

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI DUVVURU RL REDDY, VICE PRESIDENT
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA Nos. 245 & 246/GTY/2025
Assessment Year : 2021-22

Akheto Yepthomi, House No. 937, Purana Bazar, Dimapur Sadar, Dimapur - 797112 [PAN: AEEPY5735J]	Vs.	Income Tax Officer, Ward 1, Dimpaur, Aayakar Bhawan, New Colony, Purana Bazar, Dimapur - 797116
APPELLANT		RESPONDENT

Assessee by	:	Shri Anil Agarwal, FCA
Revenue by	:	Santosh Kumar Karnani, Addl. CIT

Date of hearing	:	06.01.2026
Date of Pronouncement	:	07.01.2026

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

These two appeals filed by the assessee against two separate orders passed u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”) by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereafter “the Ld. CIT(A)] dated 06.06.2025, DIN & order No./NFAC/S/250/2025-26/10767667061(1) & ITBA/NFAC/S/250/2025-26/1076767251(1) respectively.

2. The assessee has raised the following grounds of appeal in ITA No. 245/GTY/2025:

“1. For that on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in law as well as on facts in sustaining additions made by the Assessing Officer u/s 69A to the extent of Rs. 87,05,746/-.

2. For that the appellant urges leave to add to, modify or delete any ground of appeal, before or at the time of hearing of the appeal.”

2.1 The assessee has raised the following grounds of appeal in ITA No. 246/GTY/2025:

“1. For that on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) erred in law as well as on facts in upholding the penalty levied by the Assessing Officer u/s 271B of the Income-tax Act, 1961.

2. For that the appellant urges leave to add to, modify or delete any ground of appeal, before or at the time of hearing of the appeal.”

ITA No. 245/GTY/2025

3. Briefly stated to the facts of the case are that the assessee filed return of income on 04.04.2022 declaring total income of Rs. 60,880/- and claimed exempt u/s 10(26) of the Act of Rs. 34,40,680/-. On perusal of the ITR and insight details it was gathered that the assessee had deposited huge cash in his bank accounts during the year under consideration. Therefore, the case of the assessee was selected for complete scrutiny and statutory notices were issued to the assessee time to time. During the course of assessing proceedings, various opportunities were granted to the assessee but there was no proper response from the assessee side. The assessee for which the replied only on 30.11.2022 and 02.12.2022 after receiving show cause notice dated 29.11.2022. As per the information from insight portal, it was noticed that huge cash deposited in bank A/c No. 386501500840 and 386505000094 held with ICICI Bank and A/c No. 34760817026 held with SBI. There was total cash deposit of Rs. 4,27,79,090/-. The

assessee submitted that the amounts shown in ITR as deposit of Rs. 5,30,63,680/- is not only cash but also includes other deposits like cheques, transfer through banking channel. He further submitted that during the year various cash was deposited in various bank account of Rs. 4,27,79,090/- is receipts out of sales receipts and services receipts. Some cash is out of cash in hand and revolving cash. He further submitted that assessee belongs to Scheduled Tribe by producing ST Certificate and claimed that his income earned from business activities mentioned above is exempted from income tax u/s 10(26) of the Act, therefore, he is not maintaining details books of accounts. Hence, he cannot produce cash book for the same period on 30.11.2022. He further submitted residency certificate, similarly for regarding statement (only credit entries reflecting cash and cheque deposit) in excel sheet, Form 26AS and copy of GSTR3B along with his reply. He further submitted on 02.12.2022 copy of the ledger of M/s Yephthomi Auto and one tax invoice. The assessee is in the business of Sales, Services and Spares for three-wheeler vehicle of Bajaj Auto Ltd. having its dealership at Dimapur for the state of Nagaland. Moreover, he is also Director in Private Limited Company by the name of M/s Yephthomi Motors Pvt. Ltd. Dealing in Ford Brand of four-wheeler. During the course of assessment proceedings, the AO provided various opportunities to explain the source of cash deposits with documentary evidences but as per observation of the AO, the assessee could not explain the source of cash deposits, therefore, the entire cash deposits of Rs. 4,27,79,090/- were treated as unexplained money u/s 69A of the Act. He further observed that the assessee required to maintain books of accounts as per section 44AA of the Act and he has to obtain audit report as per section 44AB of the Act but the assessee conceded that no books of accounts and details have been maintained, since, the income is exempt as per section 10(26) of the Act. Accordingly, the penalty

proceedings u/s 271B of the Act was initiated separately and imposed penalty of Rs. 1,39,338/- against the above orders that the addition u/s 69A of the Act and penalty u/s 271B of the Act. The assessee filed separate appeal before the Ld. CIT(A) (NFAC) during the course of appellate proceedings, the assessee filed detailed written submissions in regard to addition u/s 69A of the Act. The Ld. CIT(A)(NFAC) after considering the entire submissions deleted the addition of Rs. 3,40,73,344/- and confirmed the addition of Rs. 87,05,746/-. The Ld. CIT(A)(NFAC) further in case of penalty levied u/s 271B of the Act was confirmed.

4. Aggrieved from the order of Ld. CIT(A)(NFAC) regarding confirmation of addition u/s 69A of the Act and penalty u/s 271B of the Act. The assessee filed appeal before the ITAT.

5. The Ld. counsel reiterated the submissions made before the Ld. CIT(A)(NFAC) and submitted that the submissions made before the Ld. CIT(A) regarding the addition of Rs. 87,05,746/- that the assessee is a director in M/s Yeptthomi Motors Pvt. Ltd. and the collections of cash were received from the debtors of M/s Yeptthomi Motors Pvt. Ltd. and cash were deposited in the assessee's bank account but this fact could not be brought at the time of assessment. During the course of assessment proceedings due to Covid-19 Pandemic the facts are submitting first time before the Ld. CIT(A)(NFAC) that the total cash were collected on behalf of M/s Yeptthomi Motors Pvt. Ltd. is Rs. 81,14,000/- and past savings/ debtors collection of Rs. 5,91,746/- . These facts have not been appreciated properly by the Ld. CIT (A)(NFAC). The GSTR3B returns were also filed and requested that the matter may be remitted back to the AO for the examination.

5.1. Further in respect of penalty proceedings u/s 271B of the Act. The Ld. Counsel reiterated the submissions made before the lower

authorities and submitted that the income of the assessee is exempt u/s 10(26) of the Act therefore he is not require to maintain books of accounts and getting audit report as per section 44AB of the Act is not compulsory.

6. On the other hand, the Ld. DR relied on the orders of authorities below and submitted that the AO during the course of assessment proceedings granted various opportunities to the assessee but the assessee furnished part in reply only after issuance of show cause notice dated 29.11.2022 and during the course of assessment proceedings, he did not submit anything about the cash deposit of Rs. 81,14,000/- and Rs. 5,91,746/- as stated that the amount belongs to M/s Yeptthomi Motors Pvt. Ltd. and as cash for past savings/opening balance. The Ld. CIT(A)(NFAC) after examining the submissions rightly confirmed the addition of Rs. 87,05,746/- for want of source of cash deposits.

6.1. He further submitted in respect of penalty initiated u/s 271B of the Act that the assessee require to maintain his books of accounts as per section 44AA of the Act and he had to obtain audit report as per section 44AB of the Act, since, the assessee's turnover excluding GST is Rs. 2,78,67,676/-. Therefore, the Ld. CIT(A) has rightly confirmed the penalty u/s 271B of the Act even the assessee is eligible for exemption u/s 10(26) of the Act. On his income. First the assessee has to compute his income as per the provisions of income tax act. Thereafter, the exemption can be claimed as per the eligibility of the assessee.

7. Considering the rival submissions and perusing the entire materials available on record and the order of authorities below. We noted that during the year under consideration, the assessee has deposited Rs. 4,27,79,090/- by way of cash in his bank accounts maintained with ICICI Bank and SBI Bank noted (supra). But for want

of explanation from the assessee after giving various opportunities to the assessee, the assessee could not explain the source of cash deposits and the assessee himself has conceded that he has not maintained books of accounts. The Ld. CIT(A) after considering the submissions partly allowed the appeal of the assessee and confirmed the addition of Rs. 87,05,746/- u/s 69A of the Act. During the course of hearing before us, the Ld. counsel submitted that sum of Rs. 81,14,000/- was received from M/s Yephthomi Motors Pvt. Ltd. from debtors was also deposited in the assessee's bank account and the out of past savings/opening balance of Rs. 5,91,746/- is opening and debtor's collections and this fact were never presented before AO. During the course of assessment proceedings and the assessee submitted that the Ld. CIT(A) also not properly appreciated on the submissions made in this regard. Considering the facts of the case and interests of justice, we are remitting this issue back to the file of AO for afresh examination on merits and decide the issue as per law, after giving a reasonable opportunity of being heard to the assessee and assessee is directed to substantiate his case with cogent documentary evidence for the source of cash deposits and assessee is further directed not to seek any unnecessary adjournment for early disposal of the case. In case of failure, no second leniency shall be granted to the assessee.

8. In the result, ITA No. 245/GTY/2025 is allowed for statistical purposes.

ITA No. 246/GTY/2025

9. Further, in case of penalty levied u/s 271B of the Act, we noted that during the course of assessment proceedings, the assessee himself conceded that he has not maintained books of accounts and during the course of appellate proceedings, it was also conceded in his statement

of facts submitted before the ld. CIT(A) too. However, the turnover of the assessee excluding GST is Rs. 2,78,67,676/- and the income reported in the income tax return noted (supra) is more than the specified limits to maintain the books of accounts as per section 44AA of the Act. The assessee also requires to maintain the books of accounts as per section 44AA of the Act and has required to get his books of account audited as per section 44AB of the Act. But he has not done so. We have gone through the submissions made during the course of assessment proceedings and appellate order passed by the ld. CIT(A) NFAC. He has contested that being the income is exempt u/s 10(26) of the Act, he is not required to maintain the books of accounts is not correct as per the statement of facts submitted during the appellate proceedings and grounds of appeal the reasons cited therein the assessee was prevented from sufficient cause from maintaining regular books of accounts for the purpose of filing income tax return for the assessment year under consideration, the contentions are not accepted as the failure to get accounts audited u/s 44AB of the Act and failure to keep maintained books of account u/s 44AA of the Act are two separate and independent acts of failure and does not depend upon each other. Moreover, the conditions prescribed in section 44AA of the Act to keep and maintained books of account are different then the conditions prescribed in section 44AB of the Act to get accounts audited. Further, section 271B of the Act does not prescribe any pre-condition that if penalty u/s 271A of the Act is levied for non-maintenance of books of accounts as required u/s 44AA of the Act and then the penalty u/s 271B of the Act for non-auditing of accounts provided u/s 44AB of the Act cannot be levied. In support of the decisions relying on the judgment of coordinate Bench of the ITAT, Ranchi Bench in the case of Rakesh Kumar Jha Vs. ITO reported in [2023] 150 taxmann.com 298 (Ranchi-Trib.) in ITA No. 72/Ran/2022

for the AY 2008-09, order dated 15.05.2023. Considering the facts and order passed by the Ld. CIT(A)(NFAC), we do not find any infirmity in the order of Ld. CIT(A) for confirming the penalty levied by the AO u/s 271B of the Act.

10. In the result, ITA No. 246/GTY/2025 is dismissed.

11. To sum up ITA No. 245/GTY/2025 is allowed for statistical purposes and ITA No. 246/GTY/2025 is dismissed. A common order passed shall be kept in the respective case files.

Order pronounced on 07.01.2026

Sd/-
(Duvvuru RL Reddy)
Vice President

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Dated: 07.01.2026
AK, Sr. P.S.

Copy of the order forwarded to:

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

//True copy//

By order

Assistant Registrar, Kolkata Benches