

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 142/Jodh/2023
Assessment Year: 2011-12

Paras Mal Sethia
Th. LR Smt. Kamla Devi Sethia,
F-146, MIA Basni II Phasse
Jodhpur (Raj.)

[PAN: ADBPS 0050L]
(Appellant)

Vs. I.T.O., 1(3),
Jodhpur/CIT(A) NFAC

(Respondent)

Appellant by : Sh. R. R. Singhvi, Adv.
Respondent by : Ms. Nidhi Nair, Sr. D.R.

Date of Hearing : 21.12.2023
Date of Pronouncement : 11.01.2024

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order of the
Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated
06.03.2023 in respect of Assessment Year: 2011-12 challenging therein

levy of penalty of Rs.1,50,000/- u/s 271B of the Act on the ground that no audit was made in this case as required u/s 44AB of the Act.

2. The Id. counsel for the assessee submitted that there is a clerical and inadvertent mistake occurred in filling the columns in the ITR, while filing the return of income due to inadvertent mistake in answer to questions "Are you liable to maintain accounts as per section 44AA? and Are you liable for audit under section 44AB?", were unfortunately given in negative i.e. "No" in place of correct answer to be given as "Yes". The Id. AR contended that this advertent mistake has been inferred adversely by the learned A.O. for the purpose of levy of present penalty u/s 271B of the Act. However, the AO on the contrary the fact regarding maintenance of regular books of account has been duly accepted by the AO. Thus, the AO has adopted contradictory interpretation in respect of this inadvertent mistake as to his convenience and the Id. CIT(A) has confirmed the finding of the AO by holding that the non maintenance of books of account and non completion of audit u/s 44AB by ignoring the true facts of the case on record. The Id. counsel has further contended that the audit report dated 28.09.2011 was duly placed on record during the course of assessment proceedings, duly supported by an affidavit of Sh. Mahendra Jain, CA to the effect that he had

prepared the said audit report on 28.09.2011 in as much as a letter from bank manager to the effect that such report was also provided to the bank as well before being noticed by the AO during the course of penalty proceedings. Thus, under these circumstances of the case, the allegation of the lower authorities regarding lack of evidence regarding audit report u/s 44AB and maintenance of books of account is factually incorrect. The counsel contended that the Id. CIT(A) NFAC has failed to appreciate the facts on merits of the case while sustaining the penalty levied by the AO. He pleaded that the penalty so levied and sustained u/s 271B is illegal and bad in law which deserved to be quashed. In support, he has placed reliance on the decision of the ITAT Mumbai Bench in ITA No. 2632/Mum/2013 AY 2009-10 dated July 09, 2014, Sujata Trading (P) Ltd. v. ITO-8(3)(2), Mumbai (2015) 152 ITD, 492 wherein the assessee company at the time of e-filing of his return inadvertently filled the column regarding details of the audit u/s 44AB wrongly as no and so penalty u/s 271B would not be leviable.

3. Per contra, the Id. DR supported the impugned order.

4. We have heard the rival contentions, perused the material on record, impugned order and case law cited before us. Admittedly, the appellant

assessee has obtained the tax audit report as required u/s 44AB of the Act on 28.09.2011 and e-filed its e-return of income before due date on 29.09.2011 wherein inadvertently he filled wrong information while filling the columns of audit report. However, the tax authorities have rejected the said explanation on the reasoning that no audit was made by the appellant as required u/s 44AB and no evidence or submissions are filed whereas such audit report, duly certified by the auditor with the support of an affidavit, has been filed on record. In the affidavit, the auditor has stated the fact that he has prepared the audit report on 28.09.2011 and a copy of said letter was also provided to the bank. The Id. counsel for the appellant contended that the required audit report as prescribed u/s 44AB was duly obtained by the appellant within the prescribed time and filed before the authorities below. Thus, it was due to inadvertent mistake occurred in respect of selection of the proper column of the ITR while filing the return of income by the office of the auditor which has been interpreted by the authorities below as if no audit report was obtained by the appellant u/s 44AB of the Act. Meaning thereby that the penalty u/s 271B was levied on wrong premises by the AO.

5. In the case of Sujata Trading (P) Ltd. v. ITO (supra), the Mumbai Tribunal has held vide para 9, as under:

“9. We have already noticed that the assessee has filed the return of income under E-filing procedure. “Part A-01” of the return of income requires the assessee who are liable for audit under section 44AB of the Act to furnish certain information. The same is optional for the assessee who are not liable for audit under sec. 44AB of the Act. The information to be given in “Part A-01” contains the details to be furnished in Form No.3CD. It is seen from the copy of e-return filed by the assessee that the assessee has duly furnished, all the details under “Part A-01 ” of the return of income, meaning thereby, there appears to be some truth in the submission of the assessee that it has obtained the tax audit report before the due date for filing return of income. Our view is further fortified with the fact that the audit under the Companies Act and under sec. 44AB of the Act was conducted by the very same auditor and he has confirmed the said fact by filing an affidavit before us. Hence, on a holistic consideration of the facts surrounding the issue, we are of the view that the assessee could have obtained the audit report u/s 44AB of the Act before filing the return of income and it has inadvertently filled the relevant column wrongly as “NO”. Since the assessee could have obtained the tax audit report before the due date for filing return of income, in our view, there is no justification for levying penalty u /s 271B of the Act. Accordingly, we set aside the order of Ld CIT (A) and direct the AO to delete the penalty levied in the hands of the assessee u/s 271B of the Act.”

6. In the present case, on identical facts the appellant assessee at the time of filing of its e-return had inadvertently filled column regarding details of audit u/s 44AB wrongly as “No” and therefore, in our view, the penalty u/s 271B would not be leviable.

7. Accordingly, we held that the Id. CIT(A)’s order is infirm and perverse to the facts on record and liable to be set aside.

8. In the above view, we accept the grievance of the appellant as genuine and as such the penalty of Rs.1,50,000/- levied u/s 44AB of the Act is hereby deleted.

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

Order pronounced as on 11.01.2024 at ITAT Amritsar Bench, Amritsar under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT (A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench