

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**

**BEFORE DR. MANISH BORAD, AM  
AND  
SHRI RAJPAL YADAV, VP**

**ITA No. 802 to 806/KOL/2024  
(Assessment Years: 2013-14 to 2017-18)**

**Madina Rice Mill Private Limited**  
C/o. S.N. Ghosh & Associates,  
Advocates 2, Garstin Place, 2<sup>nd</sup> Floor,  
Suite No.203, Off Hare Street,  
Kolkata-700 001, West Bengal

**(Appellant)**

**ACIT**  
Central Circle 4(4)  
110, Shanti pally,  
**Vs.** 5<sup>th</sup> Floor, Eastern Metropolitan  
By Pass,  
Kolkata-700 107, West Bengal

**(Respondent)**

**PAN No. AAGCM9430R**

**Assessee by** : Shri Somnath Ghosh, AR  
**Revenue by** : Shri Kapil Mondal, DR

**Date of hearing:** 10.09.2024  
**Date of pronouncement:** 13.09.2024

**ORDER**

**PER BENCH:**

These appeals at the instance of the assessee are directed against the orders of Commissioner of Income-tax (Appeals), Kolkata-27 [learned CIT (A)] even dated 15<sup>th</sup> February, 2024 for A.Ys. 2013-14 to 2017-18, which are arising from the penalty under 271A of the Act framed by Id. ACIT Central Circle-4(4), Kolkata under vide orders evenly dated 21<sup>st</sup> September, 2022 for A.Ys. 2013-14 to 2017-18.

02. As the captioned appeals relates to same assessee and similar grounds of appeal have been raised, these appeals

were heard together and are being disposed off through this common order for sake of convenience and brevity.

03. Perusal of grounds reveals that common grievance of the assessee is against the finding of learned CIT (A) confirming the levy of penalty u/s 271A of the Income-tax Act, 1961 (the Act) for the alleged failure to keep, maintain or retain books of accounts, documents, etc. Since the issue raised is common, we for the purpose of adjudication take up the facts of ITA No. 802/KOL/20024, for A.Y. 2013-14, and shall apply our decision *mutatis mutandis* to all the remaining captioned appeals.

04. Assessee has raised following grounds of appeal in ITA No. 802/KOL/2024 for A.Y. 2013-14: -

*"1. FOR THAT the Ld. Commissioner of Income Tax (Appeals). Kolkata-27 failed to appreciate that none of the conditions precedent required to be satisfied for the assumption of jurisdiction u/s. 274 read with s. 271A of the Income Tax Act. 1961 existed and/or have been complied with and/or fulfilled by the Ld. Assistant Commissioner of Income Tax, Central Circle 4(4). Kolkata and his specious action of upholding the impugned order dated 21-09-2022 imposing penalty of Rs. 25,000/- in pursuance to the impugned notice dated 21-03-2022 is therefore ab initio void, ultra vires, and ex-facie null in law.*

*2. FOR THAT on a true and proper interpretation of the scope and ambit of the provisions of s. 271A of the Income Tax Act, 1961. the Ld. Commissioner of Income Tax (Appeals). Kolkata-27 misconstrued the position in law in upholding the purported order imposing penalty of Rs. 25,000/- passed by the Ld. Assistant Commissioner of Income Tax, Central Circle 4(4). Kolkata and the specious conclusion reached on extraneous parameters not germane to the issue is totally illegal, illegitimate, and infirm in law.*



3. FOR THAT the Ld. Commissioner of Income Tax (Appeals). Kolkata- 27 acted unlawfully in upholding the impugned order imposing penalty of Rs. 25,000/- passed by the Ld. Assistant Commissioner of Income Tax, Central Circle 4(4). Kolkata by arbitrarily rejecting the explanation tendered by the appellant without considering the issues in the proper perspective and the findings rendered thereon without any independent and convincing reasons therefor is altogether unfounded, unjustified, and untenable in law.

4. FOR THAT the Ld. Commissioner of Income Tax (Appeals). Kolkata- 27 was wholly in error in upholding the order imposing penalty of Rs. 25,000/- passed u/s. 271A of the Income Tax Act, 1961 by the Ld. Assistant Commissioner of Income Tax, Central Circle 4(4). Kolkata without considering the present facts in light of the 'reasonable cause' u/s. 273B of the Income Tax Act, 1961 and his purported findings on that behalf are wholly arbitrary, unreasonable, and perverse."

05. Brief facts of the case are that the assessee is a Private Limited Company engaged in the business of running rice mill. The return of income for A.Y. 2013-14 filed on 30<sup>th</sup> September, 2013, declaring income of ₹1,45,910/-. Survey was conducted u/s 133A of the Act on 28<sup>th</sup> February, 2020, followed by issue of notices u/s 148 of the Act on 26<sup>th</sup> March, 2021, for the alleged escapement of income followed by carrying out the proceedings, during the course of which assessee failed to produce the books of accounts. The learned Assessing Officer rejected the books u/s 145(3) of the Act and made certain additions completing the assessment on 21<sup>st</sup> March, 2022. As the assessee could not produce the books of account, Id. AO initiated the penalty proceedings u/s 271A of the Act by issuance of notice u/s 274 of the Act. Thereafter, penalty proceedings were carried out, during the course of which assessee submitted that it maintains books of account which were duly audited but

failed to find any favour. The learned AO alleged that the assessee failed to offer any explanation regarding maintenance of separate set of books and the documents and finally levied the penalty u/s 271A of the Act at ₹25,000/-. Aggrieved assessee preferred the appeal before the learned CIT (A), but failed to succeed as the learned CIT (A) summarily dismissed the assessee's appeal observing that the impugned penalty deserves to be confirmed as the learned AO has passed the penalty order after receiving the unsatisfactory reply from the assessee in respect of not-maintaining proper books of account as prescribed u/s 44AA of the Act. Aggrieved assessee is now in appeal before this Tribunal.

06. The learned Counsel for the assessee vehemently argued referring to the detailed written submissions filed before the lower authorities and filed before us along with referring to the paper book containing 61 pages for A.Y. 2013-14 and similar paper books have also been filed for the remaining years. The learned counsel for the assessee submitted that the assessee maintains regular books of accounts and same were duly audited for each year and tax audit reports were filed with the department/ uploaded on the income tax portal. Books of accounts were produced before the learned AO during the penalty proceedings. He also submitted that the assessment proceedings were carried out during the period when the country was passing through Covid pandemic. One of the Directors, who was severely affected with Covid, also died. Even the learned Authorized Representative was diagnosed with Covid and was

hospitalized and could not carry out office work for a long time. All these reasons are reasonable enough to give the assessee immunity u/s 273B of the Act, and therefore, the impugned penalty deserves to be deleted.

07. On the other hand, the learned Departmental Representative vehemently argued and supporting the orders of the lower authorities.
08. We have heard the rival contentions and perused the records available on record. The sole issue for our consideration is that whether the learned CIT (A) erred in confirming the levy of penalty of ₹25,000/- u/s 271A of the Act. Before us, the learned counsel for the assessee has placed sufficient evidence to prove that the assessee is regularly maintaining books of accounts and they are audited by the Chartered Accountants and tax audit reports for the year under consideration as well as the remaining years under appeal have been either filed with the Income Tax Department before the due date or have been uploaded on the Income Tax portal before the due date prescribed under the Act. This fact that the assessee is filing the tax audit report along with its return of income has not been disputed by the Revenue authorities. It is an admitted fact that for carrying out tax audit, books of account and all related documents are must without which the auditor cannot prepare tax audit report. Also, the assessee being a Private Limited Company is required to furnish annual report along with its audited financial statements with the Ministry of Corporate Affairs. So, prima facie, the learned

counsel for the assessee has made out his case that regular books of accounts were maintained as provided u/s 44AA of the Act and that the assessee has not failed to maintain his books of accounts and therefore, should not be subjected to levy of penalty u/s 271A of the Act.

09. Coming to the alternate contentions of the assessee that assessee deserves immunity from levy of penalty in terms of Section 273B of the Act as there was a reasonable cause for the alleged failure of not placing books of account before the assessing authority during the course of assessment proceedings. We find that the assessment proceedings, were initiated by issue of notice u/s 148 of the Act on 26<sup>th</sup> March, 2021 and at that point of time, country was passing through a severe wave of Covid 19 Pandemic. The period of Covid which began from March 2020, finally ended in March, 2022. Details have been filed before us demonstrating that one of the key persons, Director Mr. SK Iqbal Hussain, who was affected from Novel Corona Virus and due to the severe infections, he died on 30<sup>th</sup> May, 2021. Since Mr. Iqbal Hussain, who was the key person looking after the taxation matters proper compliance could not been made before the AO. Later on, Mr. Somnath Ghosh, appointed as Authorized Representative of the assessee. He too got infected with Corona Virus and admitted to Apollo Hospital and he remained ill for a long time. The assessment order has been framed on 31<sup>st</sup> March, 2022, and that the various opportunities which were granted by the AO for furnishing the books of accounts were falling during the Covid Period only. All these facts clearly indicate that the assessee had

sufficient reasonable cause for not being unable to place the books of accounts before the learned AO, when called for. Section 273B of the Act, provides that no penalty to be imposed in certain cases which also includes the penalty leviable u/s 271A of the Act in case the failure referred to in the said provisions is on account of reasonable cause. Since, the assessee and his Authorized Representative were having a reasonable cause, for not producing the regular books of accounts before the learned AO during the assessment proceedings, even though the same were duly maintained the assessee deserves to get relief in view of Section 273 of the Act and penalty should not be imposed in such cases.

010. We therefore, under the given facts and circumstances find that firstly, the assessee is maintaining regular books of accounts as provided u/s 44AA of the Act, which are duly audited and that the audit reports have been furnished regularly, therefore, there is no case of invoking of Section 271A of the Act as there is no failure on the part of the assessee to maintain proper books of accounts. Even otherwise, the assessee deserves immunity u/s 273B of the Act from levy of penalty as there was a reasonable cause for the said failure provided u/s 271 of the Act. We therefore, set aside the finding of the learned CIT (A) and delete the impugned penalty of ₹25,000/- levied u/s 271A of the Act and allow the grounds of appeal raised by the assessee for A.Y. 2013-14.



011. As far as remaining appeal in ITA nos. 803 to 806/KOL/2024 for A.Ys. 2014-15 to 2017-18 are concerned, since the issue raised and facts are verbatim similar, and this fact being not controverted by both the sides, we apply our decision of ITA No. 80/KOL/2024 *mutatis mutandis* on the remaining appeals in ITA Nos. 803 to 806/KOL/2024 and delete the impugned penalties levied under Section 271 A of the Act and allow the effective grounds of appeal raised in all the appeals.

012. In the result, all the appeals of the assessee in ITA No. 802 to 806/KOL/2024 for A.Y. 2013-14 to A.Y. 2017-18, are allowed

Order pronounced in the open court on 13.09.2024.

Sd/-  
(RAJPAL YADAV)  
(VICE PRESIDENT)

Sd/-  
(DR. MANISH BORAD)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 13.09.2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata