

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.4152/Del./2018
Assessment Year 2009-10

Jaswant Singh H.No. B-30, Mansarover Park, Shahdara Delhi. ABJPS6449K	vs.	ITO Ward 56(3) New Delhi.
(Appellant)		(Respondent)

For Assessee :	Sh. Jaspal Singh Sethi, Adv.
For Revenue :	Dr. Anjula Jain, Sr. DR

Date of Hearing :	18.10.2018
Date of Pronouncement :	01.11.2018

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-19, New Delhi dated 01.05.2018 for AY 2009-10, challenging the levy of penalty u/s 271B of the Act.

2. I have heard Ld. Representatives of both the parties and perused the material on record.

3. Briefly the facts of the case are that return of income was filed for assessment year under appeal declaring income of Rs. 2,60,000/-. The case was reopened u/s 147 of the Act on the basis of information of Form 26AS traces relating to assessment year under appeal that assessee had made a total receipts of Rs. 2,95,58,365/-. During the year under consideration, against the total receipts above, TDS of Rs. 5,43,419/- is also appearing in Form 26AS traces. The assessee has however, had shown net taxable income of Rs. 2,60,000/- only and had also claimed TDS of Rs. 2,02,800/-. It was, therefore, clear that assessee has undisclosed amount of TDS to Rs. 3,40,619/- and receipts/earning taken from this amount which has not been disclosed in the return of income of assessee. The AO after issue statutory notices also issued notice to the assessee and asked him to furnish the reconciliation of income viz-a-viz receipts as per Form 26AS traces for the year under consideration. Assessee has been asked to explain as to why the total gross receipts appearing in Form 26AS traces may not be treated as his gross receipt for the assessment year under appeal. The assessee filed the reply dated 16.12.2016 (PB 4) in which the assessee explained that as per past history of the assessee, the net profit in all the years varies between 4% to 4.5% of the gross receipts. Thus, to buy peace, assessee offered that a net income calculated @ 4.5% of the gross receipts may be assessed as taxable income

of the assessee. The AO accordingly, calculated net income @ 4.5% of the total receipts which comes to Rs. 13,30,126/-. Since assessee had already declared income of Rs. 2,60,000/-, therefore, addition of Rs. 10,70,126/- was made to the returned income. The AO also noted that since the assessee has failed to get his accounts credited u/s 44AB of the Act for the year under consideration, therefore, penalty proceedings u/s 271B was initiated. The AO at the penalty proceedings again asked for the explanation of the assessee to which assessee explained that assessee has total number of six trucks which are plied and income on the basis of Section 44AE was offered for taxation. The AO, however, did not accept the contention of the assessee because total receipts/turnover of the assessee during the year has exceeded Rs. 1 crore and assessee failed to get his accounts audited as per Section 44AB of the Act. Therefore, penalty u/s 271B was imposed. The Ld. CIT(A) on the same reasoning dismissed the appeal of the assessee and also noted that the receipts of the assessee under consideration was of Rs. 2.95 crores that means the assessee was not only doing business through his six trucks but also he was doing his business through hired vehicles and that is why his turnover through the hired vehicles has reached to 2.95 crores. The appeal of assessee was accordingly dismissed.

4. After considering the rival submission, I do not find any merit in the appeal of the assessee.

5. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and submitted that assessee owned six trucks only and net income was declared u/s 44AE of the Act. Therefore, there is no requirement for the assessee to get the accounts audited. On the other hand, Ld. DR relied upon the orders of the authorities below.

5.1 Section 271B of the Act provides as under:

271B. *“If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or [furnish a report of such audit as required under section 44AB], the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of [one hundred fifty thousand rupees], whichever is less.”*

5.2 Section 44AB of the Act provides “every person –

(a) Carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or

exceeds Rs. 1 crore in any previous year get his accounts of such previous year audited by an Accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such Accountant and setting forth such particulars as may be prescribed.”

5.3 It is an admitted fact that the total turnover or gross receipts of the assessee are more than Rs. 1 crore in assessment year under consideration. It was found at Rs. 2.95 crores. The total receipts of the assessee as per Form 26AS traces were shown at Rs. 2.95 crores which is not explained by the assessee. The assessee admitted the gross receipts in a sum of Rs. 2.95 crores even at the assessment stage. The copy of the reply of the assessee dated 16.12.2016 is filed at page 4 of the paper book in which the assessee offered for calculation of net taxable income by applying net profit rate of 4.5% of the gross receipts which was also taxed by the AO. The assessee in the same reply also explained that he had in his various replies clearly stated the *modus operandi* used by him in the booking of trucks and, as such, most of the receipts for this information did not belong to the assessee. Copy of the computation of income is filed at page 14 of the PB in which the assessee has declared net income u/s 44AE of the Act from six trucks in a sum of Rs. 2,24,000/-. The

assessee further declared income from “other sources” in a sum of Rs. 36,000/- as commission income from booking of trucks. The reply of the assessee and computation of income clearly show that apart from assessee earning business income through six trucks was also doing his business activity through hiring of the vehicles on which commission income was earned. The Ld. CIT(A), therefore, correctly held that the turnover of the assessee because of this business activity has reached to Rs. 2.95 crores. Thus, the assessee did not declare correct income in the return of income and that the assessee had not only income from plying of the six trucks but was also doing business of hiring trucks from which the assessee also earned business commission income and that is why the gross receipts of the assessee has exceeded Rs. 1 crore. Since the gross receipts of the assessee have admittedly exceed Rs. 1 crore, therefore, provisions of Section 44AB(a) of the Act clearly apply in the case of the assessee. The other provisions contained u/s 44AB(b,c,d) would not apply in the case of the assessee. Since the assessee failed to get the accounts audited as per Section 44AB(a) of the Act, therefore, assessee is liable for penalty u/s 271B of the Act. Ld. Counsel for the assessee did not make out any case of reasonable cause so as to claim immunity from the penalty. No interference is required in the matter. I, accordingly, confirm

the levy of penalty u/s 271B of the Act. Appeal of assessee has no merit, same is dismissed.

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

Order pronounced in the open Court.

**Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER**

Delhi

Dated: 01.11.2018

*Kavita Arora, P.S.

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.

Date of dictation	22.10.2018
Date on which the typed draft is placed before the dictating Member	29.10.2018/30.10.18
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	01.11.18
Date on which the final order is uploaded on the website of ITAT	01.11.18
Date on which the file goes to the Bench Clerk	01.11.18
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

