

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member and

आ.अपी.सं / **ITA No 817 to 819/Hyd/2024**
(निर्धारण वर्ष/Assessment Years: 2015-16 to 2017-18)

AR Associates Hyderabad PAN:AAVFA2434K (Appellant)	Vs.	Income Tax Officer Circle 6 (1) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Hari Agarwal, CA	
राजस्व द्वारा/Revenue by:	Shri Gudimella V P Pavan Kumar, DR	
सुनवाई की तारीख/Date of hearing:	13/11/2024	
घोषणा की तारीख/Pronouncement:	21/11/2024	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

These 3 appeals by the assessee are directed against the separate orders, all dated 26/06/2024 of the learned CIT (A)-NFAC Delhi, for the A.Ys.2015-16 to 2017-18 respectively. Since common issues are raised in all these 3 appeals and arising from same set of facts, therefore, for the sake of convenience, these 3

appeals were clubbed together for the purpose of hearing and are being disposed of by this consolidated order.

2. The assessee has raised common grounds in these appeals, except quantum of penalty. Accordingly, grounds raised by the assessee for the A.Y 2015-16 in ITA No.817/Hyd/2024 are reproduced hereunder:

“1. The order passed by the Hon'ble CIT (A) NFAC is against the facts and circumstances of the appellant's case and is contrary to the provisions of the I.T. Act, 1961.

2. The Hon'ble CIT (A) has erred in passing an order u/s 250 by levying a penalty u/s 271B of the I.T. Act, 1961 of Rs.1,39,820/- for the A.Y 2015-16. Hence, the order passed by the Hon'ble CIT (A) is liable to be quashed.

3. The Hon'ble CIT (A) has failed to appreciate the fact that, if at all, any default is to be considered, it can be for non-maintenance of books of account but cannot be for non-compliance of audit provisions mentioned in section 44AB of the I.T. Act, 1961. Hence, the order passed by the Hon'ble CIT (A) is liable to be quashed.

4. Without prejudice to Ground No.2 and 3 above, the appellant submits the following ground:

The Hon'ble CIT (A) is unjustified in dismissing the appeal filed u/s 271B without considering the fact that the quantum appeal in case of the appellant for the aforesaid A.Y i.e. Appeal No. NFAC/2015-15/10122026 is still pending before the Hon'ble CIT (A). Therefore, it is prayed that the appeal be kept in abeyance until the disposal of the said quantum appeal.

5. The appellant craves to add, alter and amend the above grounds of appeals”.

3. At the time of hearing, the learned AR for the assessee submitted that, the Assessing Officer has levied penalty u/s 271B for failure of the assessee to get its accounts audited u/s 44AB of the I.T. Act, 1961. The learned AR has pointed out that, the learned CIT (A) has confirmed levy of penalty, vide impugned order, dated 26/06/2014 despite the appeal against the assessments were pending for adjudication before the learned CIT (A). The learned AR further submitted that, after dismissal of the appeal filed against the penalty levied u/s 271B of the Act, the learned CIT (A) has disposed of the quantum appeal, vide order dated 18/10/2024 and remanded the matter to the record of the Assessing Officer for fresh adjudication, on the issue of estimation of income of the assessee, by taking net profit @ 8% of gross receipts/turnover. The learned AR has further submitted that, the Assessing Officer has estimated the income of assessee while framing assessment u/s 147 r.w.s. 144 of the I.T. Act, 1961 as the assessee has not maintained any regular books of account. Therefore, when the assessee has not maintained books of account, then question of getting the books of accounts audited does not arise. Thus, the learned AR has prayed that the penalty matter for all the 3 A.Ys may also be set aside to the record of the Assessing Officer for fresh adjudication after the outcome of the quantum set aside proceedings.

4. On the other hand, the learned DR has submitted that the levy of penalty u/s 271B of the Act, has nothing to do with the

outcome of the assessment as per the remand order of the learned CIT (A). Penalty was levied due to non-compliance by the assessee u/s 44B of the Act. The learned DR has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as perused the material available on record. The assessee is a partnership firm and did not file any return of income for the A.Y under consideration. The Assessing Officer noticed that the assessee has deposited cash in the bank account and as per the TDS returned, received commission/brokerage as well as the profession and technical fees. Accordingly, the Assessing Officer issued notice u/s 148 of the Act, which was not responded by the assessee. Consequently, the Assessing Officer framed the assessment u/s 147 r.w.s. 144 of the Act, as “best judgment assessment” whereby the income of the assessee was estimated by the Assessing Officer by taking net profit @ 8% and further additions were made. Since the assessee’s turnover was more than the limit prescribed u/s 144AB of the Act, therefore, the Assessing Officer initiated the penalty proceedings u/s 271B of the I.T. Act, 1961 for not getting the books of account audited. The penalty u/s 271B was levied by the Assessing Officer @5% of the turnover or a maximum amount of Rs.1.50 lakhs for all the 3 years. The learned CIT (A) has confirmed the levy of penalty while passing the impugned order by considering the fact that the turnover of the assessee is more than the threshold prescribed

u/s 44AB for audit purpose. Now, the learned AR has filed the copies of the order of the learned CIT (A) dated 18/10/2024 passed in the quantum proceedings against assessment order. The learned CIT (A) while deciding the quantum appeal has set aside some of the issues including the issue of estimation of income by adopting net profit @8% to the record of the Assessing Officer for fresh adjudication. Thus, it is clear that the impugned orders were passed by the learned CIT (A) prior to the order passed in the quantum appeals. Further, when the assessee has not maintained regular books of account, then the question of audit of the books of account does not arise. Accordingly, in the facts and circumstances of the case, we are of the considered opinion that the assessee be given one more opportunity to explain the reasonable cause for non-compliance of the provisions of section 44AB of the Act leading to levy of penalty u/s 271B of the Act, before the Assessing Officer and the same is to be considered after the outcome of remand proceedings. Hence, the impugned order of the learned CIT (A) is set aside and the matter is remanded to the record of the Assessing Officer for fresh adjudication after giving appropriate opportunity of hearing to the assessee to explain the reasonable cause in terms of section 273B of the Act, if any, for failure to comply with the provisions of section 44AB of the I.T. Act, 1961.

6. In the result, all the three appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 21st November, 2024.

Sd/- (MANJUNATHA, G.) ACCOUNTANT MEMBER	Sd/- (VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 21st November, 2024

Vinodan/sps

Copy to:

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3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order