

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.7072 & 7073/DEL/2019
Assessment Year 2010-11

Devki Nandan Bindal, C/o Kapil Goel Adv, F-26/124 Sector 7, Rohini, Delhi.	Vs.	ITO, Ward-46(3), New Delhi.
TAN/PAN: AHEPB8698Q		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri R.S. Yadav, Sr.DR		
Date of hearing:	19	10	2022
Date of pronouncement:	19	10	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XVI, New Delhi ('CIT(A)' in short) of even date 14.06.2019 arising from respective penalty orders passed by the Assessing Officer under Section 271A and 271B of the Income Tax Act, 1961 (the Act) concerning AYs 2010-11.

2. Both the appeals have been heard together and are being disposed of by way of this consolidated order.

3. As per its Grounds of Appeal, the Assessee, in these appeals,

has essentially challenged (i) the imposition of penalty of Rs. 25000/ under section 271A for non maintenance of books in infringement of S. 44AA of the Act and (ii) imposition of penalty of Rs. 1,50,000/- under section 271B for not furnishing tax audit report enjoined by S. 44AB of the Act.

4. When the matter was called for hearing, none appeared for the assessee. Accordingly, the matter was proceeded *ex-parte*.

5. The Assessing Officer while passing the assessment order relevant to Assessment Year 2005-06 in question, *inter alia* alleged that the gross turnover of the assessee stands at Rs.53,06,51,396/- which apparently exceeds the threshold provided by S. 44AA of the Act and therefore, the assessee was under obligation to keep and maintain proper books of account. Owing to such alleged default in maintaining books and 44AA and getting such accounts audited under 44AB of the Act, the AO imposed penalty of Rs.25,000/- by invoking Section 271A of the Act and Rs. 1,50,000/- by invoking Section 271B of the Act. In the first appeal, the CIT(A) confirmed the aforesaid action of the Assessing Officer.

6. Aggrieved, the assessee preferred appeal before the Tribunal.

7. We have perused the respective penalty orders and the first appellate orders thereon passed under Section 271A & 271B of the Act. We have also taken into account the contentions on behalf of the Revenue.

8. To begin with, it is observed that the expression turnover,

gross receipt and sales form the qualifying criteria to determine whether the tax payer is liable to maintain books and subject such records to tax audit. Contextually, a question arises as to whether the sales by a commission agent or by a person on consignment basis form part of the turnover of the commission agent/consignee for the purposes of maintenance of books and tax audit thereof.

9. It is noticed from the record that the assessee claims to have been a small tax payer and was engaged in cheque/ draft discounting activity on a commission basis for which the income has also been declared on commission basis year after year and has been accepted by deptt. and assessed as such. The assessee claims to have rendered these services and gets a commission thereon. The assessee has contended before the lower authorities that according to Negotiable Instrument Act, 1881, exchange and endorsement of negotiable instrument is permissible and any person who is the payee of the draft can endorse the draft in favour of the other person and such endorsement can be made any number of times during the valid period of the draft and the endorsee can collect the payment of such draft. Moving further, the assessee has also contended that it has always maintained its books of account on the basis of commission received and pointed out that he has earned a miniscule commission income of Rs.50/- to Rs.100/- per lakh on gross basis and the IT Department has assessed his commission income at Rs.70/- per lakh in the previous assessment years on gross basis. The assessee also contended that the property in goods or significant risks & reward of ownership of goods continue to belong to the

constituent on whose behalf the assessee has acted upon and he was merely concerned with his commission income for the services rendered.

10. In the factual context, we straightaway take notice of Circular No.452 dated 17th March, 1986 issued by the CBDT wherein the question of applicability of Section 44AB in the case of commission agents/arhatias was addressed. The Board has clarified that the turnover does not include the sales affected on behalf of the principals and only the gross commission has to be considered for the purposes of section 44AB where the agents act only as an agent of his constituent and never acts as a principal. In the instant case also, it is an admitted position that the assessee is only acting as a commission agent on behalf of the constituent. In view of such clarification, only the commission income is required to be reckoned for the purposes of determination of his obligation under Section 44AA of the Act as well as Section 44AB of the Act.

11. The commission being turnover/receipt for the purposes of 44AA and 44AB, which is far below the threshold limit prescribed for the relevant assessment year, the assessee can not be treated as assessee in default in terms of S. 271A and S. 271B of the Act. The assessee thus has demonstrated reasonable cause for failure to maintain books of account as well as compliance of Section 44AB of the Act in terms of Section 271B of the Act.

12. Hence, the penalty imposed under Section 271A and Section 271B of the Act is quashed.

13. In the result, both the appeals of the assessee are allowed *ex-parte*.

Order was pronounced in the open Court on 19/10/2022.

Sd/-
[DIVA SINGH]
JUDICIAL MEMBER

DATED: /10/2022

prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

