

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 5464/Del/2019
Assessment Year: 2015-16**

Senapati Satija, D-146, Versus ACIT, Circle 45(1),
Ajay Enclave, New Delhi. New Delhi
PAN: ABAPS1651C
(Appellant) (Respondent)

Appellant by : Shri R.S. Ahuja, Ld. C.A.
Respondent by : Shri B.K. Singh, Ld. Sr. DR

Date of hearing : 27/06/2022
Date of order : 30/06/2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the assessee against the order dated 29.04.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-15, Delhi (in short "Ld. Commissioner"), whereby the Ld. Commissioner affirmed the levy of penalty imposed by the Assessing Officer u/s.271B of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

2. Brief facts, relevant for adjudication of the instant appeal, are that in the instant case, during the year under consideration, the total turnover of the business of the Assessee was increased to Rs.1,30,57,127/- and therefore, the Assessee was under obligation to get its accounts audited u/s. 44AB of the Act, which the assessee has failed to do, and therefore resulted into initiation of penalty proceedings u/s. 271B of the Act by the Assessing Officer.

2.1 During the penalty proceedings, it was claimed by the assessee that the assessee, being a senior citizen of 70 years old, was under the impression that only the gain is liable to be surrendered for taxation purposes. The case of the assessee has always fallen below the threshold limit for tax audit, however first time falls within the ambit of section 44AB of the Act, therefore, due to bona fide mistake, the assessee could not get its accounts audited and hence the Assessee may be given pardon from the rigors of penalty provisions. The assessee also relied upon various judgments as it appears from the assessment order.

2.2 The Assessing Officer, though considered the claim of the assessee and the judgments referred by the assessee, however, by distinguishing the judgments referred, did not find reasons stated by the Assessee as reasonable cause and consequently levied the penalty of Rs. 65,286/- u/s 271B of the Act.

3. The Assessee, being aggrieved with the penalty order made by the Assessing Officer, preferred first appeal before the Id. Commissioner, who vide impugned order dismissed the appeal of the assessee and confirmed the levy of penalty by concluding as under:

4. DECISION : *The AO has levied the penalty on account of failure of the assessee in getting his accounts audited as the turnover of the business exceeded the threshold limit specified u/s 44AB. During the course of appellate proceedings, The AR of the appellant has contended that the Assessee was under a bona fide belief that he was required to obtain Audit Report only in respect of that business, the turnover of which crosses the limit of Rs. 1Crore for each assessment year. From the conduct, behavior and attitude of the Assessee, it was clear that he was not aware that the aggregate of the three businesses had to be taken into consideration for compliance with the provisions contained in Section 44AB. It was also clear from the records that this was for the first time he had committed this default. The Assessee had acted in bona fide belief and had no dishonest intention in not obtaining audit report for all the three businesses carried on by him.*

The contention of the Appellant has been considered and the order of AO has also been perused. It is seen that the assessee has achieved the following turnover of his business

S. No.	Description	Amount
1.	<i>Turnover from the Business</i>	71,52,520
2.	<i>Turnover from F&O (Future & Option)</i>	59,04,607
	<i>Total Turnover</i>	1,30,57,127

It has been held in the case of CIT Vs S.C. Naregal (Kar) 329 ITR615 that Ignorance of law is no excuse and accordingly the Levy of penalty u/s 271B was upheld. Therefore, considering the facts and circumstances of the case, I am of the considered opinion that the whole of the turnover is to be taken for the purpose of calculating the Gross turnover of the business. Therefore, the action of the A.O. in levying the penalty of Rs. 65,286/- u/s 271B is justified and the action of the A.O. is confirmed accordingly.

5. *In the result, appeal is dismissed."*

4. The Assessee, being aggrieved with the impugned order, is in appeal before us.

5. Heard the parties and perused the material available on record. At the outset we observe that the Assessee's case falls under the threshold limit as prescribed u/s. 44AB of the Act and the assessee has claimed before the authorities below and us as well that the assessee was not aware that the aggregate of the Assessee's business 'heads' was required to be taken into consideration for compliance of the provisions contained in section 44AB of the Act. The assessee also claimed that the Assessee had acted under bona fide belief without dishonest intention in not obtaining audit report for all the three businesses carried on by him in respect of clearing and forwarding agent.

5.1 We have given our thoughtful consideration to the peculiar facts and circumstances of the case. In Section 271B of the Act, the discretion has been given to the Assessing Officer to direct the assessee to pay by way of penalty a sum equal to one-half percent of the total sales etc. etc. The provisions empower the Assessing Officer to levy the penalty as per its discretion. In our considered view, the discretion can be exercised by a person who has been entrusted with such discretion, judiciously, reasonably and cautiously and considering the peculiar facts and circumstances of the case.

5.3 In the instant case, the assessee committed default first time for non-complying with the provisions of section 44AB because the case of the assessee crossed the threshold limits as prescribed under the provisions of section 44AB of the Act first time only and it is not the case of the Revenue that the assessee though crossed the threshold limit of section 44AB of the Act in subsequent years as well but still committed default in not getting its accounts audited. Even it is not the case of the Revenue Department that the Assessee has acted deliberately in defiance of law or was guilty of conduct contemptuous or dishonest or acted in conscious disregard of its obligation, therefore not liable for imposition of penalty as per dictum of the Hon'ble Apex Court in the case of Hindustan Steel limited vs. State of Orissa (83 ITR-26)(SC).

5.4 Considering the peculiar facts in totality and the analyzations made above, the Assessee is entitled to get leniency and consequently, the penalty imposed by the Assessing Officer and affirmed by the Id. Commissioner is liable to be deleted, hence, ordered accordingly.

6. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 30/06/2022

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-

