

IN THE INCOME-TAX APPELLATE TRIBUNAL "D" BENCH,  
MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No. 4385/MUM/2025  
(A.Y. 2012-13)

<b>Red Ginger Media and Entertainment Pvt. Ltd.,</b> C/o Shri Gaurav Malik, C-3/136, Janakpuri, New Delhi -110058, Delhi	v/s. बनाम	Income Tax Officer, Ward - 16(1)-5, Aayakar Bhavan, Maharishi Karve Road, Mumbai- 400 020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAECR8816L		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Sanjay Jain, AR (Virtually Present)
Respondent by :	Shri Annavaran Kosuri, (Sr. DR)

Date of Hearing	10.09.2025
Date of Pronouncement	22.09.2025

**आदेश / ORDER**

**PER PRABHASH SHANKAR [A.M.] :-**

The present appeal is preferred by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to penalty order passed u/s. 271B of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 15.02.2022 for the Assessment Year [A.Y.] 2012-13.



2. The grounds of appeal are as under:

1. *The Ld. Assessing Officer as well as Ld. Commissioner Of Income Tax (Appeals) have erred in imposing penalty of Rs. 77,629.00 and modified to Rs. 71,81,790.00 u/s 271B (it should be Rs. 71,817.00 as it appears to be calculation mistake, although maximum penalty imposable u/s 271B is Rs. 1,50,000.00) even though the assessment order has been set aside and restored to Assessing Officer for fresh assessment after due opportunity.*
2. *That the Ld AO has erred in Issuing Notice dated 10/12/2019 u/s 274 r.w.s.271B without deleting the appropriate limb “failed to get accounts audited” or “failed to furnish a report of such audit as required under section 44AB of the Income Tax Act.1961” under which penalty is proposed to be imposed and thus the Penalty is not sustainable.*
3. *The Ld. Assessing Officer as well as Ld. Assessing Officer have erred in adding the amounts of income of the assessee as appearing in Form 26AS and amounts credited in the bank statements to arrive at the turnover of the assessee and impose penalty u/s 271B without appreciating that the amounts credited in bank statements are the same as reflected in Form 26AS and thus wrongly estimating the turnover of the assessee.*
4. *That the Ld. Assessing Officer as well as Ld. Assessing Officer have erred in not appreciating that the total turnover of the assessee Rs. 44,81,484.25 is far below the limits prescribed u/s 44AB and thus penalty u/s 271B is bad and without jurisdiction.*
5. *That the Ld. Assessing Officer as well as Ld. Assessing Officer has erred in imposing penalty u/s 271B on estimated turnover as no penalty can be imposed on the estimated turnover.*
6. *That the assessee failed to file the return of income, assessment was completed u/s 144 without the production of books of accounts and no penalty 271B can be imposed where books of accounts are not maintained.*

3. Brief facts of the case are that the ld.Assessing Officer imposed penalty of Rs. 77,629/-, being 0.5% of total turnover u/s 271B of the Act on account of assessee’s failure to get its books of account audited and to submit the Audit Report audited u/s 44AB of the Act within the time limit as the total receipts of the assessee was Rs.1,55,25,802/- as per AIR data incorporated in the Individual Transaction Statement(ITS) with the



Department. It was stated by the AO that the assessee had received contractual receipts of Rs 1,47,86,792/-and fees for Technical /professional services of Rs 7,39,010/-.During the assessment proceedings, assessee did not file return. Accordingly, the above receipts were brought to tax and penalty u/s 271B was initiated for not getting the accounts audited since receipts exceeded the limit as laid down in section 44AB of the Act. Before him, the assessee contented that receipts did not exceed the limit and was Rs. 44,81,484.25 only. It was stated that assessment was made including bank deposits. The AO however, rejected the submission and went on to levy penalty as stated above on the above turnover.

4. In the subsequent appeal, the Id.CIT(A),observed that the assessment in this case was made computing the total income of Rs. 1,43,63,580/-since the assessee failed to file any return of income .While computing the above income, the AO observed receipts from the four concerns, totalling Rs. 1,43,63,580/- [ 3,69,505 + 38,12,784 + 35,80,612 +66,06,679].Thus, the contention of the appellant of having turnover below threshold limit i.e only Rs 43,08,033/- was found unacceptable in as much as it was observed that the its gross receipts were more than threshold limits as stipulated in law. Therefore, he found merit in the imposition of penalty u/s 271B of the Act for violation of section 44AB of



the Act. However he observed that the AO had imposed penalty taking total receipts of Rs. 1,55,25,802/- based on the AIR data incorporated ITS when he himself had computed the gross receipts at Rs. 1,43,63,580/-. Accordingly, the AO was directed to impose penalty on the gross receipts of Rs. 1,43,63,580/- in lieu of Rs. 1,55,25,802/-.

5. Before us, the ld.AR has vehemently agitated the penalty. It was intimated that the assessment order was passed u/s 144 of the Act. The ld.AR has submitted a paper book through post dated 10.09.2025, containing as many as 50 pages which inter alia contains the appellate order dated 03.06.2025 as passed by the ld.CIT(A) w.r.t. quantum appeal (pages 3 to 21 of P.B.) wherein the assessment order which was passed u/s 144 of the Act, has been set aside vide appellate order for de novo assessment. In this case, as apparent from the above discussion the figure of total receipt/turnover is vital for determination of liability of the assessee u/s 271B of the Act. Since the quantum appeals would be passed de novo by the AO inter alia determining the amount of turnover, we deem it appropriate to set aside the appellate order and remand it back to the AO to determine the liability of the assessee to penalty u/s 271B of the Act, if any, afresh consequent to the decision taken in this regard in the de novo assessment order, Thus, we allow the grounds of appeal for statistical purposes



6. In the result, the appeal is **allowed for statistical purposes.**

Order pronounced in the open court on **22/09/2025.**

Sd/-

**SANDEEP GOSAIN**

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

**PRABHASH SHANKAR**

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 22.09.2025

Lubhna Shaikh / Steno

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.

