

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.1708/Del/2025, (A.Y.2022-23)

Sahil Gupta, D-304, Vivek Vihar, New Delhi- 110095 PAN: AOIPG4087K (Appellant)	Vs.	Dy. Commissioner of Income Tax, Central Circle 58(1), ARA Building, Jhandewalan, New Delhi (Respondent)
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Appellant by	None
Respondent by	Sh. Manish Gupta, Sr. DR

Date of Hearing	21/08/2025
Date of Pronouncement	29/08/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal of the assessee for the Assessment Year ('AY') 2022-23 is directed against the order dated 02.12.2024 of the Ld. Commissioner of Income Tax (Appeals), NFAC, New Delhi ('CIT(A)').

2. Following grounds were raised in this appeal: -

"1. The learned AO has erred in levying penalty u/s 271A of the Act, by considering F & O turnover Rs.55,64,95,179/- as against Actual F & O turnover of Rs.29,28,652/- and Speculation turnover Rs.2,87,421/-. As per Section 44AB of the Income Tax Act specifies the conditions for a tax audit Section 44AB(a): If the total turnover from F&O trading exceeds Rs 10 crore, an F&O trading tax audit is mandatory. Since the cumulative turnover from F&O and Speculation transactions are below the threshold limit, there is no liability of Tax Audit.

2. *That is my only income under the head Income from Business trade in F&O segment and speculative transactions. All other equity transactions are considered under the head income from Capital Gain.*
 3. *As per guidance note issued by ICAI turnover in case of Derivatives, futures and options shall be calculated i.e The total of favorable and unfavorable differences in case of squared off transactions shall be taken as turnover.*
 4. *I would like to rely on the following judicial pronouncement. Sachin Marotrao Rangari v ACIT 2022 TaxPub(DT) 6494 (Rkt Trib) CIT vs. Punjab Stainless Industries (2014) 364 ITR 144 (SC) CIT vs. Pact Securities and Financials Ltd. (2003) 86 ITD 115 (Hyd.), which held that the method of accounting, prescribed by ICAI can be relied upon for computing turnover in case of shares and derivatives.*
 5. *Section 44AA requires certain specific records for tax purposes which are maintained and provided during the course of assessment and penalty proceedings.*
 6. *Books of accounts i.e P&L and Balance Sheet for F.Y 2021-22 is maintained and reproduced below as per Annexure-1.*
 7. *Electronic records of F&O Turnover Statement & Speculative Transaction Statement from my broker Nuwama Wealth and Investments Limited for F.Y 2021-22 are enclosed.*
 8. *That the learned AO erred on facts and in law in imposing penalty under section 271A of the IT Act and did not examine the documents produced.*
 9. *In view of the above submissions, I pray to your honor to delete the penalty wrongly levied u/s 271A of the IT Act.”*
3. The relevant facts giving rise to this appeal are that the assessee filed his Income Tax Return (‘ITR’) on 27.08.2022 declaring income of Rs.4,92,310/-. The case was scrutinized and the Assessing Officer (‘AO’) completed the assessment under section 143(3) r.w.s. 144 of the Income Tax

Act, 1961 ('Act') at income of Rs.30,31,456/-. The AO took value of entire F & O trading as turnover of the assessee. As per the AO, the turnover of the assessee is Rs.55,64,95,179/-, whereas, as per the assessee, the F & O turnover is Rs.29,28,652/- and Speculation turnover is Rs.2,87,421/-. The AO, taking note of the fact that the assessee who was required to maintain his books of accounts stipulated under section 44AA of the Act has not maintained his books of accounts; therefore, he initiated penalty proceedings under section 271A of the Act and later, levied the penalty of Rs.25,000/- under section 271A of the Act. Aggrieved, the assessee filed appeal before the Ld. CIT (A), who dismissed the same.

4. Before us, the assessee was not represented by anyone. Therefore, we heard the Ld. Sr. DR, who defended the orders of the Authorities below.

5. We have perused the material available on the record. As per the penalty order, it is evident that the assessee has filed detailed submission before the AO stating that the F & O turnover has to be determined as per the ICAI guidelines as the Income Tax Act does not contain any provision or guidance for the computation of turnover in F & O trading. The Act does not contain any provision or guidance for the computation of turnover in F & O trading. Para 5.14(b) of the Guidance Note on Tax Audit under Section 44AB of the Act (Revised 2022) provides the following guidance on how turnover or gross receipt in

respect of transactions in derivatives, futures and options is to be determined:

- The total of favourable and unfavourable differences shall be taken as turnover.
- The premium received on the sale of options is also to be included in turnover. However, where the premium received is included for determining net profit for transactions, the same should not be separately included.
- In respect of any reverse trades entered, the difference thereon should also form part of the turnover.

Later, it was revised in 2023 [Para 5.10(b) of the Guidance Note on Tax Audit under Section 44AB of the Act]. According to which the turnover or gross receipt in respect of transactions in derivatives, futures and options is to be determined as follows:

- In the case of squared-off transactions, the total of favourable and unfavourable differences shall be taken as turnover.
- Premium received on the sale of options is also to be included in turnover. However, where the premium received is included for determining net profit for transactions, the same should not be separately included.
- In respect of any reverse trades entered, the difference thereon should also form part of the turnover.

- In case of an open position at the end of the financial year (i.e., trades which are not squared off during the same financial year), the turnover arising from the said transaction should be considered in the financial year when the transaction has been actually squared off.
- In case of delivery-based settlement in a derivatives transaction, the difference between the trade price and the settlement price shall be considered as turnover. Further, in the hands of the transferor of the underlying asset, the entire sale value shall also be considered as business turnover where the underlying asset is held as stock in trade.

6. We have heard both the parties and have perused the material available on the record. With the help of facts mentioned in orders of the Authorities below, it is evident that there is reasonable cause for not maintaining the books of account as the assessee is guided by the ICAI guidelines. We are of the considered view that this reasonable cause for not maintaining the books of account is justified and the penalty of Rs.25,000/- levied by the AO, in view of provisions of section 274 of the Act, is uncalled for. Hence, the penalty is deleted. The assessee gets consequential relief.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 29th August, 2025.

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER
Dated:29/08/2025
Binita, Sr. PS

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI