

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

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

ITA No.1784/Bang/2024
Assessment year : 2017-18

Uday G. Andanimath, Annapoorna, Vinayak Colony, Vidya Nagar, Hubli – 580 031. PAN: AIKPA 4597N	Vs.	The Income Tax Officer, Ward 1(1), Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravi Shankar S.V. Advocate
Respondent by	:	Shri Subramanian S., Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10.01.2025
Date of Pronouncement	:	10.02.2025

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order of the Id. CIT(Appeals), National Faceless Appeal Centre, Delhi (NFAC) dated 22.8.2024 having DIN ITBA/NFAC/S/250/2024-25/1067855770(1) for the assessment year 2017-18 challenging the penalty u/s. 271B of the Act.

2. Briefly stated the facts of the case are that the assessee has deposited cash in his various bank accounts of Rs.7,81,70,435 including cash of Rs.12,03,000 deposited during the demonetisation period.

3. The assessee has also not filed return of income u/s. 139(1). The assessment was completed u/s. 144 of the Act on 04.09.2019 determining total income at Rs.62,53,640 on estimate basis on the total turnover and computed the income @ 8% of the total bank deposits. The Id. Pr.CIT exercised his power u/s. 263 and observed that the order passed by the AO u/s. 144 dated 04.09.2019 is erroneous and prejudicial to the interests of the revenue observing that the AO has ignored certain things which was to be taxed u/s. 69A and had not taxed applied tax rate u/s. 115BBE. Accordingly the Id. Pr.CIT set aside the order passed u/s. 144 and directed to make a fresh assessment in accordance with law after considering the findings noted by him and the AO has to examine the deposits/credits in the bank account and conduct necessary enquiries as per CBDT guidelines.

4. Consequently the AO issued notice to the assessee and reply was submitted by the assessee and it was observed that the assessee company is a dealer of Kubota Agricultural Machinery Inia Pvt. Ltd. for Belgaum district under the proprietorship concern M/s. Gurugiri Tractors at Gokak and deals in tractors and its spare parts. Assessee has maintained 3 bank accounts namely OD account, Current account and Savings account. It was noted that the assessee has deposited cash

of Rs.12,03,000 during the demonetisation period and in this regard explanation was called for and assessee submitted that assessee has not maintained books of account or proper records due to some reason, therefore, it is not possible to furnish the full and accurate details and it was also noticed that assessee has filed list of sundry debtors in Excel Sheets vide submission dated 30.12.2022. The AO noted that assessee has not maintained proper books of account inspite of having turnover above the limits as per provisions of section 44AA of the Act and it has also not got the books of account audited as per section 44AB of the Act. Therefore, the assessee is liable for penalty u/s. 271B. Since the turnover is more than Rs.2 crores, therefore provisions of section 44AD will not apply. As per the VAT return, the turnover was determined at Rs.4,87,86,321 inclusive of VAT of Rs.6,49,601. The AO computed the income of Rs.38,50,937. The AO applied 8% net profit rate on the turnover of Rs.4,81,36,720 excluding VAT and he also made other additions and assessed income at Rs.53,61,606. The AO passed penalty order u/s. 271B on 15.09.2023. He relied on judgment mentioned in his order and distinguished the case law relied by the Id. counsel. He also relied on the Karnataka High Court judgment in the case of *CIT v. S.C. Naregal, 200 Taxman 17 [2011]* in which it has been held that where accounts are maintained though not all the accounts as prescribed under the Act, auditing of accounts is necessary u/s. 44AB.

5. Aggrieved from the above order, the assessee filed appeal before the CIT(Appeals). The Id. CIT(A) also confirmed the penalty levied by the AO relying on the ITAT Kolkata Bench decision in the case of Rakesh Kumar Jha v. ITO. Aggrieved from the above order, the assessee is in appeal before the Tribunal.

6. The Id. counsel reiterated the submissions made before the lower authorities and strongly submitted that where no books of accounts are maintained by the assessee, no penalty can be levied u/s. 271B. He further submitted that it is very much clear from the submissions made before the AO consequent to the proceedings u/s. 144 r.w.s. 263 vide order dated 20.03.2023 that assessee has submitted that there is no books of account maintained, so penalty u/s. 271B is not sustainable and in support of his argument, he relied on the judgment of coordinate Bench in ITA No.1136/Bang/2012 and ITA Nos.1993 to 1996/Bang/2014.

7. On the other hand, the Id. DR relied on the order of lower authorities and submitted that the contention of the assessee is completely wrong, the AO has rightly imposed penalty u/s. 271B for not maintaining books of account and not furnishing audit report within the due date as prescribed u/s. 44AB of the At. He further submitted that assessee has arrived turnover, filed VAT return and has maintained bank accounts and produced list of debtors, all these are impossible without maintaining any ledger books for the debtors, creditors and for expenses. The AO has analysed the written

submissions and assessee has himself admitted that he is not able to explain source of deposits of Rs.12,03,000 and he has not maintained proper books of account inspite of having turnover above the limits as per section 44AA of the Act. As per submissions of the assessee the maintenance of improper books of account show that there is something maintained by the assessee and as per section 2(12A) books of account has been defined which includes ledgers, day books, cash books, account books and other books. Other books has not been separately defined in the provisions of the Act. But in the present case at hand, the assessee has maintained and produced list of debtors, which clearly shows that assessee must have books of account in terms of section 2(12A) of the Act. The ld. CIT(A) is justified in confirming the penalty levied by the AO and he relied on the judgment of Hon'ble jurisdictional High Court in the case of CIT v. S.C. Naregal as relied by the AO. Here in the case on hand the assessee has also maintained list of debtors and filed VAT return as submitted by the assessee it has not maintained proper books of account, which shows that there is some books of account. Therefore, the judgment of Hon'ble jurisdictional High Court is squarely applicable in the present facts of the case. He further submitted that the judgment relied by the ld. counsel for assessee is not applicable to the present facts of the case and therefore it is distinguishable.

8. Considering the rival submissions, we note that during the course of consequential assessment proceedings u/s. 144 r.w.s. 263 vide order dated 20.03.2023 the assessee has submitted at one place

that there are no books of account or proper records and only sales invoices are available and has furnished list of sundry debtors in Excel Sheet and has filed VAT return also. The AO has observed that the assessee has not maintained proper books of account in spite of having turnover above the limits as per provisions of section 44AA of the Act, which is clear from page 6 of the assessment order. The assessee is required to maintain books of accounts and get the accounts audited which the assessee has failed to do so. The assessee has filed VAT returns and turnover has been arrived at Rs.4,81,36,720 excluding VAT. Therefore we find substance in the argument of the Id. DR. The AO has also computed the profit under Chapter IVD – Profits & gains of business or profession applying 8% net profit on the turnover computed by the assessee. Without maintaining books of account to arrive at the turnover is not possible. The consequential order has been passed u/s. 144 r.w.s 263 of the Act. On going through section 2(12A) of the Act, other books are also part of the books of account. The assessee has produced the list of debtors. The assessee has arrived at the turnover on the basis of documents available and assessee has not maintained proper books of account. That shows there is some books of account for arriving Net Profit and filling of VAT return and the turnover of the assessee is more than Rs.2 crores, therefore the assessee was required to get his books of accounts audited within the due date as per section 139(1). Therefore, we confirm the order of the Id. CIT(A) and reject the arguments advanced by the Id. counsel for the

assessee. The case law relied by the ld. counsel for the assessee is not applicable to the present facts of the case.

9. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on this 10th day of February, 2025.

Sd/-

(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 10th February, 2025.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.