

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

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 1064/DEL/2023 [A.Y. 2018-19]

ITA No. 450/DEL/2023 [A.Y. 2019-20]

Shri Sumit Jindal
T-303, Gali No. 6
Shivaji Nagar
Narela, New Delhi

Vs.

The Dy. C.I.T
Central Circle - 5
New Delhi

PAN - AETPJ 2761 A

(Applicant)

(Respondent)

Assessee By : None

Department By : Shri Mahesh Kumar, CIT-DR
Shri Manish Gupta, Sr. DR

Date of Hearing : 12.08.2025

Date of Pronouncement : 10.09.2025

ORDER

PER NAVEEN CHANDRA, A.M:-

The above captioned two separate appeals by the assessee are preferred against 2 separate orders of the Id. CIT(A)-24, New Delhi dated 17.02.2023 and 28.12.2022 for A.Ys 2018-19 and 2019-20 respectively.

2. Since common grievance is involved in the captioned appeals and pertain to same assessee, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. None appeared on behalf of the assessee. We decided to proceed after hearing the ld. DR and perusing the synopsis furnished by the assessee. The ld. DR was heard at length. Case records carefully perused.

ITA No. 1064/DEL/2023 [A.Y. 2018-19]

4. Facts on record show that the assessee is an individual engaged in the business of trading of agricultural products under the proprietorship concern in the name and style of M/s Khanak International. The assessee filed his return of income on 09.10.2018 declaring income of Rs. 4,96,580/-. The Assessing Officer assessed the total income of the assessee u/s 153A r.w.s. 143(3) at Rs. 73,98,620/- being of Rs. 62,11,880/- on account of unaccounted commission income and Rs. 6,90,160/- by disallowing various expenses.

5. Additions were sustained by the ld. CIT(A) and hence the assessee is in appeal before us.

6. Having heard the ld. DR and perusing the relevant material on record, we find that the assessee was an accommodation entry provider through his proprietary concern as well as four Firms controlled by him, on a commission basis and during the impugned year had provided entries to the tune of Rs 431 crore. The assessee had declared a commission of Rs 2,53,120/- in his return of income. We find that in the assessment order the Assessing Officer, on the basis of admission made u/s 132(4) of the assessee and seized materials found during the search, has worked out the rate of commission income on the accommodation entries provided for Rs 304 crore which varies from 0.03% to 0.18%. On the basis of these percentage, the AO worked out the commission income varying from Rs 3000/- per crore to Rs 18,000/- per crore. The assessee has admitted to Rs 5000/- per crore as commission income. The AO however, has rejected the assessee rate of Rs 5000/- per crore and has estimated a mean rate of 0.15% i.e., Rs 15,000/- per crore. As the total accommodation entries are Rs 431 crore, the AO has calculated the commission income for AY 2017-18 of Rs 64,65,000/- (Rs 15,000/- *431). We also find that the Assessing Officer has granted benefit of Rs. 2,53,120/- holding the same to have been offered by the assessee to taxation as commission income in his return.

7. We also find that there is no dispute on the fact that the assessee's business is of providing accommodation entries for a commission. The assessee has also not disputed the fact that the total accommodation entries supplied by the assessee is of Rs 431 crore in the instant year. The only bone of contention is the rate of commission charged by the assessee. We find that as per the seized documents, the commission rate varies from Rs 3000/- to Rs 18,000/- per crore and the AO has adopted an estimated rate of Rs 15,000/- per crore. In such factual matrix, we are of the considered view that in the interest of fairness and justice, without making the same as a precedence, a commission rate of Rs 8,000/- per crore be adopted which works out to Rs 34,48,000/- (431 * 8,000/-). The AO is accordingly directed to delete the balance commission income added of Rs 30,17,000/-. Needless to add, the assessee will get benefit of the commission income already declared in his return of income. Ground 1 to 4 and 6 are partly allowed.

8. Next ground is in respect of disallowance of expense of Rs 6,90,160/- as bogus. We find that the assessee is an accommodation entry provider and in the course of search/investigation has accepted that there is no actual transportation of goods is involved or any godown is maintained. We also find that out of expense of Rs 6,90,160/-, the assessee has claimed Rs 4,06,890/- as Freight charges and Labour

charges. We are of the considered view that since there is no such activity of transportation and godown is undertaken by the assessee, the disallowance of this part of expense as bogus expense is sustained. The AO accordingly, is directed to allow the balance expense. Ground 5 is partly allowed.

9. With respect to ground No. 7 we find that the AO has made a protective addition of Rs 64,65,000/- as the commission income in the hands of four Firms, managed and controlled by the assessee, in the name of dummy proprietors. The name of the Firms and dummy proprietor are as follows:

1. M/s Pushpdant Trading Co, proprietor Ramesh
2. M/s Om Trading Co, proprietor Rajesh Kumar
3. M/s Moolchand Shivam kumar, proprietor Shivam Gupta
4. M/s Shiv Poojan Vipin Kumar, Proprietor Shiv Poojan Singh

10. We have already addressed and confirmed the substantive addition of commission income in the hands of the assessee. As the substantive addition is confirmed, the protective addition made in the hands of the four dummy Firms as above is hereby deleted. Ground 7 is allowed.

11. As a result, the appeal of the assessee is partly allowed.

ITA No. 450/DEL/2023 [A.Y 2019-20]

12. In this assessee's appeal, the issue is with regard to levy of penalty u/s 271B. Grounds taken by the assessee are as under:

1. *That the Ld. CIT(A) had erred in law by confirming the penalty imposed by Ld. AO u/s 271B of the act without appreciating the fact that no penalty was imposed vide intimation order dated 15.05.2020 passed u/s 143(1) of the act whereas in recent judicial pronouncements, Hon'ble Punjab and Haryana High Court had held that where no penalty u/s 271B of the act has been imposed while processing the return u/s 143(1) of the act, no penalty u/s 271B of the act could be imposed upon completion of assessment proceeding u/s 143(3) of the act. Thereby, impugned order passed by Ld. CIT(A) confirming the penalty imposed by Ld. AO without even discussing impugned contention of the appellant in impugned order dated 28.12.2022, where said contention required specific adjudication by Ld. CIT(A), deserves to be quashed being the same is illegal and non-est.*

2. *That the Ld. CIT (A) had erred in law while confirming the penalty of Rs. 1,50,000/- imposed u/s 271B of the act by Ld. AO on account of delay in filing of tax audit report i.e. Form 3CB - 3CD for the period under consideration without appreciating the fact that said delay was due to delay on the part of revenue in furnishing copy of seized data upon completion of impugned search operation conducted u/s 132 of the act on 03.11.2018, being during said search operation, various laptops and pen drive containing the financial data in electronic form were seized by the search party but copy of said seized laptops and pen drives along with the copy of seized material was furnished to the appellant by the department at the earliest by 24.04.2019 only whereas, copy of seized material furnished by the department was corrupted and required appellant to engage a technical expert to recover said data and thereafter, upon recovery of complete seized material, the books of accounts for the period under consideration was*

prepared, necessary audit was conducted by the tax auditor and prescribed Form 3CB - 3CD was prepared and filed on 17.01.2020 which was due for filing on 31.10.2019. Thus, the impugned penalty of Rs. 1,50,000/- imposed u/s 271B of the act deserves to be deleted being the delay was not intentional but the appellant was prevented by reasonable cause for filing of tax audit report within stipulated time limit.

That the appellant craves leave to add, alter, delete & modify any of the ground of appeal at the time of hearing.

13. Brief facts of the case is that a search and seizure action u/s 132 of the Act was carried out on 03.11.2018 on the assessee, a part of the Hawala Traders group of cases. The assessee had filed his original return of income u/s 139(1) of the Act on 18.01.2020 declaring total income of Rs.38,24,200/-. The assessment in the case of the assessee was completed on 13.05.2021 u/s 143(3) of the Act at the assessed income of Rs.77,17,839/-.

14. The AO, during the course of assessment proceedings, noticed that the return of income filed u/s 139(1) of the Act was belated return, the audit report, etc. were also filed belated. The AO further noted that the assessee's total turnover/gross receipt was above Rs.1 crore and the assessee was liable to get his accounts audited and prepare an audit report within the stipulated period as provided under the Act. The AO found that the assessee failed to get his accounts audited u/s 44AB of the Act within the stipulated period as provided and therefore, penalty

proceedings u/s 271B of the Act was initiated and finding the explanation not reasonable, the penalty of Rs 1,50,000/- was levied.

15. We find that the CIT(A) has upheld the penalty u/s 271B by holding as follows:

"4.1.7 In this case a search & seizure action u/s 132 of Income Tax Act was carried out on 03.11.2018. Subsequently the appellant is filed his return of income u/s 139(1) of Income Tax Act for AY 2019-20 on 18.01.2020 declaring a total income of Rs. 38,24,200/-. During the course of assessment proceedings, it was noticed that the return of income was a belated return and the audit report was also filed belated. Therefore, the Assessing Officer initiated penalty proceedings u/s 271B of Income Tax Act. In view of the failure of the appellant to get his books of account audited within the stipulated period, the Assessing Officer imposed a penalty u/s 271B of Income Tax Act amounting to Rs. 1,50,000/- in this case.

4.1.8 On perusal of response filed by the appellant, it is noticed that various laptops and pen drives containing the financial data were seized by the search party during the course of search. The seized laptops and pen drives along with the copy of seized material were furnished to the appellant by the department on 24.04.2019. The appellant was the requisite tax audit conducted and Form 3CB and Form 3CD were finalized on 17.01.2020 and the Income Tax Return was then filed on 18.01.2020. Therefore the audit report was filed beyond the due date.

4.1.9 The copy of Panchnama, seized laptop and pen drives were released by the department and were handed over to the appellant on 24.04.2019. The due date for filing of tax audit report and the income tax return for the concerned year was 31.10.2019. The appellant filed the audit report and the return of income only on 18.01.2020. This would mean that the audit report was not filed before the department on or before 31.10.2019 and there is a failure on the part of the appellant to get it books audited within

the provision of 44AB within the stipulated time. The appellant argued that when the seized laptop and pen drives were handed over the appellant the data stored in them was corrupt and was could not be accessed for next few months until the competent computer engineer fixed it. However, the appellant during the course of penalty proceedings and subsequent appellate proceedings did not file any evidence to substantiate this claim. The appellant did not provide any evidence such as the invoice raised by the computer engineer and the proof of its subsequent payment to substantiate its claim that the data was actually corrupted and was subsequently rectified by a professional.

4.1.10 In view of the discussion above, it is clear that the books of accounts of the appellant were not audited within the stipulated period and therefore the provision for Section 271B were clearly applicable in this case. The appellant could not provide any reasonable cause of failure which had prohibited him to get his books of account audited within the stipulated time. Therefore in my considered opinion this is a fit case for levy of penalty u/s 271B of Income Tax Act and there is no justification for the undersigned to interfere with the order of the Assessing Officer. Accordingly, the order imposing penalty of Rs. 1,50,000/- under provisions of Section 271B of Income Tax Act passed by the Assessing Officer is upheld and the Ground Nos. 1 to 4 and additional ground of appeal are dismissed.

16. To adjudicate the validity of the penalty u/s 271B, it is prudent to examine the provision for levy of penalty u/s 271B and 44AB. Section 271B, as applicable in the impugned year, provides as under:

271B. [Failure to get accounts audited. [Inserted by Act 21 of 1984, Section 30 (w.e.f. 1.4.1985).]

- 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 under section 44-AB],*

the [Assessing Officer] may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent. of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less.

44AB. Audit of accounts of certain persons carrying on business or profession.

Every person,—

*(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year [***]:*

[Provided that in the case of a person whose—

*(a)****

*(b) ****

*(c) *****

*(e) ****

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Explanation.—For the purposes of this section,—

*(i)****

(ii)"specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means [date one month prior to] the due date for furnishing the return of income under sub-section (1) of section 139.

17. The mandate of law under section 271B stipulates levy of penalty in two situations: one where the assessee **fails to get its account audited** and second is where the assessee fails to **furnish the audit report** by the specified date as prescribed in section 44AB of the Act. The law in section 44AB mandates that where the total sales, turnover, gross receipts in business exceeds one crore, the assessee has to get its account audited before the specified date and furnish the audit report by the specified date. The “specified date” is due date for furnishing the return of income under section 139(1).

18. The admitted facts in the instant case is that due date for filing of tax audit report and the income tax return for the impugned AY 2019-20 was 31.10.2019 which is the “specified date” u/s 44AB. Another uncontroverted fact is that the requisite tax audit was conducted and Form 3CB and Form 3CD were finalized on 17.01.2020 and the assessee filed the Income Tax Return, along with Audit report, on 18.01.2020. It is therefore, an admitted fact that the audit report, which was to be filed on 31.10.2019, was filed on 18.01.2020 i.e., beyond the “specified date”. Under these facts, it is established that a breach of law, in terms of section 271B read with section 44AB, has taken place.

19. In such circumstances, the only recourse left for the assessee to escape the rigour of law, is provided u/s 273B of the Act which is to

establish “a reasonable cause” for the said failure. The “reasonable cause” pleaded by the assessee is as follows:

“delay was due to delay on the part of revenue in furnishing copy of seized data upon completion of impugned search operation conducted u/s 132 of the act on 03.11.2018, being during said search operation, various laptops and pen drive containing the financial data in electronic form were seized by the search party but copy of said seized laptops and pen drives along with the copy of seized material was furnished to the appellant by the department at the earliest by 24.04.2019 only whereas, copy of seized material furnished by the department was corrupted and required appellant to engage a technical expert to recover said data and thereafter, upon recovery of complete seized material, the books of accounts for the period under consideration was prepared, necessary audit was conducted by the tax auditor and prescribed Form 3CB - 3CD was prepared and filed on 17.01.2020 which was due for filing on 31.10.2019. Thus, the impugned penalty of Rs. 1,50,000/- imposed u/s 271B of the act deserves to be deleted being the delay was not intentional but the appellant was prevented by reasonable cause for filing of tax audit report within stipulated time limit.

20. Let us examine whether the assessee has come forward with his explanation with clean hands. The assessee is admittedly an entry operator, as established hereinabove while dealing with his appeal for AY 2018-19, who has been earning commission income for providing bogus entries. In the course of search, various laptops and pen drives containing the financial data were seized on 03.11.2018. These seized laptops and pen drives along with the copy of seized material were furnished to the appellant by the department on 24.04.2019. Now, the due date for filing of tax audit report and the income tax return for the

impugned year was 31.10.2019. The assessee however, filed the audit report and the return of income only on 18.01.2020.

21. To explain the delay in audit and filing of return, the assessee stated that the data received from the Department got corrupted. This explanation may have been considered as “reasonable cause” only when the contention of corrupted data was backed up with some cogent evidence. The CIT(A) has given a finding that the assessee, neither before the assessee nor before the CIT(A), substantiated his claim by providing any evidence such as the invoice raised by the computer engineer and the proof of its subsequent payment to substantiate its claim that the data was actually corrupted and was subsequently rectified by a professional. We may add that no such evidence was put before us also to substantiate the “reasonable cause”. We find that the delay of almost six months, from 24.04.2019 when the Department handed over the seized materials/ documents to 31.10.2019 the due date of filing audit report and Return of Income, is not explained.

22. In view of the above discussion, we are of the considered view that the assessee failed to “furnish” the audit report alongwith the return of income within the “specified date” inviting the penalty u/s 271B. We are also of the opinion that that the assessee’s explanation is not backed by any cogent evidence to support any “reasonable cause” which

prevented him to get his books of account audited within the stipulated time. We therefore hold that there is no reason to interfere with the decision of the CIT(A) upholding the levy of penalty u/s 271B of Income Tax Act. Ground Nos. 1 and 2 are dismissed.

23. In so far as reliance on the hon'ble Punjab and Haryana High Court in the case of Jasbir Singh V CIT (2012) taxmann.com 202 is concerned, the same is distinguishable on both facts and law as we find that the decision was rendered on law of section 271B which existed prior to the amendment by the Finance Act, 1995. Further, in that case the Return was filed u/s 139(4), hence the hon'ble Court held that the assessee is not be exigible to penalty u/s 271B.

24. The assessee has relied on the following decisions for deletion of penalty u/s 271B:

- i. ACIT vs. Tribhovandas Tejpal Sons([2003] 126 taxmann 28 (Rajkot) (Mag) [06-08-2001])
- ii. ACIT vs. Smt. Kokilaben A. Shah ([2000]111 taxmann.com 44 (Ahmedabad-ITAT) (Mag.) [13-01-2000])
- iii. Assistant Commissioner of Income Tax vs. Roop Textiles ([1996] 86 laxmann 123 (Ahmedabad-ITAT) (Mag) [30-11-1995])

25. In all the above case, there is a finding by the ITAT that there was inordinate delay in collecting seized documents from the Department after the search, and the reason was considered a "reasonable cause".

In the instant case, the facts are distinguishable as the documents/materials seized, were returned well within a reasonable time leaving sufficient time to prepare the audit report within due date. In view of the same, we are of the considered view that there is no reason to interfere with the decision of the CIT(A) of upholding the penalty u/s 271B. The grounds of appeal are dismissed.

26. As a result, the appeal of the assessee is dismissed.

27. In the result, the appeals of the assessee in ITA Nos. 1064 is partly and 450/DEL/2023 is dismissed.

The order is pronounced in the open court on 10.09.2025.

Sd/-

[MADHUMITA ROY]
JUDICIAL MEMBER

Sd/-

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 10th September, 2025.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

| Sl No. | PARTICULARS | DATES |
|--------|---|-------|
| 1. | <i>Date of dictation of Tribunal Order</i> | . |
| 2. | <i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i> | |
| 3. | <i>Date on which the typed draft Tribunal Order is placed before the other Member</i> | |
| 4. | <i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i> | |
| 5. | <i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i> | |
| 6. | <i>Date on which the signed order comes back to the Sr. P.S./P.S</i> | |
| 7. | <i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i> | |
| 8. | <i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i> | |
| 9. | <i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i> | |
| 10. | <i>Date on which the file goes to the Supervisor (Judicial)</i> | |
| 11. | <i>The date on which the file goes for xerox</i> | |
| 12. | <i>The date on which the file goes for endorsement</i> | |
| 13. | <i>The date on which the file goes to the Superintendent for checking</i> | |
| 14. | <i>The date on which the file goes to the Assistant Registrar for signature on the Tribunal order</i> | |
| 15. | <i>Date on which the file goes to the dispatch section</i> | |
| 16. | <i>Date of Dispatch of the Order</i> | |