

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, CHENNAI**

**मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON’BLE SHRI MANU KUMAR GIRI, JM**

1. आयकरअपील सं ITA No.2441/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)
&
2. आयकरअपील सं ITA No.2442/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)
&
3. आयकरअपील सं ITA No.2443/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2015-16)
&
4. आयकरअपील सं ITA No.2444/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2015-16)
&
5. आयकरअपील सं ITA No.2445/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2016-17)
&
6. आयकरअपील सं ITA No.2446/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2016-17)
&
7. आयकरअपील सं ITA No.2447/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)
&
8. आयकरअपील सं ITA No.2448/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)

Shri Karuppanan Thulasimani 23C, Ganapathy Nagar, Mariyamman Kovil Street, Periyasemur, Erode-638 004.	बनम/ Vs.	ITO Ward-1(1), Erode.
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ADMPT-5801-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri S. Sridhar (Advocate) Erode -Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Ms. Kavitha (Addl.CIT) - Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	20-11-2024
घोषणाकीतारीख / Date of Pronouncement	:	20-11-2024

आदेश / O R D E R

Per BENCH:

1. Aggrieved by confirmation of penalty u/s 271A & 271B for Rs.25,000/- & Rs.1.5 Lacs respectively for each of the Assessment Years (AYs) 2014-15 to 2017-18, the assessee is in further appeal before us. The impugned orders have been passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 29-02-2024 in the matter of impugned penalties levied by Ld. Assessing Officer [AO] in its separate orders dated 19-09-2022. Facts leading to penalty are stated to be the same.
2. The registry has noted a delay of 142 days in the appeals, the condonation of which has been sought by Ld. AR on the strength of affidavit of the assessee. It has been stated that the quantum orders were in further appeals which got disposed-off subsequently to impugned orders after which the assessee decided to prefer the present appeals. Considering the contents of affidavit and period of delay, the delay is condoned and we proceed with disposal of the appeals.
3. The Ld. AR assailed levy of simultaneous penalty and referred to the decision of this Tribunal in **Shri Balasingam Somasundaram vs. ACIT (ITA No.1199 & 1200/Chny/2023 dated 06-03-2024)** in support of

its submissions. The Ld. Sr. DR, on the other hand, submitted that both the penalties could be levied simultaneously and therefore, the appeals are to be dismissed. The Ld. Sr. DR stated that non-maintenance of books of accounts and failure to get accounts audited are separate lapses for which the assessee could be visited with simultaneous penalties as per the provisions of Sec.271A and 271B. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

4. From penalty order of Ld. AO u/s 271B for AY 2014-15, it could be seen that the assessee derived contract receipts for Rs.513.96 Lacs. However, the assessee did not file return of income. The case was reopened and the assessee admitted income of Rs.10.46 Lacs. The Ld. AO estimated income of 8% in the absence of books of accounts. Consequently, penalty was levied u/s 271A for non-maintenance of books of accounts u/s 44AA. Another penalty was levied u/s 271B for failure to get the accounts audited u/s 44AB. In the absence of any response forthcoming from the assessee, Ld. AO levied penalty u/s 271A for Rs.0.25 Lacs and penalty u/s 271B for Rs.1.50 Lacs in each of the AYs. The assessee defended its stand during appellate proceedings. However, Ld. CIT(A) confirmed both the penalties against which the assessee is in further appeal before us. Similar are the facts in all the other years.

5. It is quite evident that the assessee is a contractor and considering its contractual receipts, it is not only required to maintain books of accounts but also get the same audited under law so as to enable Ld. AO to determine its correct income. Admittedly, the assessee has not maintained any books of accounts in the present case. Accordingly,

when there are no books, the question of getting the same audited would not arise at all. It could be seen that Ld. AO has framed the assessment on *best judgment* basis and estimated the income @8% only due to the fact that the assessee has not maintained any books of accounts. In our considered opinion, the maintenance of books is primary requirement. The books could be audited only when the same are maintained. When the books are not maintained, the question of getting them audited would not arise. As a natural corollary, the levy of penalty for non-maintenance of books could be justified but levy of penalty for not getting the books of accounts would be unfair. The Hon'ble Guwahati High Court, in the case of **Surajmal Parsuram Todi Vs. CIT (222 ITR 691)**, held that maintenance of accounts is envisaged u/s 44AA and upon failure to do so, the assessee shall be guilty and liable to be penalized u/s 271A. Even after maintenance of books of account, the obligation of the assessee does not come to an end. He is required to do something more, i.e., by getting the books of account audited by an accountant. But when a person commits an offence by not maintaining the books of account as contemplated by Sec. 44AA, the offence is complete. After that, there could be no possibility of any offence as contemplated by Sec. 44AB and therefore, the imposition of penalty u/s 271B would be erroneous. This decision has been followed by various benches of the Tribunal including the cited decision of Chennai Tribunal as referred to by Ld. AR. Therefore, we confirm levy of penalty u/s 271A but delete penalty as levied u/s 271B, in all the years. The appeals stand disposed-off accordingly.

6. In the result, appeals ITA Nos.2441, 2443, 2445, 2447/Chny/2024 stand dismissed. The appeals in ITA Nos.2442, 2444, 2446, 2448/Chny/2024 stand allowed.

Order pronounced on 20th November, 2024.

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 20.11.2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF