

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
SHRI ARUN KHODPIA, AM

I.T.A. No. 7412/Mum/2025
(Assessment Year: 2015-16)

Zenith Outdoors Private Ltd., 104, Jolly Bhavan No.1, 10, New Marine Lines, Churchgate, Mumbai-400020. PAN: AAACZ0649M	Vs.	ITO, Ward-1(3)(1), Aayakar Bhavan, M.K. Road, Mumbai-400020.
Assessee - अपीलार्थी / Appellant	:	Revenue - प्रत्यर्थी / Respondent

Assessee by : Shri Gagan Kakkad, Advocate
(Virtually appeared)

Revenue by : Shri Swapnil Choudhary, Sr. DR

Date of Hearing : 29.01.2026

Date of Pronouncement : 20.02.2026

ORDER

Per Arun Khodpia, AM:

The present appeal by the assessee, directed against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi (in short “Ld. CIT(A)”), dated 22.09.2025 for the Assessment Year (AY) 2015-16, which in turn arises from the penalty order under section 271B of the Income Tax Act, 1961 (the Act) passed by Assessment Unit, Income Tax

Department on 19.03.2024. The grounds of appeal raised by assessee are as under:

“PENALTY SHOULD NOT BE LEVIED UNDER THE PROVISIONS OF SECTION 271B R.W.S 273B OF THE ACT

1. On the facts and circumstances of the case and in law, the Hon'ble National Faceless Appeal Centre, Delhi, Income-tax Department (hereinafter referred to as "the CIT(A)" for brevity) has erred in upholding the order of the Assessing Officer imposing penalty under section 271B of the Act.

2 On the facts and circumstances of the case and in law, the CIT(A) ought to have appreciated that the Appellant was prevented from getting its books of account audited and consequently, it could not comply with provisions of section 44AB of the Act.

3. On the facts and circumstances of the case and in law, the CIT(A) erred in holding that sufficient cause was not established despite the Appellant submitting the details of the numerous cases which are pending inter se the directors.”

2. Briefly stated, the assessee's case was reopened under section 147 of the Act and the reopening assessment was completed on 15.05.2023 with no addition to the taxable income, however penalty proceedings under section 271B of the Act are initiated, due to the failure of assessee-company to get its accounts audited for the Financial Year (FY) 2014-15 relevant to AY 2015-16. Subsequently notice under section 274 r.w.s. 271B was issued on 15.05.2023, to which the assessee has responded that there was a litigation pending between the Directors of the Company, thus a situation occurred, resulting failure to submit the income tax returns and annual returns with the Registrar of Companies. It is clarified that in absence of availability of Directors for signing of the balance-sheet, the balance-sheet could not be signed, so the Auditors of

the Company have refused to carry out the statutory Audit as well as the tax audit. Such contentions of the assessee were not found favour with the Id. AO, therefore, a penalty of Rs. 1,50,000/- u/s 273B has been imposed vide the impugned penalty order.

3. The assessee carried the matter before the First Appellate Authority (FAA)/ CIT(A), who had decided the appeal against the assessee, stating that the reasons given by the assessee for not obtaining and furnishing the Audit Report as per requirement of statute does not constitute a reasonable cause and therefore the penalty levied under section 271B of the Act has been held as correct and sustainable.

4. Being aggrieved with the aforesaid decision of Id. CIT(A), the assessee preferred an appeal before the Tribunal.

5. At the outset, the Id. AR of the assessee submitted that the similar issue has been came up before the coordinate bench of the Tribunal in assessee's own case for AY 2016-17 and 2017-18, wherein under similar facts and circumstances the penalty levied on assessee under section 271B of the Act was deleted by the ITAT, Mumbai.

6. The observations of ITAT, Mumbai, referred to and relied by the Ld. AR in the aforesaid case, in ITA Nos. 5481-5482/Mum/2024 for AY 2016-17 & 2017-18 in assessee's own case, are culled out hereunder:

“3. We have heard both the parties and also perused the relevant finding given in the impugned orders. As per Section 134 of the Companies Act, statutory audit is compulsorily to be carried out and both the Directors have to sign the audit report. Section 134(1) reads as under:-

“134.[(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director for submission to the auditor for his report thereon.]

(2) The auditors' report shall be attached to every financial statement.

(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include

4. Form 3CA which is audit report prescribed u/s.44AB clearly provides that without the statutory audit under the Companies Act, tax audit cannot be prepared. Rule 6G which is a report of audit of accounts to be furnished u/s.44AB provides that it is mandatory to get the audit done under the Companies Act. Thus, without the signature of the Directors of the company neither the statutory audit nor the tax audit u/s.44AB can be conducted. Here in this case, assessee did not file any return of income u/s.139(1), albeit, it has been filed in response to notice u/s.148 and the said return of income has been accepted by the Id. AO in the order passed u/s.147 / 143(3). Assessee had given explanation and also filed documents to prove that the Directors were in dispute with each other and none of the Directors were cooperating with each other and one of the Director has completely refused to sign, therefore, the assessee company could not get the statutory audit done nor tax audit report u/s. 44AB. Since these two Directors were major shareholder of the company, therefore, Board could not appoint any other Director to sign the statutory audit and tax audit report. Thus, so far as assessee company is concerned which is separate juridical person, it was impossible to get the tax audit report or accounts audited. Accordingly, we hold that not getting accounts audited was due to bonafide and genuine reasons therefore, in terms of Section 273B, it falls in the category of a reasonable cause and therefore, no penalty can be levied. In our view, penalty u/s.271B for both the years is to be deleted. We order accordingly.”

7. It was the submission that, having the penalty under section 271B of the Act has been deleted by the Tribunal in assessee's own case for AY 2016-17 &

2017-18, in squarely identical circumstances, the penalty imposed for AY 2015-16, which is under consideration in the instant appeal may also be directed to be deleted.

8. Per contra, the ld. DR vehemently supported the orders of revenue authorities.

9. We have considered the rival submissions and perused the material available on record. Admittedly, in present case the assessee was unable to get its accounts audited for the reasons that there was some dispute between the Directors and the balance-sheet for the relevant years could not be signed, therefore the statutory Auditor refused to audit the books of accounts of the assessee company. Accordingly, the tax audit could not be conducted. Since the issue has already been discussed and decided under similar facts and circumstances in assessee's own case by this Tribunal (supra), therefore in absence of any material to distinguish the facts of present case from the facts of case relied upon by the assessee, we are of the considered view that the assessee was prevented with sufficient cause for not getting the account audited, so penalty under section 271B of the Act cannot be levied. We thus set-aside the impugned order of ld. CIT(A) and direct the ld. AO to delete the penalty imposed vide impugned order under section 271B of the Act.

10. In result, the appeal of assessee stands **allowed**, in our aforesaid observations.

Order pronounced in the open court on 20-02-2026.

Sd/-
(SAKTIJIT DEY)
Vice-President
Mumbai, Dated : 20-02-2026.
**SK, Sr. PS*

Sd/-
(ARUN KHODPIA)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai