

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

डॉ. मनीष बोराड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष
Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 188/KOL/2023
Assessment Year: 2016-17**

***Bangla Readymade Garments Mfg. & Traders Welfare
Association.....Appellant
[PAN: AADAB 2514 Q]***

Vs.

ACIT, Circle-26(1), Kolkata.....Respondent

Appearances by:

Sh. Anil Kochar, Adv., appeared on behalf of the Assessee.

*Smt. Ranu Biswas, Addl. CIT, Sr. D/R, appeared on behalf of the
Revenue.*

Date of concluding the hearing : May 15th, 2023

Date of pronouncing the order : May 24th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2016-17 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the

“Act”) by ld. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short ld. “CIT(A)”] dated 02.02.2023 arising out of the assessment order framed u/s 143(3) of the Act dated 20.12.2018.

2. The assessee has raised the following grounds of appeal:

“1. For that the order passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad -in - law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT(A) erred in confirming the action of the Ld. A.O. in levying penalty of Rs. 1,50,000/- u/s 271B on alleged grounds

3. For that the Ld. CIT(A) erred in holding that the receipts by the appellant is the turnover of the appellant & consequently liable to get the accounts audited u/s 44 AB of the IT Act, 1961

4. For that the Ld. CIT(A) misconstrued the facts of the case & failed to appreciate the same resulting in confirmation of penalty levied on alleged grounds

5. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

3. The sole grievance of the assessee is that ld. CIT(A) erred in confirming the penalty levied u/s 271B of the Act at Rs. 1.50 lakh for not getting the books of accounts audited.

4. Ld. Counsel for the assessee submitted that the assessee is an association of persons and formed on 19.01.2007 for looking after the interests of manufacturers and traders of garments. He submitted that the gross turnover of the association was only at Rs. 32,38,340/- being the service charges received for facilitating the members for deposits of sales tax to the Government treasury and other activities of the association. It is also submitted that the

alleged cash deposit of Rs. 8,55,94,735/- has been wrongly construed as turnover by ld. AO since the said sum includes approx 8.13 Cr received from the members towards sales tax and the same being deposited with the Government treasury and for such facilitation the assessee receives service charges. Therefore, since the turnover is below the prescribed limit u/s 44AB of the Act the assessee is not liable to get the books of accounts audited and, thus, no penalty is leviable u/s 271B of the Act.

5. On the other hand, ld. D/R stated that the assessee has failed to explain the purpose of receiving the huge cash from its members and depositing the said sum with the Government treasury towards sales tax. Further, he submitted that unless the assessee is able to explain the source of the alleged cash deposit, it has to be considered as business turnover of the assessee and, thus, liable for audit u/s 44AB of the Act.

6. We have heard rival contentions and perused the records placed before us. The sole grievance of the assessee is that ld. CIT(A) erred in confirming the penalty levied by ld. AO u/s 271B of the Act for failure to furnish audit report u/s 44AB of the Act. We observe that penalty u/s 271B of the Act is levied if any person fails to get his accounts audited in respect of any previous year(s) relevant to an assessment year or fail to furnish a report of such audit as required u/s 44AB of the Act. Further with regard to the audit of a person carrying on business the limit provided u/s 44AB of the Act is Rs. 1 Cr i.e. the sales turnover or gross receipts as the case may be in the business exceed/exceeds Rs. 1 Cr then the

assessee is liable to get books of accounts audited u/s 44AB of the Act. For applying the provisions of Section 44AB of the Act, first we have to examine that whether the assessee in the instant case is carrying on any business and whether its sales turnover or gross receipts has exceeded Rs. 1 Cr.

7. We notice that the assessee is an association of persons and is registered with the Registrar of Societies since 19.01.2007. The said association works under the Rules and Regulations framed under the Memorandum of Association dated 07.08.2006 and as perused by us from page 10 to 19 of the paperbook the objects of the assessee association are mainly for the welfare of the manufacturers and traders of readymade garments. So far as the year under appeal is concerned, we notice that the assessee association operates a bank account. It receives the sum mostly in cash from its members who are not acquainted with the procedure of paying the sales tax online and to assist its members it acts as an intermediary between the trader/manufacturer and Government Revenue authorities by paying the statutory taxes due from the small scale manufacturers. Perusal of the audited statement shows that during the year the assessee received Rs. 8,12,68,000/- and also received service charges of Rs. 32,38,340/- and during the year the assessee made sales tax payment of Rs. 8,14,91,250/- on behalf of its members. So, the members give the cash to the assessee and it deposits in the bank account and bank pays the same to the Government treasury towards sales tax. Further, for facilitating this arrangement, it charges a service fee

from its members. So, effectively the assessee is carrying business activities but its gross business receipts/turnover i.e. service charges is Rs. 32,38,340/-. Both the lower authorities erred in considering the cash sum received towards sales tax as business turnover of the assessee association.

8. Therefore, since the turnover of the assessee i.e. Rs. 32,38,340/- is less than Rs. 1 Cr during the year, it is out of the purview of Section 44AB of the Act. Since the assessee is not liable to get its books of accounts audited u/s 44AB of the Act, then provisions of Section 271B of the Act cannot come into force. We, thus, reverse the finding of ld. CIT(A) and delete the penalty of Rs. 1,50,000/- levied u/s 271B of the Act. Therefore, grounds of appeal raised by the assessee are allowed.

9. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 24th May, 2023

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 24.05.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Bangla Readymade Garments Mfg. & Traders Welfare Association, S-74/2, S.A. Farooquie Road, VIP Centre, Kolkata-700 018.**
- 2. ACIT, Circle-26(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata

