

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA Nos.1993 to 1996/Bang/2024
Assessment Years : 2015-16, 2017-18

Shri. Muddayya Amarayya Hiremath, Basaveshwar Nagar, Shahpur Dist, Yadgir – 585 215. PAN : ABRPH 1616 F	Vs.	The Income Tax Officer, Ward –1, Yadgir.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Tarun Kothari, AR.
Revenue by	:	Shri. Subramanian S, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	26.11.2024
Date of Pronouncement	:	28.11.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

All these four appeals have been filed by the assessee against the separate Order passed by the CIT(A). The ITA Nos.1993 and 1995/Bang/2024 are appeals against the quantum proceedings and ITA Nos.1994 and 1996/Bang/2024 for Assessment Years 2015-16 and 2017-18 are against the penalty proceedings under section 271B of the Act, for not furnishing the audit report within the due date.

2. The learned CIT(A) has passed an ex-parte order as assessee did not respond to the notices issued by the CIT(A) and the issues raised before us are identical for both the Assessment Years. therefore, for the sake and

brevity of the case, we are taking first the appeal for the Assessment Year 2017-18 and decision of the same shall apply mutatis mutandis for Assessment Year 2018-19.

3. Briefly stated, the facts of the case are that assessee is a contractor and has received payments from contract works done and as per the information on ITBA "Multi year category". The assessee has not filed return of income in respect of cash deposited of Rs.1,02,40,000/-, TDS made under section 194C of the Act on payment received of Rs.1,23,69,326/- and interest under section 194A of the Act of Rs.34,416/-. Accordingly, notice was issued to the assessee under section 148 of the Act on 30.03.2021 and subsequently, other statutory notices were issued to the assessee on 20.12.2021 and 07.11.2022 but there was no response by the assessee. Accordingly, show cause notice was issued to the assessee proposing assessment under section 144 of the Act on 10.03.2022. In this regard, assessee has filed written submissions on 17.03.2022. stating the reasons which were not accepted by the AO. The AO noted that assessee has not maintained books of accounts. The AO, after discussing the details, assessed the total income at Rs.70,23,962/- and initiated penalty proceedings under sections 271C, 271A, 271B and 271(1)(b) & 271F of the Act, in the Assessment Order.

4. Aggrieved from the above Order, assessee filed appeal before the CIT(A) raising various grounds. The details of the written submissions have been incorporated by the CIT(A) and as per para No.6, various notices were issued to the assessee but assessee failed to respond in spite of various opportunities were provided to the assessee. Accordingly, the CIT(A)

decided the issue on the basis of the material available and dismissed the appeal of the assessee.

5. Aggrieved from the above Order, assessee filed appeal before the Tribunal.

6. The learned Counsel submitted that sufficient opportunity was not granted by the Revenue authorities. During the Covid-19 period, notices were issued by the AO but because of medical reasons and other factors, assessee could not respond and the CIT(A) has also issued various notices which were not responded properly and requested that if a chance is given, assessee will comply to the notices issued. It is noted that during the course of hearing, learned Counsel for the assessee did not argue on legal issue raised before the Tribunal.

7. Learned DR relied on the Orders of the authorities below and objected to grant opportunity again to the assessee as assessee was given several opportunities to represent his case before the lower authorities.

8. Considering the rival submissions, we note that assessee is a contractor and is doing contract works. The TDS has been deducted from the contract receipts of the assessee and on interest from bank also and there is huge cash deposit in the Saving Bank account and assessee has not filed return of income. During the pandemic period, notices were issued to the assessee and there was no response from the assessee side properly. It is noticed from the Assessment Order that assessee had deposited cash of Rs.60 lakhs in the SBI, Raichur Branch. . Assessee has received contract

amount of Rs.1,23,69,326/- on which the AO has considered income @ 8% and treated it as undisclosed net profit on the contract receipts. Assessee has also received interest from bank. Accordingly, the AO completed the assessment and initiated penalty proceedings under different sections. Before the CIT(A), as per para No.6, various opportunities were also granted to the assessee but assessee did not respond. Considering the facts and circumstances of case, in the interest of justice and equity, we are of the view that one more opportunity should be provided to the assessee to represent his case and accordingly, accordingly we remit this issue back to the AO for de novo consideration as per law and update the email id, communication address and other details and file necessary documents that would be essential and required for substantiating his case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

9. ITA Nos.1994 and 1996/Bang/2024 for Assessment Years 2015-16 and 2017-18

In these two appeals, assessee has challenged the penalty levied by the AO under section 271B of the Act and the penalty order passed by the AO has been confirmed by the CIT(A). The AO has noted in the Assessment Order that the assessee has not maintained books of accounts and vouchers, the books of accounts are not audited and also assessee has failed to furnish the audit report, hence, AO has passed penalty order imposing the penalty under section 271B of the Act on 21.09.2022

respectively for both the assessment year against which assessee filed appeal before the CIT(A) and the CIT(A) has also confirmed the imposition of penalty vide Order dated 20.08.2024 [DIN Nos.ITBA/NFAC/S/250/2024-25/1067754591(1) and ITBA/NFAC/S/250/ 2024-25/1067756054(1)] for Assessment Years 2015-16 and 2017-18 respectively. In this regard, the learned Counsel for the assessee strongly submitted that section 44AB of the Act will not be application to the assessee since the assessee has not maintained books of accounts and the AO has also confirmed this in his order consequently penalty under section 271B of the Act cannot be levied and the issue is squarely covered in favour of the assessee by the Order of the Co-ordinate Bench of the Bangalore Bench and other Benches of the Tribunal. He further submitted that the AO has also passed penalty Order under section 271A of the Act dated 21.09.2022 for both the Assessment Years.

10. The learned DR relied on the Order of the AO and the lower authorities and submitted that the authorities below have rightly passed the penalty order which is confirmed by the CIT(A), after relying on various judgments. Therefore, the assessee is liable for penalty under section 271B of the Act.

11. Considering the rival submissions, it is noted that AO has imposed penalty under section 271B of the Act, for not getting its books of accounts audited inspite of the mandate that if the turnover of the assessee is more than the specified limit, then the books of accounts are to be audited by the accountant and it has to be furnished before filling of the income tax return. The AO has also passed penalty order under section 271A of the Act for both the Assessment Years. As per the assessment orders the assessee has

not maintained the books of accounts. We concur with the arguments of the learned Counsel for the assessee that if the assessee has not maintained books of accounts then the penalty under section 271B of the Act cannot be levied and this view is supported by the judgment of the jurisdictional High Court in the case of CIT vs S C Naregal order dated 23.09.2008 reported in (2011) 16 taxmann.com 420 (Karnataka) in which it has been held as under:-

6. Substantial questions of law 1, 2 and 5

These substantial questions of law relates to the finding given by the Income Tax Appellate Tribunal holding that the penalty could not be imposed under Section 271B of the Act and if at all proceedings could not initiated under Section 271A of the Act as the assessee has not maintained any account and question of limitation holding that the order imposing penalty was barred by time.

7. The learned counsel for the appellant submitted that the assessee has admitted in its statement and the reply given to the show cause notice that he is maintaining the party wise register for credit sales, pucca book of cash sales and purchase register and wherefore, it cannot be disputed that the assessee has maintained accounts though not all the accounts required to be maintained under the Act. The decisions relied upon by the learned counsel for the respondent would clearly show that only where no books of account are maintained, no proceedings can be initiated for non auditing of the books of account which are not maintained under section 271B of the Act and penalty can be imposed only under Section 271A of the Act-

8. The following decisions are relied upon by the learned counsel for the respondent:

Sheraton Apparels, Max Corporation, Stressa Fashion v. Assistant Commissioner of Income-tax [\[2002\] 256 ITR 20](#)

Surajmal Parsuram Todi v. Commissioner of Income-tax [\[1996\] 222 ITR 691](#)

Income Tax Officer v. Nanak Singh Guliani [2002] ITR 677

Commissioner of Income-tax v. Heros Publicity Services (Bombay) [2001] ITR 248

It is clear from the principle laid down in the decisions relied upon by the learned counsel for the respondent that only where no accounts are maintained, question of auditing the accounts does not arise

arid wherefore, no proceedings can be initiated for imposing penalty under section 271B of the Act. However, where accounts are maintained though not all the accounts as prescribed under the Act, it is clear that the auditing of the accounts is necessary under Section 44AB of the Act.

9. It is clear from the provisions of Section 44AB of the Act that where the turn over exceeds rupees forty lakhs, accounts are required to be audited. There is no merit in the contention of the learned counsel for the respondent that the books referred to in the order of the assessment and stated by the assessee in the statement and in the reply to the show cause notice comprising of party wise register for credit sales, pucca book of cash sales and purchase register are not books of account as defined under Section 2(12A) of the Act as it cannot be disputed that pucca book and purchase register are the accounts maintained by the assessee.

10. It is clear from the definition that 'books or books of account' includes ledgers, day-books, cash books, accountbooks and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device and wherefore, it cannot be denied that the assessee has maintained accountbooks as defined, under section 2(12A) of the Act though not all the books prescribed under the Act as it cannot be disputed that the pucca book of cash sales and purchase register are the accountbooks as defined under section 2(12A) of the Act. The Assessing Officer and the Commissioner of Income Tax Appeals had confirmed the order of the Assessing Officer to the effect that the notice initiating proceedings for imposing of penalty under section 271B of the Act was justified as the assessee has maintained accountbooks. The finding of the Tribunal that assessee has not maintained any books of account is perverse and arbitrary as it is clear from the reply given by the assessee as also the answer to question 7, the statement given before the Authority that assessee has maintained pucca books of cash, sales and purchase registers which are books of account as defined under Section 2(12A) of the Act and wherefore, the finding of the Appellate Tribunal that the initiation of proceedings for imposing of penalty under Section 271B of the Act is not justified cannot be sustained.

12. Since the facts are similar, respectfully following the judgment of the jurisdictional High Court, we quash the penalty Order passed by the AO.

13. In the result, the appeals by the assessee in ITA Nos. 1993 & 1995/Bang/2024 are allowed for statistical purposes and ITA Nos. 1994 & 1996 /Bang/2024 are allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SOUNDARARAJAN K)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated : 29.11.2024.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.