

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.365/Nag./2024
(Assessment Year : 2015-16)

Ramankumar Ganeshlal Agrawal
I R G Agrawal, APMC Market Yard
Khamgaon 444 303 PAN – ABAPA6189R

..... Appellant

v/s

Income Tax Officer
Ward-1, Khamgaon

..... Respondent

Assessee by : None
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 05/12/2024

Date of Order – 20/12/2024

ORDER

PER V. DURGA RAO, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 30/05/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2015-16.

2. In its appeal, the assessee has raised following grounds:-

“1. Whether the Ld. AO and Hon'ble CIT(A) is justified in law and fact in levying a penalty under Sec 271B of the Income Tax Act, 1961.

2. Whether the Ld. AO and Hon'ble CIT(A) is justified is passing an order without appreciating the reasonable cause of the assessee.

3. Whether the Ld. AO and Hon'ble CIT(A) is justified is passing an order in breach of principle of Natural Justice.

4. The appellant craves leave to add, alter, modify and withdraw any grounds before or during the course of appellate proceedings.

3. Facts in brief:- The assessee was said to be a proprietor of M/s. Ganesh Corporation and was engaged in the business of wheat, jawar and some agricultural produce. The assessee did not file his return of income for the year under consideration. The case was selected for re-assessment for the reason that the assessee made cash deposit of ₹ 1,92,99,500, with The Akola Janata Commercial Co-operative Bank Ltd., Akola. Hence, the Assessing Officer issued several notices in response to which the assessee filed Statement of Bank Account, Letter of Authority, Cash Book, Ledger Book, Copy of APMC license, Statement of Affairs, etc., which were considered by the Assessing Officer. The Assessing Officer held that since as per the provisions of section 44AB of the Act, the assessee was liable to get his books of accounts audited and submit the same within the due date as the gross turnover of the assessee was ₹ 1,88,66,823, which is more than the specified limit of ₹ 1 crore. However, according to the Assessing Officer, the assessee did not get his books of accounts audited within the due date. Therefore, as per the provisions of section 44AB, the penal proceedings initiated under section 271B of the Act, which were held to be valid and correct. The Assessing Officer made addition on presumption basis which resulted in levying of penalty of ₹ 94,333 under section 271B of the Act.

4. On appeal, the learned CIT(A) confirmed the order of the Assessing Officer.

5. None appeared on behalf of the assessee.
6. Per-contra, the learned Departmental Representative, representing the Revenue, vehemently argued that the assessee has filed return of income only after issuance of notice under section 148 of the Act even though the receipts in this case is for an amount of ₹ 1,88,66,823. The learned Departmental Representative submitted that the Assessing Officer was justified in levying penalty under section 271B of the Act as the assessee failed to get his books of account audited which was mandatory under section 44AB of the Act. The penalty levied being statutory under the Act be confirmed by dismissing the appeal of the assessee.
7. We have heard the arguments of the learned Departmental Representative, perused the material available on record and gone through the orders of the authorities below. The Bench noted that the Assessing Officer has levied penalty under section 271B of the Act for not getting the books of accounts audited . The learned D.R. did not controvert the facts and finding of the lower authorities. So, once it has been categorically held that the assessee failed to maintain the books of account and consequent thereto the penalty has also been levied, in our considered opinion, penalty for not getting the books of account audited cannot be fastened, especially when the addition made by the Assessing Officer is on presumption basis. The penalty under section 271B of the Act can be levied when the assessee maintains the books and does not get them audited but once it is been held and not disputed that the assessee has not maintained the books of accounts how the penalty for not getting the books audited be levied. The Id. DR did

not controvert these basic facts. Accordingly, se set aside the impugned order passed by the learned CIT(A) and quash the penalty levied at ₹ 94,333 under section 271B of the Act. Thus, all the grounds raised by the assessee are allowed.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20/12/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 20/12/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur