

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.390/CTK/2018

(निर्धारण वर्ष / Assessment Year :2013-2014)

Smt. Sanghamitra Pattnaik, Pattanaik Lane, Rairangpur, Mayurbhanj-757043	Vs.	Income Tax Officer, Ward-1, Baripada
स्थायी लेखा सं./PAN No. : AIQPP 8079 C		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri S.N.Sahoo/Somnath Sahoo, Advocates
राजस्व की ओर से /Revenue by	:	Shri D.K.Pradhan, JCIT-DR

सुनवाई की तारीख / Date of Hearing	:	08/06/2020
घोषणा की तारीख/Date of Pronouncement	:	11/06/2020

आदेश / ORDER

Per L.P.Sahu, AM:

This appeal is filed by the assessee against the order passed by learned CIT(A), Cuttack, dated 10.09.2018 for the assessment year 2013-2014, on the following grounds of appeal :-

- 1) *That the penalty levied u/s. 271A by the Assessing Officer and confirmed by the 1st Appellate Authority is illegal, uncalled for and against the facts on record.*
- 2) *That the mensrea is an essential ingredient of an offence has not been considered by the authorities below, therefore penalty levied is not sustainable in law.*
- 3) *That since the assessee has maintained such books of account which was duly audited and submitted before the AO as may enable the AO to compute his total income in accordance with the provision of law, therefore no offence was committed by the assessee so that he could be visited with penalty.*
- 4) *That the income assessed by the AO has been substantially reduced in appeal and resulted in refund, therefore penalty is not excisable.*

5) *That other ground if any will be urged at the time of hearing of appeal.*

2. Brief facts of the case are that the assessee is an individual deriving income from the sale of Indian made foreign Liquor. During the course of assessment proceedings, the assessee was asked to produce the books of accounts by the AO for completing the scrutiny assessment u/s.143(3) of the Act. The assessee submitted audit report along with balance sheet and profit and loss account, bank statement, copies of money receipts towards license fees paid and copy of VAT returns only. The AO provided many opportunity to the assessee to produce the books of accounts as mentioned in the audit report issued by the Chartered Accountant, but the assessee did not produce any books of accounts and furnished their written submissions before the AO, which reads as under :-

"My books of account was audited by the qualified CA Mr. P. K. Panda & submitted the audit report done u/s.44AB of IT. Act, 1961 with proper verification of computerized cash book, bank book, general ledger & general register with relevant vouchers but subsequently the hard disc was corrupted and we can't take the backup. So only available of hard copy, but unfortunately the hard copy documents were damaged by white ant which is not visible and some ledger I am trying to produce before your honour."

The AO noticed that the assessee failed to produce the books of accounts and supporting bills and vouchers for the verification of expenditure claimed by the assessee and arriving correct taxable profit of the assessee but the assessee was unable to produce the same.

Thereafter the AO issued the show cause notice for the rejection of books of accounts and net profit disclosed by the assessee by invoking the provisions of Section 145(3) of the Act, 1961 and computed the profit @4% of the total turnover transferred by the assessee in audit report and imposed penalty u/s.271A of the Act for not complying the provisions of Section 44AA of the Income Tax Act, 1961.

3. Aggrieved from the order of AO, the assessee preferred appeal before the CIT(A), wherein the CIT(A) confirmed the action of AO.

4. Feeling further aggrieved by the order of CIT(A), the assessee is in appeal before the Income Tax Appellate Tribunal.

5. Ld. AR of the assessee submitted that the assessee had maintained books of accounts which were duly audited by the Chartered Accountant and he has not pointed out any defect in audit report. The books of accounts were maintained in the computer system and it was got printed but the physical copy of the books of accounts were damaged by white ant which was not visible and hard disk of the computer in which the books of accounts was maintained also got corrupted. Ld. AR further submitted that since the assessee has maintained such books of account which was duly audited and submitted before the AO as may enable the AO to compute his total income in accordance with the provision of law, therefore no offence was committed by the assessee so that he could be visited with penalty.

Therefore, the penalty proceedings initiated by the AO u/s.271A of the Act and confirmed by the CIT(A) deserves to be deleted. To support his contentions, ld. AR relied on the decision of coordinate bench of the Tribunal in the case of M/s Agarwal Transport Corp. Vs. ITO, ITA Nos.406&407/CTK/2019, order dated 16.12.2019 and in the case of C.T.Chacko Vs. ITO [2012] 20 ITR (Trib) 125 (Cochin).

6. On the other hand, ld. DR relied on the orders of both the authorities below and submitted that the assessee was required compulsory to maintain books of accounts as per the provisions of Section 44AA of the Income Tax Act,1961 and as per Income Tax Rules, 1962. Therefore, the AO is justified to impose the penalty u/s.271A which has been confirmed by the CIT(A).

7. After considering the submissions of both the parties and perusing the entire material available on record, we find that the AO imposed penalty u/s.271A of the Act for non-maintenance of books of account u/s.44AA of the Act. In the appellate proceedings, the CIT(A) upheld the action of AO observing that non-maintenance of books of account by the assessee enabled the AO to levy penalty u/s.271A of the Act. It was also observed by the CIT(A) that other ledger accounts are essential and primary books of account in the absence of which the assessee's income cannot be accurately computed. any reasonable cause for non-maintenance of books of accounts. However, as per the

provisions of Section 271A of the Act, If any person fails to keep and maintain any such books of account and other documents as required by section 44AA of the Act or the rules made thereunder, in respect of any previous year or to retain such books of account and other documents for the period specified in the said rules, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty a sum of twenty-five thousand rupees. The relevant provisions of Section 271A of the Act read as under :-

"Failure to keep, maintain or retain books of account, documents, etc"

271A. Without prejudice to the provisions of [section 270A or] section 271, if any person fails to keep and maintain any such books of account and other documents as required by section 44AA or the rules made thereunder, in respect of any previous year or to retain such books of account and other documents for the period specified in the said rules, the [Assessing] Officer or the [Commissioner (Appeals)] may direct that such person shall pay, by way of penalty, [a sum of twenty-five thousand rupees].

8. It is clear from the penalty order dated 31.08.2016, the AO has observed that the assessee derives her income from sale of Indian made foreign liquor and is covered under section 44AA(2)(i) of the Act. Although the assessee is not supposed to maintained specified books of account as mentioned in Rule 6F, 44AA(2) mandates every person to "keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of this Act". Therefore, there exists cogent reason for imposition of penalty u/s 271A of I.T. Act, 1961. Accordingly, by virtue

of section 271A of the Act , penalty of Rs.25,000/- imposed by the AO on the assessee for failure to keep or retain books of accounts. A conjoint reading of Section 44AA and 271A of the Act, it is clear that the assessee failed to maintain books of accounts, therefore, as per Section 44AA of the Act, the assessee is liable for penalty u/s.271A of Rs.25000/-. The AO gave opportunity to the assessee for production of books of accounts many times but the assessee did not produce the said books of accounts. Further the assessee submitted that books of accounts have been damaged by white ants and hard disk of the computer in which books of accounts were prepared also got damaged. The AO did not accept the book results shown by the assessee for computing the taxable income and he rejected the profits shown by the assessee in the return of income and he applied Section 145(3) of the Act and computed the profit after applying 4% of the turnover shown by the assessee. Therefore, there was a cogent reason before the AO for imposing the penalty. It is the duty of the assessee to maintain books of accounts as per Section 44AA of the Act. If the income of the taxpayer falls above the prescribed limit, then he should have to maintain books of accounts u/s.44AA of the Act and he should produce the same as and when required by the AO enabling him to calculate correct taxable income of the assessee, which is lack in this case. We also noted from the assessment order and submissions of the assessee that there is no

any specific date or nearby date when the books of accounts were got damaged by the white ant which came to the notice of the assessee that on a particular date the books of accounts have been damaged by the white ant and there is also no date as to when the hard disks were corrupted. In the peculiar facts and circumstances of the case, the case laws relied on by the assessee are not applicable in the present case in hand. Further the ld. AR of the assessee could not show any reasonable cause under which he may get relief u/s.273B of the Act. Therefore, the AO was justified in imposing the penalty u/s.271A of the Act for non-maintenance of the books of accounts. Accordingly, we do not see any reason to interfere in the order of the CIT(A) in upholding the penalty levied by the AO u/s.271A of the Act and we confirm the same and dismiss the grounds of appeal of the assessee raised in the instant appeal.

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

Order pronounced in the open court on 11/06/2020.

Sd/-

(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 11/06/2020

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Smt. Sanghamitra Pattnaik,
Pattanaik Lane,
Rairangpur, Mayurbhanj-757043
2. प्रत्यर्थी / The Respondent-
Income Tax Officer, Ward-1, Baripada
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack