

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT
MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER MEMBER

ITA No. 504/Ind/2024
Assessment Year: 2014-15

Shanvaj Hussain, 5, New Sabji Mandi, Khargone	<u>बनाम/</u> Vs.	Income Tax Officer, Khargone
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AFKPH8029P		
Assessee by	Shri S.N. Agrawal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	10.03.2025	
Date of Pronouncement	11.03.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act' for sake of brevity) before this Tribunal as and by way of Second Appeal under the Act. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2024-25/1064311688(1) dated 24.04.2024 of the Ld. CIT(A) passed Under Section 250 of the Act, in first appeal which was preferred by the assessee in

terms of Section 246 of the Act. The relevant Assessment Year is 2014-15 and the corresponding previous year period is from 01.04.2013 to 31.03.2014.

2.

FACTUAL MATRIX

2.1 That the Income Tax Return of the assessee for the Assessment Year 2014-15 was filed as per the Provision of Section 139 of the Act on 01.11.2015 wherein total income was declared at Rs.2,70,280/-.

2.2 That thereafter the case of the assessee was selected for scrutiny and assessment order U/s 143(3) of the Act was passed on 28.11.2016 wherein addition of Rs.40,000/- was made to the total income of the assessee and that total income was assessed at Rs.3,10,280/-.

2.3 That subsequently the case of the assessee was reopened U/s 147 of the Act on the basis of information received from the Office of the DDIT (Inv)-III, Indore that the assessee failed to explain the source of credit of Rs.1,63,75,394/- in his bank account maintained with ICICI Bank, Khargone. On merits the

assessee submitted during the course of reassessment proceedings that he was merely a commission agent who earned the commission income and offered it for tax in his Income Tax Return. The assessee further submitted that the amount credited in his bank account represented the proceeds from sale of vegetables by farmers which was thereafter utilized towards making payments for purchases and that he merely earned commission at the rate of 4-5 percent from the farmers. The assessee also submitted that said facts were duly accepted by the then Assessing Officer during the course of original assessment proceedings. The assessee also filed supporting documentary evidences such as affidavit of farmers so as to substantiate his contention that he was merely a commission agent and that amount credited in his bank account represented proceeds from sale of vegetables by farmers. That however, the Ld. A.O simply brushed aside the contentions put forth by the assessee and considered the credit of Rs.1,63,75,394/- in bank account as turnover of business on which the Ld. Assessing Officer estimated the profit of 8% which come to Rs.13,10,032/- and accordingly the Assessing Officer made addition of Rs.9,99,752/-

to the total income of the assessee after allowing credit of assessed income of assessee of Rs.3,10,280/-. Thereafter the assessee preferred an appeal before Ld. CIT(A) against the assessment order passed u/s 147 r.w.s. 144B of the Act challenging the entire addition made to the total income. The said appeal was however decided by Ld. CIT(A) by order dated 01.01.2024 in favour of the assessee and reopening u/s 147 was held to be bad in law.

2.4 That after the aforesaid assessment order the Ld. Assessing Officer initiated and levied penalty of Rs.81,900/- u/s 271B of the Act for failure to get accounts audited as is required u/s 44AB of the Act without properly appreciating the facts of the case and submissions made before him. The Gross receipt is only Rs.7,50,000/- on account of commission income in respect of which assessee is not required to get its books of account audited as per provision of Section 44AB of the Act. Therefore Assessing Officer grossly erred in law in imposing penalty u/s 271B of the Act. The Ld. Assessing Officer imposed penalty of Rs.81,900/- by ignoring that assessee's income was only as and

by way of commission agent of vegetables and the gross amount deposited in bank account represented sale proceeds of vegetables sold on behalf of farmers hence only his real income which is by way of commission is required to be considered and not turnover of sales of vegetables.

2.5 That the order of penalty u/s 271B of the Act of Ld. A.O bears No.ITBA/PNC/F/271B/2022-23/1045533565(1) dated 15.09.2022 which is hereinafter referred to as the "impugned penalty order".

2.6 The sum and substance of penalty u/s 271B of the Act is failure on part of the assessee to get its accounts audited u/s 44AB of the Act by accountant specified in this behalf as total turnover of the assessee was Rs.1,63,75,394/- which admittedly exceeded turnover of Sixty lakhs the minimum required for audit for A.Y 2014-15. The penalty of Rs.81,700/- was 0.5% of total turnover of Rs.1,63,75,394/-.

2.7 The assessee being aggrieved by the "impugned Penalty Order" preferred first appeal before Ld. CIT(A) u/s 246A of the Act who by the "impugned order" has dismissed the appeal of the

assessee. The assessee being aggrieved by the "impugned order" has preferred this second appeal U/s 253 of the Act before this Tribunal and has raised following grounds of appeal against the "impugned order" in Form No.36 which is form of appeal to this Hon'ble Tribunal:-

"1. That on the facts and in the circumstances of the case and in law, penalty order passed by the Assessing Officer under section 271B of the Act was barred by limitation of time since the assessment order had already been quashed and set-aside by the Ld. CIT(A)

2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the penalty of Rs. 81,900/- levied by the Assessing Officer under section 271B of the Act without properly appreciating the facts of the case and submissions made before him/her

3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the penalty of Rs. 81,900/- levied by the Assessing Officer under section 271B of the Act for failure to get accounts audited as required under section 44AB of the Act by completely overlooking the fact that the gross receipts of the business carried on by the appellant was of Rs. 7,50,000/- only on account of commission income on sales executed through him in respect of which the appellant was not liable to get his books of accounts audited as per the provisions of section 44AB of the Act and henceforth, there was no justification for levy of penalty under section 271B of the Act

4. The appellant reserves the right to add, alter and modify the grounds of appeal as taken by him."

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 10.03.2025 when the Ld. AR for and on the behalf of the assessee

appeared. The Ld. AR has placed on record of this Tribunal a paper book containing pages 1 to 98 and appeal memo from pages 1 to 35. The Ld. AR at the outset and threshold contended that the impugned order of Ld. CIT(A) which has dismissed first appeal against impugned penalty order is illegal and bad in law. The impugned order should be set aside by this Tribunal in exercise of its appellate power. Our attention was invited to reply filed by the assessee in response to notice u/s 143(2) of the Act (Page 9-10 of paper book) wherein it was clearly brought to the notice of the revenue that assessee is small time commission agent. He sells vegetables in mandi as a commission agent and for and on behalf of farmers. That all sale proceeds are deposited in the bank account after sale is completed. That all payments to farmers are made from his bank account. That he gets 4 to 5% commission upon sales of vegetables in "Mandi". That during the year under consideration his income from commission was Rs.7,50,000/-. His expenses were Rs.4,79,725/-. That during the year under consideration total deposit in his ICICI Bank account which are two in number were Rs.57,26,049/- on account of sale of vegetables in mandi. The real income as and

by way of commission was only Rs.7.5 lakhs which is much below the threshold limit for audit. The Ld. AR then brought to our notice on page 54 of paper book a copy of Circular No.452 (F No.201/3/85-ITA-II) dated 17.03.1986 wherein CBDT has advised that in so far as "Kachha Arahtias" 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. Basis this CBDT circular it was contended by Ld. AR that since the assessee acts as a "Kachha Arahitas" the amount of sale realization in respect of goods sold through him is not to be considered as his turnover but the amount of commission received by him is to be considered for purpose of Section 44AB of the Act. In the present case the amount of commission received is only Rs.7.5 lakhs which is much below the prescribed limit of the required for audit. Once board has advised the said circular is binding on revenue then Revenue cannot contend otherwise.

3.2 The Ld. AR also contended that reassessment proceedings u/s 147/148 after original assessment proceedings u/s 143(3) too were set aside by CIT(A) vide order dated 01.01.2024 Page 44

to 53 of paper book hence when entire basis of addition is deleted, penalty cannot survive.

3.3 Per contra Ld. DR has supported the impugned penalty order of Ld. A.O and impugned order of Ld. CIT(A). It was contended that this Tribunal should not interfere with the impugned order.

4. **Observations, findings & conclusions.**

4.1 We now have to decide the legality, validity and propriety of the "Impugned Order" of Ld. CIT(A) basis records of the case.

4.2 We have carefully perused records of the case and have examined the rival contentions of Ld. AR & Ld. DR. We are of the considered view that by having held as under in para 6.4 of the impugned order

"6.4 The Ld. CIT, in his order, has clarified that the ground raised on merits are not decided upon, since the reopening of the assessment was held to be bad in law. The impugned order in the instant appeal is the order levying penalty u/s 271B of the Act. The penalty has been levied for the assessee's failure to get his accounts audited inspite of having a gross turnover exceeding Rs.60 lakhs as laid down in section 44AB of the Act. Though the re-opening of assessment u/s 147 has been held to be invalid, the fact remains that the turnover of the appellant has exceeded Rs.60 lakhs during the year. The appellant was under an obligation to get his accounts audited under the section 44AB of the Act. The appellant has pleaded that its turnover was only Rs. 750,000/- on account of commission income on sales executed. However, it is seen that the appellant was in receipt of Rs.1,63,75,394/- as credits in his

bank account. The net income of the appellant could be a percentage of the total turnover of Rs. 1,63,75,394/-. Once the money is received by the appellant in his bank account which is subsequently paid out for making expenditure for earning such revenue, they would constitute his gross receipts. Provisions of section 44AB mandates audit of books of accounts if the gross receipts from the business of an assessee exceeds Rs.60 lakhs. In the appellant's case, what is required to be seen is not the net income but the gross proceeds from his business. It cannot be denied that an amount of Rs. 1,63,75,394/- has been received as business receipts in the bank account of the assessee during the year. That being the case, the appellant is obligated to get his accounts audited u/s 44AB of the Act and for the failure of the same, the penalty levied by the Assessing Officer is found to be in order. The grounds of appeal raised are dismissed."

The Ld. CIT(A) has grossly erred in law as CBDT circular (supra) mandates that in respect of "Kaccha Arahtias" their turnover will not include sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of Section 44AB. We hold that the entire basis for the impugned order on basis of which appeal was dismissed was that the assessee has not got his books audited but in view of aforesaid circular of CBDT entire basis/foundation of impugned order disappears and status of assessee as Kaccha Arahtias has gone undisputed.

4.3 In the premises we set aside the impugned order.

5.

Order

5.1 In result appeal of Assessee is allowed.

Order pronounced in open court on 11.03.2025.

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक /Dated : 11/03/2025

Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore