

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR
(Through Virtual Mode)
BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.22, 23 & 24/JAB/2024
A.Y.- 2017-18

Shubh Hatcheries, 442, Manmohan Nagar, Near Gayari Mandir, Jabalpur, Madhya Pradesh-482002	vs.	Income Tax Officer, Ward-1(1), Jabalpur
PAN:ACIFS6457R		
(Appellant)		(Respondent)

Assessee by:	Sh. Dr. H.S. Modh, Advocate
Revenue by:	Sh. Alok Bhura, Sr. DR
Date of hearing:	19.05.2025
Date of pronouncement:	23.05.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.

These three appeals have been filed by the assessee against the orders of the Id. CIT(A), under section 250 of the Income Tax Act, 1961 dated 20.12.2023 (for ITA No.22/JAB/2024) and 21.12.2023 (for ITA Nos. 23 & 23/JAB/2024), in which the Id. CIT(A) has dismissed the appeal of the assessee.

2. ITA No.22/JAB/2024 has been filed against the confirmation of the assessment made while ITA No. 23 & 24/JAB/2024 have been filed against the upholding of the penalty orders under section 271AAC(1) of the Act and section 271B of the Act. The grounds of appeal in these three appeals are as under:-

ITA No.22/JAB/2024 (A.Y. 2017-18)

"1. That the Id. National faceless Appeal Centre (NFAC) has grossly erred in facts and circumstances of the case to confirm the addition of Rs. 11,30,950/- as against the returned LOSS of Rs.1,32,779/-.

2. That the addition confirm for Rs.11,30,950/- on account of each deposit during demonetization period is not justified.
3. That the addition made u/s 69A of the IT Act, 1961, at Rs.11,30,950/- is arbitrary and bad in law.
4. That the provision of Section 115BBE applied to the income assessed is arbitrary and bad in law.
5. That the assessee crave leaves to raise any other ground/s on or before the date of hearing to prove that the order passed is bad.”

ITA No.23/JAB/2024 (A.Y. 2017-18)

- “1. That the Id. National faceless Appeal Centre (NFAC) has grossly erred in facts and circumstances of the case to confirm the penalty of Rs. 67,857/-under section 271AAC(1) of the IT Act, 1961, for the assessment completed for the addition of Rs. 1,30,950/- as against the returned LOSS of Rs.1,32,779/-.
2. That the penalty confirm under section 271AAC(1) of the IT Act, 1961, at Rs.67,857/- is not justified.
3. That the assessee crave leaves to raise any other ground/s on or before the date of hearing to prove that the order passed is bad.”

ITA No.24/JAB/2024 (A.Y. 2017-18)

- “1. That the Ld. National faceless Appeal Centre (NFAC) has grossly erred in facts and circumstances of the case to confirm the penalty of Rs. 1,50,000/- U/s 271B of IT Act, 1961, for the Assessment completed for the addition of Rs. 11,30,950/- as against the returned LOSS of Rs. 1,32,779/-.
2. That the penalty confirm U/s 271B of IT Act, 1961, at Rs. 1,50,000/- is not justified.
3. That the Assessee crave leaves to raise any other ground/s on or before the date of hearing to prove that the order passed is bad.”

2.1 The facts of the case are, that the Id. AO observed that the assessee had not filed a return of income under section 139 of the Income Tax Act, 1961 for the assessment year 2017-18. He subsequently received information that the assessee had deposited cash of Rs. 11,30,950/- during the demonetization period in its account in maintained with ICICI Bank, Vijay Nagar Branch, Jabalpur. Therefore, assessment proceedings under section 147 of the Act were initiated. In response to the notice under section 148, the assessee filed an income tax return declaring a total

loss of Rs. 1,32,779/-. It also e-filed audited accounts in Form 3CB on 26.01.2020. Subsequently, the ld. AO issued notices under section 143(2) and section 142(1) of the Income Tax Act but none of the notices were responded to. He, therefore, proceeded to complete the assessment on the basis of the material available on record. Ongoing through the audited profit and loss account, the ld. AO noticed that the assessee achieved a turnover of Rs. 2,99,74,493/- from which it had a business loss of Rs.1,32,778/-. He observed that the assessee was required to furnish its audited accounts for the F.Y. 2016-17 within the specified due date i.e. 15.10.2017 but had failed to do so. Therefore, he initiated penalty under section 271B of the Act on this account. On the issue of cash deposited, the ld. AO held that though the assessee had been found to be the owner of money, he had not offered any acceptable and cogent explanation regarding the source of such money found in its bank accounts. The ld. AO held that since the onus was upon the assessee to explain the deposit of Rs.11,30,950/- in its accounts and the assessee had failed to do so, the amount deposited into the bank account represented the assessee's income from undisclosed sources. Accordingly, he brought it to tax under section 69A of the I.T. Act, 1961 and also initiated penalty proceedings under section 271AAC of the Act in this regard.

3. Aggrieved with the said order, the assessee went in appeal before the ld. CIT(A). However, the ld. CIT(A) notes that despite three notices being issued to the assessee, the assessee neither made any compliance nor submitted any request for adjournment. Accordingly, the ld. CIT(A) held that the assessee was not interested in prosecuting its appeal and he therefore, dismissed the appeal of the assessee.

4. With regard to the penalty initiated under section 271AAC(1), the ld. AO notes that the assessee did not respond to the penalty notice and therefore, his case was referred to the verification unit which duly delivered to the notices to the assessee that had been issued by the NFAC. The assessee was also informed that

further failure to comply would result in the passing of an *ex parte* order. In response to the same, the assessee filed a submission in which it was stated it had filed an appeal on 21.01.2022 before the ld. CIT(A) against the assessment order on the basis of which the penalty had been initiated and therefore, the penalty notice may kindly be dropped. However, the ld. AO did not accept the reply. He held that the appeal before the appellate authority had been filed belatedly and it was not clear at this stage as to whether that appeal would be accepted or rejected. Furthermore, the assessee was a non-filer who had made cash deposits in its bank accounts during demonetization of about Rs.11,30,950/- and not explained the reason for failure. Since, no evidences have been submitted, the amount had been assessed under section 69A of the Act and therefore, the income had been brought to tax under section 115BBE. Since, the assessee had deliberately chosen to be non-complaint and non-cooperative and not submitted any reply / explanation to the source of cash deposits, the continuous failure to make compliance could not be treated as bonafide. Hence, since the assessee had failed to prove that he had not resorted to tax evasion, the ld. AO held that the provisions of section 271AAC(1) were attracted and tax was levied at 10% of the tax payable under clause (i) of sub section 1 of section 115BBE of the Act. Accordingly, a penalty of Rs.67,857/- came to be levied.

5. Aggrieved with the same, the assessee went in appeal before the ld. CIT(A). But the ld. CIT(A) records that after issuing notices to him, no response was received. Therefore, the ld. CIT(A) concluded that the assessee was not interested in pursuing the appeal and accordingly he dismissed the appeal.

6. The ld. AO initiated penalty proceedings under section 271B of the Income Tax Act, 1961, during the course of assessments, followed it up with a regular notice. However, the assessee did not file any response to the penalty notice under section 271B issued on 1.09.2021. The assessee was thereafter, given an another opportunity to justify with documentary evidences as to why the penalty should not be levied and

the assessee was warned that failure would result in the levy of penalty. However, once again, there was no response. Thereafter, the matter was referred to the verification unit for vehicle delivery of notices but despite this, the ld. AO did not receive a response on merits, it was only submitted that since it had filed an appeal with the ld. CIT(A) on 22.01.2022, the penalty under section 271B may be kept in abeyance. The ld. AO held that section 271B could not be kept in abeyance under the provisions of section 275(1A) because it was for failure to comply with the provisions under section 44AB within the stipulated time and have nothing to do with the quantum addition. The ld. AO noted that the assessee had a turnover of Rs. 2,99,74,493/- and therefore, was liable to get his accounts audited by an Auditor before the specified date and to have furnished such report in the prescribed form before the specified date. However, the assessee had not furnished any explanation as to why it had not furnished the audit report or got accounts audited within the time limit therefore, the ld. AO held that the assessee was in violation of the provisions of section 44AB and accordingly, was liable for penalty under section 271B of the Income Tax Act. He, therefore, levied the penalty of Rs. 1,50,000/- after computing Rs. 1,49,870/- as the amount of penalty leviable @ .5% of turnover.

7. Aggrieved with this levy of penalty, the assessee went before the ld. CIT(A). The ld. CIT(A) records that he issued four notices to the assessee but did not receive compliance on any of the notices. Accordingly, he held that the assessee was not interested in pursuing his appeals and he therefore, dismissed the appeal.

8. The assessee is aggrieved at this summary dismissal of all these appeals by the ld. CIT(A) and has come in appeal before us. Sh. Hemant S. Modh, Advocate (hereinafter referred to as the 'ld. AR') submitted that the assessment against the assessee was unjustified because the cash that had been deposited was out of the business receipts of the assessee firm and the assessee had filed a copy of its accounts before the ld. AO to demonstrate the same. However, the ld. AO had not

considered this and had held that amount deposited is treated to be unexplained. It was submitted that the matter could not be properly represented before the ld. AO or the ld. CIT(A) but the deposits were not unexplained and it was prayed that if the matter could be sent back to the ld. AO, the deposits would be duly explained. On a query from the Bench, the ld. AR undertook to appear before the ld. AO and explain the matter.

9. Sh. Alok Bhura, Sr. DR (hereinafter referred to as the 'ld. Sr. DR') pointed out that the assessee had not made any compliance before either the ld. AO or the ld. CIT(A) and therefore should be presumed that he had nothing to say in this regard. However, if the Tribunal, in its wisdom decided to send the matter back while necessary direction should be issued to the assessee for compliance before the ld. AO so that the true facts could be arrived at. With regard to the issue of levy of penalty under section 271B, the ld. Sr. DR pointed out that the same ought to be confirmed as it had nothing to do with the quantum but was on account of failure to comply with the provisions of section 44AB. In response, the ld. AR submitted that this matter may also be kindly sent back to the ld. AO to enable the assessee to prove that there was an explanation for the late compliance.

10. We have duly considered the facts and circumstances of the case. It is seen that as per the audited accounts placed before the ld. AO, on the basis of which, return in response to notice under section 148 of the Act was filed, the assessee did not have taxable income. The ld. AR has also contended that the deposits in the bank account are explained out of the turnover of the assessee firm. We have observed that the facts of the case have not been brought out before either the ld. AO or the ld. CIT(A). Therefore, in the interest of justice, we restore ITA No. 22/JAB/2024 to the file of the ld. AO with a direction to the assessee to make due compliance before him following which the ld. AO may make *de novo* assessment. Accordingly, ITA No. 22/JAB/2024 is allowed for statistical purposes. Regarding ITA No. 23/JAB/2024, as

the quantum assessment has been set aside for discovery of whether there was any income of escaping assessment, the penalty on account of the addition under section 69A is not sustainable. Accordingly, we restore this matter also back to the file of the Id. AO to take a final decision on the matter, which will depend on his findings in the quantum assessment. Accordingly, ITA No. 23/JAB/2024 is also allowed for statistical purposes. Regarding ITA No. 24/JAB/2024, we find that it is not disputed by the assessee that he failed to get his account audited and that he failed to submit the audited accounts to the Department before the due date of compliance. In the circumstances, it appears that the assessee has rendered itself liable to be proceeded against under section 271B of the Income Tax Act, 1961. However, we note that the provisions of section 273B grant the discretion to the Assessing Officer not to levy the penalty if the assessee is able to show reasonable cause for the failure to make compliance and the penalty u/s 271B is among those penalties that are listed in the said section. We further observe that the assessee has not been heard in the matter and we believe that before the levy of penalty, it must be given an opportunity to explain the default. In the circumstances, we restore this matter back to the file of the Assessing Officer, with a direction to the assessee to make due compliance. The Id. AO may thereafter pass an order in accordance with law.

11. In the result, ITA No.22/JAB/2024, ITA No.23/JAB/2024 and ITA No.24/JAB/2024 are allowed for statistical purposes.

Order pronounced on 23.05.2025 in the open Court.

Sd/-
[KUL BHARAT]
VICE PRESIDENT
DATED: 23/05/2025
Sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

*ITA Nos. 22, 23 & 24/JAB/2024
A.Y. 2017-18
Shubh Hatcheries*

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CITDR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.