

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E”, DELHI**

**BEFORE SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1018/DEL/2025
Assessment Year: 2017-18

Ankit Chauhan C-48, Lal Bagh, Azadpur Delhi-110033 PAN No.AXQPC2657N	Vs.	ITO Ward 36 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ranjan Chopra, CA
Respondent by	Sh. Dheeraj Kumar Jain, Sr. DR

Date of hearing:	12/08/2025
Date of Pronouncement:	20/08/2025

ORDER

PER SUDHIR KUMAR, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] vide order dated 09-12-2024 pertaining to A.Y. 2014-15 arising out the penalty order date 29-06-2021 under section 271B of the Income Tax Act,1961, (in short ‘the Act’).

2. The assessee has raised the following grounds in appeal:

1. *That the learned CIT (A), NFAC has erred in law and on facts in upholding the penalty of Rs 1,37,285/- levied u/s 271B without appreciating the facts of the appellant in proper perspective.*
2. *That orders passed by learned CIT (A), NFAC and learned Assessing Officer are against the principles of natural justice.*
3. *The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of objection either before or during the course of proceedings.*
4. *That the order passed by learned CIT (A), NFAC sustaining the order of the Assessing Officer is bad in law and on facts and is liable to be set-aside.*

3. The brief fact of the case are that the assessee filed his return of income for the A.Y. 2017-18 on 28-07-2017 declaring total income of Rs. 2,49,466/- claiming the deduction u/s 80 TTA of the Act. The case of the assessee was selected for scrutiny under CASS with reason 'large cash deposits during the year'. Notice u/s 143(2) of the Act was issued. The assessee filed his reply stating that he was an authorized dealer of Amul Milk and he started his business from 01-10-2016. The Ld. Assessing officer completed the assessment vide order dated 18-12-2029 under section 143(3) of the act after making the addition of 1,47,738/- and initiating penalty proceedings u/s 271B of the Act for his failure to get his books of account audited by a

qualified chartered Accountant, thereby violating the provisions of section 44AB of the Act.

4. During the penalty proceedings, show cause notices were issued and reply filed by the assessee. After considering the reply submitted by assessee the penalty of Rs, 137285/- was imposed vide order dated 29-06-2021 under section 271B of the Act, against which the assessee filed the appeal before the NFAC, Delhi. Who dismissed the appeal.

5. During the assessment it was submitted that the daily proceeds received by the assessee were firstly deposited by him in the bank account maintained by him from where he transferred such deposits to Principal, i.e. Gujarat Co-operative Milk Marketing Federation Ltd. On the same day. The assessee also submitted that it was the first year of business of the assessee who was absolutely not aware that section 44AB is applicable to him. There was no willful default and mensrea for not getting the tax Audit done. He further submitted that no penalty shall be imposable on the person if he proves that there was reasonable cause for the failure as provided under section 273B of the Act.

6. Aggrieved the order of the Ld. CIT(A), the assessee filed the appeal before the Tribunal.

7. The Ld. AR of the assessee reiterated the same arguments which were advanced before the Ld. CIT(A). He further submitted that the matter is covered in favour of the assessee by the order dated 22-05-2023 of the Co-ordinate Bench in the case of Mohammad Daud vs. ITO Ward -58 (1) in ITA No. 1691/Del/ 2022 for A.Y.2017-18. In this case the Co-ordinate bench in para 10 held as under;

“During assessment proceeding as also before the Ld. CIT(A) in penalty proceedings the assessee explained, inter alia that it was the first year of business and that he was under the bonafide belief that the provision of section 44AB of the Act was inapplicable to him as he was only a commission agent supplying milk on behalf of “Amul Milk” in the assigned area and was entitled to fixed commission only. In our opinion, the explanation offered by the assessee constitutes ‘reasonable cause’ and the assessee is eligible to the protection envisaged under section 273B of the Act.”

8. The Ld. AR has also relied upon the followings, judgments:-

*(i) Ved Singh vs. Income- tax Officer- [2024] 159 taxmann.com
1568 (Delhi-Trib)*

(ii) Dharam Singh Vs. Income- tax Officer- [2024]167 taxmann.com 289 (Delhi-Trib)

(iii) Parag Hashmukhbhai Davda Income- tax Officer – [2024] 161 taxmann.com 303 (Rajkot-Trib)

9. The Ld. DR however relied on the order of the Ld. CIT(A).

10. We have heard the parties and gone through the material available on record. In this case the assessee contended before the lower authorities, that the assessee is only an authorized dealer of Amul Milk and this fact was also confirmed by the GCMMF by mail. The assessment order reveals that the assessee explained in details the modus operandi of his business. The assessee sold the federation Milk and their milk products in the assigned area implying thereby that the assessee was providing the services and acted only on behalf of his principal for earning the fixed commission. This fact has not been appreciated in right perspective. The explanation offered by the assessee has been discarded by the Ld. CIT(A) without any valid and cogent reasons. We also find that the Co-ordinate Bench in the case of Mohammad Daud vs. ITO Ward -58(1) (supra) wherein under similar circumstances, have deleted the penalty. In view of the facts and circumstances and legal position of the case, penalty levied u/s 271B upheld by the Ld.

CIT(A) /NFAC is quashed and we direct the Assessing officer to delete the penalty levied against the assessee.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20.08.2025.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Neha, Sr. PS

Date:20.08.2025

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(SUDHIR KUMAR)
(JUDICIAL MEMBER)

ASSISTANT REGISTRAR
ITAT DELHI