be considered by the Hon'ble Punjab & Haryana High Court in the case of Market Committee, Sirsa (supra), wherein it was held as under:

"11. Chapter IV of the Act provides for 'computation of total income'. Section 44AB of the Act is one of the sections enacted under Chapter IV-D dealing with computation of profits and gains of business or profession. Section

44AB of the Act becomes operative where there is computation of profits and gains of business or profession as a part of total income. In other words, it has no applicability where the assessee is not involved in or has no income from profits and gains from business or profession. In the present case, it was not disputed that the income of the assessee was exempted under Section 10(20) of the Act which falls in Chapter III of the Act. There was no income of the assessee which would fall under heading "profits and gains of business or profession". Once that was so, it could not be said that the provisions of Section 44AB were applicable and as a sequel thereto, penalty under Section 271B of the Act was not leviable. The Tribunal had rightly decided the issue in favour of the assessee.

12. In view of the above, the substantial question of law as claimed by the revenue is answered against the revenue. The appeals are accordingly dismissed."

5.1. Identical view has been expressed by the Mumbai bench of Tribunal in the case of ACIT vs. India Magnum Fund (81 ITD 295), wherein it was held as under:-

"The heading of Chapter III is "Incomes which do not form part of total income". It is therefore plain to us that provisions of sec.44AB cannot and do not have any application in relation to incomes which are enumerated under Chapter III and are expressly excluded from total income. To reiterate, section 44AB is operational only when profits and gains of business or profession are to be computed for the purpose of computation of total income to meet the requirements of the provisions of section 4. That being so, any income which is designated as "income which do not form part of total income" have nothing to do and cannot be subjected to the provisions of section 44AB."

6. We noticed that the Hon'ble Punjab & Haryana High Court held that the provisions of section 44AB of the Act will not be applicable when there was no income of the assessee which would fall under the head profits and gains of business and consequently, penalty u/s. 271B of the Act was not leviable for not getting into audited the accounts of the assessee u/s. 44AB of the Act. Identical view has been expressed by the Mumbai bench of Tribunal in the case of India Magnum fund (supra). The facts of the present case are identical to the facts of the above cited cases. Accordingly, following the said decisions rendered by the Hon'ble Punjab & Haryana High Court and co-ordinate bench (referred supra), we hold that the penalty u/s. 271B of the Act is not

leviable in the facts of the present case. Accordingly, we set aside the orders passed by the Ld.CIT(A) and direct the AO to delete the penalty of Rs.1.50 lakhs levied u/s. 271B of the Act for the year under consideration.

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

Order pronounced in the open court on 8th August, 2024.

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 08-08-2024

TNMM

Copy to

1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "C" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai