



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.

&

DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No.859/RJT/2024

निर्धारणवर्ष / Assessment Year: (2017-18)

(Hybrid Hearing)

Nikunj Sojitra Dhudashiya, Jamvanthali, Jamnagar - 361130	Vs.	Income-tax Officer, ITO Ward – 2(7), Jamnagar - 361008
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: GDEPS4923M		
(Appellant)		(Respondent)

Appellant by : Shri Chetan Agarwal, Ld. AR

Respondent by : Shri K. L. Solanki, Ld. Sr. DR

Date of Hearing : 24 / 04 /2025

Date of Pronouncement : 08 / 07 /2025

आदेश / ORDER

PER DINESH MOHAN SINHA JM;

Captioned appeal filed by assessee pertaining to Assessment Year 2017-18 penalty, is directed against order passed by Commissioner of Income Tax (Appeal), vide order dated 13/09/2024, which in turn arises out of an order passed by the Assessing Officer dated 09/09/2021 u/s 271 B of the Income Tax Act, 1961.



2. GROUNDS OF APPEAL: -

1. Learned CIT(A) erred in law as well as on facts in upholding the penalty of Rs. 1,50,000/- u/s 271B of the without considering the fact that books of account are not maintained as per section 44AA of the Act.

3. Facts of the Case

The assessment proceedings finalized by making best judgment u/s 144 of the Act, on the basis of the total receipt in the Bank and treated as turnover of the assessee. During the course of assessment for the year under consideration, it was noticed that total gross receipt from the business were at Rs.4,02,49,168/-. thus, it was mandatory on the part of the assessee to get his books of account audited from the Auditor before due date i.e. 30.09.2017, as per the provision of section 44AB of the IT Act. The assessee failed to do so. The penal proceeding under section 271B for non-auditing the books of account were initiated. The default on the part of the assessee to comply with the provisions of section 44AB of the Act within specified date attracts penalty. Hence a penalty of Rs.1,50,000/- is imposed on the assessee.

4. That the assessee filed an appeal against the order dated 09/09/2021 before the Ld. CIT(A), The Ld. CIT(A) has issued notices to the assessee in response the assessee submitted written submission. After considering the response of the assessee the Ld. CIT(A) has dismissed the appeal of the assessee with following observations:

“I have examined the issue. It is an admitted fact that the total sales/turnover or gross receipts of the appellant company for the year under consideration is more than Rs. 4.02 crores. Obviously, it was a case where e-filing of Audit reports u/s 44AB was mandatory. As per the provision of sec. 271B of the IT Act 1961, if any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required u/s 44AB. Penalty is leviable. The wording of the section as mentioned



*above are unambiguous and clear in as much as that the getting the accounts audited if the turnover exceeds sixty lakhs is mandatory. The explanation by the appellant is general in nature and found not tenable. The assessee has not given reasonable cause for not getting the books of accounts audited.
In the result, appeal is dismissed.”*

5. That the assessee filed an appeal against the impugned order dated 13.09.2024 before this Tribunal.

(i) The Ld. A.R. of the assessee has submitted that assessee earned commission income and no return filed by the assessee. The commission earned on the deposit in Bank of Baroda & ICICI Bank, Jamnagar. The assessee submitted before AO that commission income earned @1% on the receipt which is deposited in the Bank. The A.O. has assessed income @1.25% on the deposit in the bank. The A.R. requested that penalty u/s. 271B may kindly be deleted.

(ii) On the contrary Ld. D.R. has relied on the order of the Ld. CIT(A) and submitted that the assessee has admitted the turnover during the course of assessment.

6. We have heard the matter during the course of assessment, it was submitted the books of accounts was not maintained by the assessee commission on 1% was offered to tax during the course of assessment the assessment framed by making addition @1.25% of total deposited cash of Rs.4,02,49,168/- in the Bank. The AO initiated penalty proceedings u/s. 271B of the Act. Assessee was not aware about maintenance of books of accounts in his case as he was concerned with his commission income only That the Ld.AO imposed penalty u/s.271B ignoring provisions of section



273B meaning thereby ignoring reasonable cause for the failure on the part of appellant. when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief on the part of the assessee then the offender is not liable for non-compliance in the manner prescribed by the statute. - we find support from the decision given by Hon'ble Apex Court in the case of Hindustan Steel Ltd. vs. State of Orissa (1972) 83 ITR 26 (SC) Reliance is also placed on the decision of Gujarat High Court dated 4th march 2009, in case of Income-tax Officer v. Sachinam Trust wherein it was held as under:

“Where in view of Tax Audit Manual published by Bombay Chartered Accountants' Society, which contained legal opinion of eminent counsel that in case of a person carrying on banking business, appropriate expression to be considered for deciding applicability of provisions of section 44AB would be term 'gross receipts', assessee, carrying on business of financing, Bonafide believed that gross receipts of interest and not gross amount of advance, would constitute basis for ascertaining limit of Rs.40 lakhs so as to attract section 44AB, penalty on assessee was not leviable.”

Reliance is also placed on the decision dated 21st August, 2015 given by ITAT Ahmedabad in case of Jigisha M. Soni, Anand vs Assessee which was given in the favor of the assessee after considering the provisions of section 273B of the Act.

7. In view of the above facts & circumstance of the case and in the light of above discussion. We are inclined to quash the order of the lower Authorities.

8. Resultantly, this appeal is allowed for statistical purpose.



Order pronounced in the open court on 08/ 07 /2025.

Sd/-

**(Dr. A.L. SAINI)
ACCOUNT MEMBER**

Sd/-

**(DINESH MOHAN SINHA)
JUDICAL MEMBER**

Rajkot

दिनांक/ Date: 08 / 07/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot