



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकर अपील सं. /ITA No.293/RJT/2025
निर्धारण वर्ष/Assessment Year : 2016-17

Hiraben Rajuhai Bokhiriya Raju Goods Transport Co., Opp. New Airport National Highway, Near N. K. Mehta Hospital, Porbandar, Gujarat - 360575	बनाम/ Vs	The I.T.O. Ward – 2(4), Porbandar
स्थायी लेखासं./जी आइ आरसं./PAN/GIR No.: ALOPB2996B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Divyesh Sodha, Ld. AR
राजस्वकी ओर से / Revenue by : Shri Dheeraj Kumar Gupta, Ld. Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **11/09/2025**
घोषणा की तारीख/**Date of Pronouncement** : **27/11/2025**

आदेश/Order

Per, Dr. Arjun Lal Saini, A.M.:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2016-17, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 18.03.2025, which in turn arises out of a penalty order passed by Assessing Officer u/s 271B of the Act, on 23.05.2019.



2. Grounds of appeal raised by the assessee are as under:

- “1. *The Ld CIT (A) & assessing officer failed to appreciate that the appellant is merely acting as a commission agent and only commission income not total freight constitutes gross receipts for the purpose of section 44AB.*
2. *The Penalty levied by the Ld CIT (A) & assessing officer exceeds the statutory limits u/s 271(B) which prescribes a penalty of 0.5% of turnover or 1,50,000/- whichever is lower. However, the penalty of 1.5% has been imposed.*
3. *The failure to get accounts audited was not deliberate or intentional but arose from a genuine & reasonable interpretation of the law, as recognized u/s 273B which provides relief from the penalty if reasonable cause is demonstrated.*
4. *There was a Bonafide belief on the part of the appellant due to their status as a commission agent that the books of accounts are not required to be audited u/s 44AB on the basis of past practices performed by the appellant where no penalty imposed for similar circumstances.*
5. *That the appellant craves leave to add, alter, amend or withdraw any ground of appeal during further proceedings.”*

3. Succinctly, the factual panorama of the case is that assessee before me is an Individual. The assessment order u/s 143(3) of the I.T. Act was passed on 30.11.2018, determining total income of Rs. 6,88,650/-, The return of income was filed by the assessee electronically declaring total income of Rs. 3,78,830/-.Penalty proceedings u/s 271B of the Act was initiated, as the assessee is liable to furnish audit report as per the provisions of section 44AB of the Act but the assessee has not furnished audit report in due course while as per ITS data available on record gross contract receipts shown was at Rs. 1,11,60,365/-.Accordingly, during the course of penalty proceedings, a show cause notice was issued to the assessee.In response, the assessee has furnished reply on 16.11.2018, which is reproduced below:



“The assessee was only commission agents for providing the trucks to the various parties and received commission from the truck owners. Further, stated that commission was charged as a specific amount per consignment of irrespective of its total value of freight (say Rs. 500/- per consignment). The assessee has not produced any documentary evidences in support of his claim. Further furnish only reasons/explanation for proving herself as a commission agent. The assessee also relies on the judgment of the the ITAT, New Delhi in the case of Delhi U.P Golden transport v/s ITO Wd. 1(2), Gaziabad which is not applicable in the assessee's case as it was belongs to reopen case which was already scrutinize u/s 143(3) of the I.T.Act.”

4. However, assessing officer rejected the above contention of the assessee and imposed the maximum penalty under section 271B of the Act, to the tune of Rs.1,50,000/-.

5. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has confirmed the action of the assessing officer. The ld.CIT(A) held that amount of Rs. 1,11,60,365/- represented total sales, turnover or gross receipts of the assessee and that the assessee has consciously and deliberately failed to undertake audit of her accounts despite the threshold, as per section 44AB of the Act, being sixty lakh rupees. Thus, the penalty order passed by the Ld. A.O. u/s 271B of the Act dated 23.05.2019, was upheld by ld.CIT(A).

6. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal.

7. The Learned Counsel for the assessee argued that the assessee is merely a commission agent and the amount is getting reflected in the Form No.26AS, because



the assessee after getting the amount from the client, pass over the same amount to his counter party and he received only commission. Therefore, commission income is below the threshold limit. Hence, the assessee is not subjected to tax audit, therefore, penalty u/s.271B of the Act, should be deleted.

8. On the other hand, Ld. DR for the Revenue submitted that the turnover is getting reflected in the PAN number of the assessee in Form No.26AS, therefore, it is not a case of commission, but turnover of the assessee. Therefore, the assessee was required to get the accounts audited and hence the assessing officer has rightly imposed the penalty u/s 271B of the Act.

9. I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. Section 44AB requires an audit only if the assessee's total sales/turnover/gross receipts exceed the prescribed threshold (e.g., ₹1 crore / ₹10 crore subject to conditions). If commission income is below the threshold limit prescribed under Section 44AB, then tax audit is not applicable, and therefore no penalty under Section 271B can be levied. I note that right from the beginning the assessee is maintaining the stand that he is a commission agent. Just because the amount paid by the party is getting reflected in Form No.26AS, which is as per the custom prevailing in the transportation business, the assessee receives the amount and then transfers the said amount to the opposite party and he gets only commission income. Therefore, the assessee is not liable to get his accounts audited



u/s.44AB of the Act. Hence, the penalty imposed u/s.271B of the Act needs to be deleted. Accordingly, I delete the penalty.

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

Order pronounced in the open court on 27/11/2025.

Sd/-
(Dr. Arjun Lal Saini)
लेखा सदस्य/Accountant Member

//True Copy//

राजकोट /Rajkot
दिनांक/ Date: 27/11/2025

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, राजकोट

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation (dictation sheet is enclosed with main file.)	11/09/2025
2) Date on which the typed draft is placed before the Dictating Member & Other Member	/09/2025
3) Date on which the approved draft comes to the Sr. P.S./P.S.	
4) Date on which the fair order is placed before the Dictating Member for pronouncement	
5) Date on which the fair order comes back to the Sr. P.S./P.S.	
6) Date on which the file goes to the Bench Clerk	
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	