

**आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.2286/Kol/2024**  
Assessment Year: 2017-18

**Arup Chatterjee.....Appellant**

Uttarpara(W), Maheshtala,  
South 24 Parganas, W.B-700140.  
**[PAN: AMVPC8144N]**

**vs.**

**DCIT, Circle-29(1), Kolkata..... Respondent**

**Appearances by:**

Shri Ankit Jalan, AR, appeared on behalf of the appellant.

Shri Sanjay Paul, Addl. CIT, appeared on behalf of the Respondent.

Date of concluding the hearing : January 23, 2025

Date of pronouncing the order : January 28, 2025

**आदेश / ORDER**

**Per Sonjoy Sarma, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 19.09.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. Brief facts of the case are that the assessee filed his return of income for the assessment year 2017-18 declaring total income of Rs.3,99,920/-. The case of the assessee was selected for scrutiny through CASS and the assessment was completed u/s 143(3) of the Act with the same returned income of Rs.3,99,920/-. Thereafter, a penalty u/s 271B of the Act was levied due to failure of the assessee to get his accounts audited which is required u/s 44AB of the Act. During the assessment proceedings, the Assessing Officer viewed that the assessee was required to get accounts audited by a Chartered Accountant and furnish the audit report before the due date if the turnover exceeds the

prescribed limit. Accordingly, he held that the assessee failed to comply with the provisions of 44AB of the Act and initiated penalty proceedings u/s 271B of the Act and levied penalty of Rs.1,50,000/- vide order dated 18.01.2022.

3. Aggrieved by the above order, the assessee went in appeal before the ld. CIT(A) but the ld. CIT(A) dismissed the appeal of the assessee by simply upholding the penalty u/s 271B of the Act as imposed by the Assessing Officer.

4. Dissatisfied with the above order, the assessee approached before this Tribunal raising multiple grounds. However, the primary contention of the assessee is that the turnover of the assessee did not exceed the prescribed limit u/s 44AB of the Act, since his income derived from commission from the sale of Dairy and Milk Products manufactured by Gujarat Co-operative Milk Marketing Federation Ltd. The ld. AR contended that the commission income received by the assessee was not gross sales, therefore, it should not be considered as turnover. He further contended that the commission was below the prescribed limit to get his accounts audited and filing an audit report did not arise in the case of the assessee. However, as a precautionary measure, the assessee got the accounts audited during the assessment year in question and the assessee failed to upload the same before the due date because it was not required to submit since the turnover of the assessee was not exceeded the prescribed limit. In this respect, the ld. AR relied on the decision of the Coordinate Delhi Bench of the Tribunal in the case of Dharam Singh vs. ITO reported in [2024] 167 taxmann.com 289, wherein, it was held that as the value of gross commission received from the sale of Dairy and Milk Products is much below the prescribed limit u/s 44AB of the Act, therefore, the provisions of section 44AB of the Act were not attracted in his case and also, no

penalty was warranted u/s 271B on this issue. The ld. AR referred CBDT Circular No. 452 dated 17-3-1986 which further clarifies that “the turnover did not include sales effected on behalf of the principals and only gross commission has to be considered for the purpose of section 44AB”. The relevant part of the order of the Coordinate Delhi Bench (supra) is reproduced as under:

*“12. Having heard the rival submissions, we have perused the materials on record. We are inclined to agree with the AR that the DGR has used word Commission which shows that the relationship between the Mother Dairy is that of Principal (Mother Dairy) to agent (Assessee). Even though the Mother Dairy has given nomenclature of Principal-to- Principal in its certificate, the nature of activity undertaken by the assessee shows the actual relationship between the Mother Dairy and assessee is that of Principal to Agent. We say so because the Milk booth was allotted on the following terms: -*

- i) All the proceeds from the sale of milk and other allied products to be deposited immediately or latest by next day in the designated SBI bank account hypothecated in favour of Mother Dairy.*
- ii) Assessee receives uniform and fixed margin/commission which constitutes his taxable income rather than total sales as turnover.*
- iii) Expenses like electricity, water, telephone, repair & maintenance expenses related to machinery installed at booth etc. are paid by the Mother Dairy itself.*

*13. Based on facts as stated above, we are of the opinion that the sales proceeds belonged to Mother Dairy and the assessee turnover was only commission of 4,62,000/- from the sales of Dairy and milk products. The ld DR has not controverted the fact that in earlier years, no penalty was levied u/s 271B on this issue.*

*14.As the value of gross commission received from the aforesaid business as turnover is much below than the prescribed limit of Rs. 1 Crore u/s 44AB of the Act, we hold that the provisions of section 44AB of the Act were not attracted in his case. The CBDT Circular No. 452 [F. No. 201/3/85-IT(A- II)], dated 17-3-1986 also supports our view which in cases of kachha arahati has advised that the turnover did not include sales effected on behalf of the principals and only gross commission has to be considered for the purpose of section 44AB. The relevant extract of which is re-produced as follows:*

- "4. The Board are advised that so far as kachha arahatias are concerned, the turnover does not include the sales effected on*

*behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB."*

*The remuneration of a kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pucca arahtia.*

*15. In the instant case, we are of the opinion that the assessee is similarly placed to that of the kachha arahtia, who gets remuneration which consists solely of commission and he is neither interested into nor entitled to the profit and losses made by his principal (ie., Mother Dairy in given case).*

*16. We also find that the co-ordinate Bench in the case of Ved Singh case of Mohammad Daud ITA No. 1691/DEL/2022 order dated 22nd May 2023 wherein under similar circumstances, have vacated the impugned penalty. In view of the above facts and circumstances and legal position, penalty levied u/s 271B upheld by the ld. CIT(A) CIT/NFAC is quashed and we direct the Assessing Officer to delete the penalty of Rs. 1,23,313/- so levied.*

*17. In the result, the appeal of the assessee in ITA No. 472/DEL/2024 is allowed.*

4.1 He, therefore, prayed before us that the imposition of the penalty was not justified in the present case and is liable to be deleted.

5. On the other hand, the ld. DR supported the decisions rendered by the authorities below.

6. We, after hearing the rival contentions and perusing the materials available on record, find that the assessee was engaged in a business as agent of selling of Milk and other allied products which is supported by a Certificate of Enlistment issued by local bodies under the W.B. Municipal Act, 1993 dated 19.04.2016. We also find that the gross commission received from the aforesaid business is much below the prescribed limit fixed u/s 44AB of the Act. We are of the opinion that as the gross commission received by the assessee is below the prescribed limit u/s 44AB of the Act, therefore, there was no requirement of his accounts get audited u/s 44AB of the Act and hence, no penalty was warranted u/s 271B in the case of the assessee. Therefore, following the

decision of the Coordinate Delhi Bench in the case of Dharam Singh vs. ITO (supra), we delete the penalty u/s 271B of Rs.1,50,000/- imposed by the Assessing Officer.

7. In terms of the above, the appeal of the assessee is allowed.

***Kolkata, the 28<sup>th</sup> January, 2025.***

Sd/-

**[Rajesh Kumar]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sonjoy Sarma]**

न्यायिक सदस्य/Judicial Member

Dated: 28.01.2025.

RS

*Copy of the order forwarded to:*

1. Arup Chatterjee
2. DCIT, Circle-29(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches