

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 564 & 565/Agr/2025
Assessment Year : 2012-13**

Rajaram Arya E-22, Tansen Nagar, Hazira Gwalior M.P. - 474 002	V	ITO, 2(2) Gwalior M.P. - 474 001
PAN : AKBPA6577D		
(Appellant)		(Respondent)

Assessee by	Shri Rajendra Sharma, Adv. & Shri Manuj Sharma, Adv.
Department by	Shri Anil Kumar, Sr. DR

Date of hearing	17/02/2026
Date of pronouncement	19/02/2026

ORDER

PER SUNIL KUMAR SINGH, JUDICIAL MEMBER

These appeals have been preferred against the impugned orders dated 16.10.2025 each, passed in Appeal no. NFAC/2011-12/10069231 & NFAC/2011-12/10069226 respectively by the Ld. Commissioner of Income-tax(Appeals)/National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the "CIT(A)") u/s. 250 of the Income tax Act, 1961 (hereinafter referred to as "Act"] for the Assessment year |A.Y. 2012-13, wherein learned CIT(A) has confirmed the penalty orders and dismissed assessee's appeals.

2. The facts and issues involved in both these appeals are similar, hence for the sake of brevity and convenience, both these appeals are being decided by this common order.

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3. The facts in brief are that the appellant is an individual and during the Financial year ending on 31.03.2012 relevant to the Assessment year 2012-13 filed his return of income on 24.03.2014 declaring total income of Rs.2,35,715/-. As per records, the Appellant has deposited cash of Rs.1,06,52,000/- for the period from 01.04.2011 to 31.03.2012 in his bank account maintained with HDFC Bank. The case was reopened u/s. 147 of the Act. Notice u/s. 148, dated 27.03.2018 was issued and served upon the Appellant. The Assessment was completed u/s.143(3) r.w.s 147 of the Act after determining the income of Rs.9,90,502/- The appellant has shown sales of Rs. 1,06,95,400/- in the year under consideration, which is above the threshold limit to get his account audited u/s 44AB of the Act. The appellant did not maintain books of account as provided u/s 44AA of the Act, Hence, the penalty of Rs. 25,000/- was levied u/s 271A of the Act, vide penalty order 08.01.2022.
4. Aggrieved, assessee preferred an appeal before Ld. CIT(A), who confirmed the penalty order and dismissed assessee's first appeal.
5. Appellant assessee has preferred this second appeal on the ground that Ld. CIT(A) has erred in confirming the said penalty by denying the immunity u/s 273B of the Act, as the assessee was of bonafide belief that the maintenance of account was not required. Further, ignoring the fact that the assessment order was completed on presumptive basis u/s 44AD of the Act.
6. Perused records. Heard Ld. representative for the appellant assessee and Ld. Sr. DR for the respondent revenue.
7. The main point for determination under appeal is as to whether Ld.CIT(A) has erred in confirming the penalty of Rs. 25,000/- imposed u/s 271A of the Act, vide penalty order dated 08.01.2022 ?
8. Ld. AR for the assessee has submitted that the assessee was engaged in the business of trading of machineries, spare parts and suffered heavy losses and could not bonafidely maintain the regular books of account. Revenue authorities have erred in dismissing assessee's claim of reasonable cause u/s 273B of the Act. Prayed to set aside the penalty.

9. Ld. Sr. DR has supported the impugned order.

10. It is not disputed that the total sales/turnover of the assessee was Rs. 1,06,52,000/-. Section 44AB of the Act, mandates the assessee to have such accounts audited by an accountant before the specify date if the total sales/turnover/gross receipts exceed one crore rupees. Admittedly, assessee was required to maintain books of account mandatorily but failed to maintain the same for the year under consideration as provided u/s 44AA of the Act. For such failure, the assessee is liable to pay by way of penalty a sum of Rs. 25,000/- as provided u/s 271A of the Act. Assessee has also failed to prove that there was any reasonable cause for the said failure so as to get the benefit of section 273B of the Act. Further, the presumptive assessment u/s 44AD as argued by the Ld. AR is also of no avail to the assessee. We, thus, do not find any error or infirmity in the impugned penalty order. The aforesaid point is accordingly determined in negative against the appellant assessee and in favour of the respondent revenue. This appeal is liable to be dismissed.

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11. This appeal relates to the penalty of Rs. 53,477/- @ 0.5 % of the total turnover levied u/s 271B of the Act, for not getting the accounts audited by an accountant before the specified date as provided u/s 44AB of the Act. Accordingly to the finding arrived at ITA No. 565/Agr/2025, the penalty for not maintaining regular books of account has already been confirmed by us. Since the books of account were not maintained by the assessee, there was no occasion for the assessee to get such accounts audited as provided u/s 44AB of the Act. In such factual scenario, this would amount to double penalty for not maintaining the books of account. We are thus, not inclined to sustain the penalty order dated 11.01.2022 passed u/s 271B of the Act. Ld. CIT(A), has thus, erred in confirming the said penalty order. This appeal is liable to be allowed.

12. In the result, the assessee's appeal, ITA No. 565/Agr/2025 is dismissed. ITA No. 564/Agr/2025 is allowed.

Order pronounced in the open court on 19.02.2026.

Sd-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 19.02.2026

Sd-

**(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

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Rajaram Arya, Gwalior v

ITO, 2(2), Gwalior

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

Asst. Registrar,
ITAT, Agra