

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3732/MUM/2024  
Assessment Year: 2012-13**

European Trust, 4 <sup>th</sup> Floor, Janmabhoomi Chamber, 29, Walchand Hirachand Marg, Ballard Estate, Mumbai – 400038  (PAN : AAATE3654L)	Vs.	Income Tax Officer – 17(3)(1), Mumbai
<b>(Assessee)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Pravin Kumar Jain, CA  
Revenue : Shri P.D. Chougule, Sr. DR

Date of Hearing : 05.09.2024  
Date of Pronouncement : 19.11.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1065172641(1), dated 28.05.2024 passed against the assessment order by National Faceless Assessment Centre, Delhi, u/s. 271B of the Income-tax Act (hereinafter referred to as the "Act"), dated 22.01.2022 for Assessment Year 2012-13.

2. The sole issue involved in the present appeal is in respect of imposition of penalty of Rs.1,50,000/- u/s. 271B of the Act on account of assessee not getting its accounts audited u/s. 44AB of the Act.

3. Brief facts of the case are that assessee is a private trust engaged in investment activities which did not carry on any business or profession. Return was filed on 29.03.2014 reporting total income at Nil. Assessment was completed u/s.143(3) r.w.s. 147 vide order dated 30.12.2019 by making an addition of Rs.170.28 crores as unexplained cash credit u/s.68 of the Act. It was on the basis of this addition, ld. Assessing Officer held that assessee was liable to get its account audited u/s. 44AB and for failure to do so penalty proceedings u/s.271B was initiated. Order imposing penalty was passed on 22.01.2022. Aggrieved, assessee went in appeal before the ld. CIT(A).

4. It was contended that assessee is a trust engaged in investment activities. During the year under consideration, it did not carry out any business or profession. Assessee did not have any income during the year. Assessee did not have any receipts from any kind of business or profession in the year under consideration, fact of which was pointed out from the financial statement and return of income filed by the assessee. Accordingly, it was contended that assessee is not liable to get its accounts audited u/s. 44AB of the Act. Attention was invited to the provisions of Section 44AB which required that the accounts of the assessee for the previous year are to be audited before specific date and the report is to be furnished in Form - 3C AB and Form-3CD by that date duly signed and verified by the accountant in a case where total sales/turn over or gross receipts in the case of business exceeds Rs.60 lakhs and gross receipts in case of profession exceeds Rs.15 lakhs during the year. According to assessee, it did not have any income whatsoever during the year under consideration much less any business income. The only receipts of assessee was by way of loans and advances which were duly recorded by it in its books of accounts. It was only in the reassessment that the loans and advances were treated as

unexplained cash credit and were deemed to be income of the assessee u/s. 68 of the Act. Thus, it was submitted that income assessed under the deeming provisions of the Act cannot be treated as sales or receipts from business or profession as the same is not an actual income. Accordingly, in absence of any sale, turn over or gross receipts from any business or profession, exceeding the prescribed limit u/s. 44AB, assessee was not liable to get its accounts audited u/s. 44AB for the year under consideration.

4.1. On the submissions made by the assessee, ld. CIT(A) observed that gross receipts of the assessee are Rs.170 crores which are the loans given by the assessee hence they exceed the prescribed limit of Rs.60 lakhs u/s. 44AB. Assessee has thus failed to comply with the provisions of section 44AB and therefore the penalty so imposed is justified.

5. Before us, ld. Counsel for the assessee reiterated the facts stated above. It was pointed out that the additions made in the hands of assessee are in respect of loans and advances given by the assessee which have been treated as unexplained cash credit u/s.68 and thus on the deemed income assessed by the ld. Assessing Officer, provisions of section 271B have been invoked. We note that section 44AB refers to sales, turn over, gross receipts in respect of business or profession which the assessee has received/receivable during the year under consideration above the threshold prescribed which mandates conduct of audit and furnishing of the report as prescribed. In the given set of facts, the treatment of loans and advances as deemed income u/s.68 are considered as sales/turn over/gross receipts in the hands of the assessee by the ld. Assessing Officer requiring it to get its books of accounts audited and furnishing of the report thereon u/s.44AB, which

the assessee has failed to do so, leading to imposition of penalty contested before us.

6. We, considering the stated facts, find that the penalty so imposed is not tenable since the addition made in the hands of the assessee is neither sales/turnover/gross receipts as required u/s.44AB of the Act. Accordingly, penalty so imposed is deleted.

7. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 19 November, 2024

Sd/-  
(Anikesh Banerjee)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 19 November, 2024***

*MP, Sr.P.S.*

**Copy to :**

- 1 The Assessee
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai