

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.3070/DEL/2025  
Assessment Year 2017-18

Juginder Singh Wadhwa, A-1/8, Krishan Nagar, Delhi: 1100 51 <b>PAN No. ABLPW9409R</b>	Vs.	Assistant Commissioner of Income Tax, Circle 67(1), New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Suresh Batra, Adv.
Department by:	Shri Om Prakash, Sr. DR
Date of Hearing:	04.11.2025
Date of pronouncement:	04.01.2026

**ORDER**

**PER VIMAL KUMAR, JUDICIAL MEMBER:**

The appeal filed by the assessee is against order dated 13.03.2025 of Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre(NFAC), Delhi [hereinafter referred to as 'Ld. CIT(A)] under Section 250 of the Income-Tax Act, 1961 (hereinafter referred to as 'the Act') arising out of penalty order dated 25.01.2022 of Learned Assessing Officer/National Faceless Appeal Centre(NFAC), Delhi (hereinafter referred to as "Ld. AO") passed under section 271B of the Act in

pursuance to assessment order dated 23.12.2019 under Section 143(3) of the Act for assessment year 2017-18.

2. Brief facts of the case are that the assessee filed return of income on 26.08.2017 declaring total income of Rs.60,48,470/-. The assessee declared income under the head business/profession of Rs.42,43,020/- and under the head 'other sources' of Rs.19,84,063/-. The case was selected for scrutiny under CASS. Assessment order under Section 143(3) dated 23.12.2019 under Section 143(3) of the Act was passed accepting the income returned at Rs.60,48,470/-. The Ld. AO noted that the assessee was engaged in contract business but failed to furnish audit report within time allowed under Section 44AB of the Act. Penalty proceedings were initiated by issuing notice under Section 274 r.w.s. 271B dated 23/12/2019. Accordingly, assessee filed written explanation dated 11.05.2021. Another reply dated 28.07.2021 was furnished. On completion of proceedings, Ld. AO vide order dated 25.01.2022 under Section 271B of the Act imposed penalty of Rs.1,50,000/-

3. Against order dated 25.01.2022 of Ld. AO, the appellant/assessee filed appeal before Ld. CIT(A) which was dismissed vide order dated 13.03.2025.

4. Being aggrieved, the appellant/assessee preferred present appeal on following grounds:

“1.That the impugned Appellate order as well as penalty order passed by the Officers below are illegal and against the principles of natural justice.

2. That on the facts and circumstances of the case, Section 44AB is not applicable since the assessee did not maintain accounts.

3. That observation of the Id. CIT(Appeals) as well as Officer below that accounts have been maintained is not well founded as they have not perused the return submitted and other facts and material available on record.”

5. Learned Authorised Representative for the appellant/assessee submitted that Ld. CIT(A) erred in upholding penalty order inspite of the fact that assessee filed return of income without accounts. No Profit and Loss account or balance sheet was prepared since no accounts were maintained. These facts were mentioned in reply dated 09.12.2019. Penalty order states that accounts have not been audited, an extract of return has been referred which states that the assessee has stated that Accounts have been audited by an Accountant. The assessee has said ‘Yes’. In fact, ‘Yes’ has been erroneously ticked as ‘Yes’. However, another Extract of return mentioned that cash system of accounting was followed and no accounts have been

maintained. No profit & Loss figures were shown as is required in an account's case. Complete return form is at page nos. 1 to 51 of papers books. Copy of letter dated 19.12.2019 is at page nos. 52 to 53 pf papers books. Reply dated 18.12.2019 to show-cause is at page nos. 56 & 57 of papers books. Hon'ble High Court of Gauhati in Surajmal Parsuram Todi Vs. C.I.T., 1996 ITR 691 has held that penalty under Section 271B of the Act cannot be levied for failure to maintain books of account.

6. Learned Departmental Representative submitted that assessee had submitted letter dated 09.12.2019 and 18.12.2019 is an afterthought.

7. From examination of record in light of above stated rival contentions, it is crystal clear that penalty order dated 25.01.2022 under Section 271B of the act is in pursuance of assessment order dated 23.12.2019 under Section 143(3) of the Act accepting the income mentioned in return. However, Ld. AO initiated penalty proceedings by issuance of copies under Section 274 read with section 271B dated 23.12.2019 for failure to furnish audit report within time allowed under Section 44AB of the Act. Assessee filed copy of return at page nos. 1 to 51, letter dated 09.12.2019 at pages 52 & 53, reply at page nos. 56 and 57

of papers books. In replies dated 09.12.2019 and 18.12.2019, assessee stated that no accounts were maintained. Reference to ITR entries regarding audit information has been made basis for passing the penalty order. Assessee claimed that the entries in audit information were erroneously made. Assessee has specifically pleaded in the return that no regular books of accounts of business are maintained.

8. Hon'ble High Court of Gauhati in Surajmal Parsuram Todi Vs. C.I.T., 1996 ITR 691 has held as under:

“We have gone through the provisions of sections 44AA, 44AB, 271A and 271B of the Act. Maintenance of accounts is envisaged under section 44AA and on failure to do so the assessee shall be guilty and liable to be penalised under section 271A. Even after maintenance of books of account the obligation of the assessee does not come to an end. He is required to do something more, i.e., by getting the books of account audited by an accountant. But when a person commits an offence by not maintaining the books of account as contemplated by section 44AA the offence is complete. After that there can be no possibility of any offence as contemplated by section 44AB and, therefore, in our opinion, the imposition of penalty under section 271B is erroneous.”

9. In view of above material facts and well settled principles of law, it is held that Ld. CIT(A) vide order dated 13.03.2025 erred in upholding penalty order of Ld. AO dated 25.01.2022 ignoring the fact that no accounts were maintained by the assessee, so the

question of filing audit report within time under Section 44AB of the Act did not arise. Therefore, impugned orders of departmental authorities are set aside. Grounds of appeal nos. 1 to 3 are accepted.

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

**Order pronounced in the open court on 21<sup>st</sup> January, 2026.**

Sd/-

**(S RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)  
JUDICIAL MEMBER**

**Dated: 21/01/2026**

***Mohan Lal***

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi