

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.1694/Del/2024
(ASSESSMENT YEAR 2017-18)

Sumit Kumar H. No.22, Tilang Pur Kotla, Nangloi Delhi-110041 PAN:CNUPK2944J (Appellant)	Vs.	Income Tax Officer New Delhi (Respondent)
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Assessee by	Shri Manoj Kumar, CA
Respondent by	Shri Munish Rajani, Sr. DR

Date of Hearing	12/08/2024
Date of Pronouncement	28/08/2024

ORDER

PER VIMAL KUMAR, JM:

1. The assessee's application for condonation delay of two weeks and order dated 29/01/2024 of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi, [hereinafter referred to as 'Ld. CIT(A)'] dismissing appeal and upholding order dated 18/03/2012 of the Income Tax Officer, (hereinafter referred to as the 'Ld. AO') u/s 271B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year 2017-18.

2. At the outset, we find that due to delayed downloading of order there is a delay in filing of appeal. No serious objections to dealy were made by the Ld. Departmental Representative. Considering the reason adduced in the condonation petition, in the peculiar facts and circumstances of the instant case, we are inclined to condone the delay and admit the appeal of the assessee for adjudication.

3. The brief facts of the case are that, appellant assessee is distributor of milk and dairy products. The appellant was not aware of the requirement to maintain books of account and audit of the same by accounting. As required u/s 44AB of the Income Tax Act, 1961 (hereinafter referred as 'the Act') The appellant assessee was served with Assessment Order u/s 144 fixing income as Rs.3,93,667/- and demanding tax liability of Rs.12,432/-. The appellant assessee deposited additional demand without delay vide Challan No.02193 on 22/01/2020. The Ld. Assessing Officer vide order dated 18/03/2022 levied penalty u/s 271B of the IT Act.

4. The appellant assessee preferred appeal before the Ld. CIT(A) which was dismissed vide order date 29/01/2024.

5. Being aggrieved, the appellant assessee preferred present appeal with following grounds of appeal:-

"1. The Assessee has already deposited the full tax amount paid and all the replies were done in a timely manner and the assessee has already submitted that his case should be considered in Vivad se Vishwas Scheme, the asssse was not aware of the fact that the Vivad se Vishwas Scheme was available through filing the requisites forms on the Income Tax Portal. If the assessee has received the response in a timely manner regarding the vivid se vishwas scheme he would have filed the complete

forms for availing the benefits of the scheme, the assessee received the penalty order only after the scheme ended. The assessee was not given a fair chance to avail the scheme. Kindly waive the penalty.”

6. The Ld. Authorized Representative for appellant assessee submitted that assessee had deposited full tax amount well in time. The assessee was not aware of Vivad se Vishwash Scheme through filing requisites forms on the Income Tax Portal. The appellant assessee was not given a fair chance to avail the scheme.

7. The Ld. Departmental Representative (DR) submitted that assessee had failed to furnished Explanation for not filing audit report u/s 44AB, therefore, penalty u/s 271B of the Act was rightly imposed.

8. From examination of record, it is crystal clear that appellant assessee is a milk distributor, failed to maintain the accounts and get the same audited u/s 44AB. Appellant, a milk distributor had earned income i.e. a small portion of cash collection for selling milk products as a commission. Taxable income of assessee had been fixed at Rs.3,93,667.00, demanding tax liability of Rs.12,432.00 and penalty imposed was Rs.1,50,000.00. In view of the above material facts i.e. milk distributor earning small portion of cash collection as a commission, action of imposition the penalty u/s 271B for not filing audit report u/s 44AB is not just, fair and reasonable. As such the penalty order deserves to be set aside. Hence, the impugned order is set aside.

9. In the result, the application for condonation of delay of two weeks and appeal filed by the assessee are allowed

Order pronounced on 28th August, 2024.

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 28/08/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI