

**THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH, AHMEDABAD**

Before Ms. Suchitra Kamble, Judicial Member

**ITA No. 2674/Ahd/2025
Assessment Year 2022-23**

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| Manubhai Shamrav Kharat, Shop No. 7, Ground Floor Sharda Chambers, Sheth Ni Pole, Ratan Pole, Kalupur, Ahmedabad-380001 PAN: ABKPK1380N (Appellant) | Vs | The Income Tax Officer, Ward-1(2)(3), Ahmedabad (Respondent) |
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**Assessee by: Shri P D Shah, A.R. &
Shri Saiyam V. Shah, A.R.
Revenue by: Shri Suresh Chand Meena, Sr. D.R.**

Date of hearing : 16-02-2026
Date of pronouncement : 26-02-2026

आदेश/ORDER

This is an appeal filed against the order dated 30-05-2025 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2022-23.

2. The grounds of appeal are as under:-

"1. That the learned CIT(Appeal)/ National Faceless Appeal Centre, Delhi has erred in law and facts by confirming the penalty levied of Rs. 1,50,000/- under section 271B of the Income Tax Act the non-compliance of the provision of section 44AB of the Income Tax Act and therefore the ld. AO be directed to delete the said penalty in full.

2. That your appellant craves a leave to add, alter or amend any grounds at the time of hearing."

3. The assessee is an individual and filed return of income for assessment year 2022-23 declaring a taxable income to Rs.

5,56,610/- under the head income from profits and gains from business and profession. The case of the assessee was selected for scrutiny for the reason that 'large turnover but books of accounts not audited u/s. 44AB' and on the issues of '44AB audit compliances'. Notice u/s. 144B of the Act dated 01-06-2023 was issued intimating the assessee that the assessment proceedings in this case has been selected for the purpose of faceless assessment. The assessment was completed u/s. 143(3) r.w.s. 144B of the Act on 08-03-2024 at total assessed income of Rs. 5,56,610/- by accepting returned income. During the year, the assessee's sales turnover was Rs. 9,04,76,883/- as per profit and loss account submitted by the assessee which was more than threshold limit of Rs. 1 crore to get account audited u/s. 44AB of the Act. The assessee did not file audit report in accordance with the provisions of section 44AB of the Act. The penalty proceedings u/s. 271B of the Act was passed for initiation in the case of the assessee for assessment year 2022-23. The assessee submitted that in his case detailed receipt in cash was 1.4% and the payment was 1.07% in financial year 2021-22. The assessee attached the certificate obtained from chartered accountant regarding these percentages of receipts and payments in support of its submissions. The assessee submitted that the proviso to section 44AB is applicable and the limit for tax audit will be Rs. 10 crores instead of Rs. 1 crore for the financial year 2021-22. The Assessing Officer considered the said reply and held that from the provisions of section 44AB, it was clear that the assessee's turnover is more than threshold limit of Rs. 1 crore or declared profit 8% shall be required to get inspected such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnished a report of such audit as required u/s. 44AB of the Act. Thus, the Assessing Officer imposed the penalty u/s. 271B being 0.25% of the total sales turnover over or gross receipt of the business and profession subject to maximum of Rs. 1,50,000/-.

4. The assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. A.R. submitted that the Assessing Officer has failed to consider the applicability of the proviso to Section 44AB, which increases the threshold for mandatory audit to 10 crore if cash receipts and cash payments during the year are less than 5% of the total receipts and payments. In the present case:

Cash receipts constituted only 1.40% of total receipts.

Cash payments constituted only 1.07% of total payments.

The assessee has provided a certificate from a Chartered Accountant verifying these percentages, as well as supporting evidence in prior submissions. Therefore, the assessee was not liable for audit under Section 44AB. The ld. A.R. also submitted about levy of the penalty under section 271B that section 44AB of the Act for the AY 2022-23, is not applicable to the assessee, in view of the following proviso to section 44AB of the Act.

"[Provided that in the case of a person whose

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount: and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment,

this clause shall have effect as if for the words "one crore rupees", the words "[ten] crore rupees" had been substituted:]

Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash; or]. In the case of the assessee, both the conditions has been complied i.e. Turnover for the year is less than Rs. 10 Crore viz Rs.9.05 Crores and the cash transaction of receipts and payments are within the limit of 5%. The amount cash transaction has been certified by a CA after verification of books of accounts and for applicability of tax audit itself. That the CA certificate dated 29.5.2024, for the transactions of cash within limit of 5% cannot be treated as afterthought, as it has been submitted during the course of the penalty proceeding itself and further as per the settled legal position, CA certificate cannot be thrown out, if not particular defect has been pointed out therein and further it has been issued after verification of the books of accounts. That the learned AO has applied section 44AB(e) of the Act, which is application to the audit for presumptive tax, under section 44AD(4) of the Act, whereas in the present case proviso to section 44AB(a) is applicable, whereby 44AB is not applicable. In view of the penalty levied under section 271B of the Act, is bad in law and against the facts of the case and therefore ld. A.R. requested to direct the learned AO to delete the said penalty of Rs.1,50,000/-.

6. The Assessing Officer failed to adequately consider the assessee's detailed replies

7. Heard both the parties and perused all the relevant material available on record. There was a delay of 152 days in filing the present appeal, the same is condoned. It is pertinent to

note that the assessee at no point of time denied that the assessee has the total turnover of Rs. 10 crore in the assessment year 2022-23. The contention of the ld. A.R. submitted the proviso to section 44AB(2) applicable for the assessment year 2022-23 is not justifiable from the reading of the applicability w.e.f. 01-04-2021 of the said proviso. Merely providing CA certificate cannot be said that Audit Report was submitted as per requirement of Section 44AB of the Act. The threshold was for prior to assessment year 2022-23 but once the proviso has given cut off date and the assessment year has fallen into purview of said cut off date of the assessment year then the assessee cannot make plea of applying that cut off date to be taken into account as retrospective for its own convenience. Thus, the assessee has to file the auditor report as per proviso to section 44AB(2) of the Act for assessment year 2022-23 for which the assessee failed to do so. Thus, penalty imposed on the assessee was justified.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 26-02-2026

Sd/-
(Suchitra Kamble)
Judicial Member

a.k.

Ahmedabad : Dated 26/02/2026

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद