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IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'D', KOLKATA

[Before Shri P.M. Jagtap, AM and Shri S.S. Viswanethra Ravi, JM]

I.T.A. Nos. 839 to 842/Kol/2017
Assessment Years: 2007-08, 2008-09, 2009-10 & 2010-11

Rajesh Agarwal...Appellant
C/o S.L. Kachar, Advocate,
86, Canning Street,
Kolkata – 700 001.
[PAN : ADHPA 3042 Q]

ITO Ward 36(1) Kolkata...Respondent
110, Shantipally,
Kolkata – 700 107

Appearances by:
Shri Anil Kochar, Advocate appearing on behalf of the Assessee
Shri A Bhattacharjee, Addl CIT appearing on behalf of the Revenue

Date of concluding the hearing : April 11, 2018
Date of pronouncing the order : April 13, 2018

ORDER

Per P.M. Jagtap, AM

These four appeals filed by the assessee are directed against the four separate orders of Ld. CIT(A) – 10, Kolkata all dated 27th February, 2017 whereby he confirmed the penalties imposed by the A.O. under section 271B of the Income Tax Act, 1961 for the four years under consideration as under:

Assessment Year	*Amount*
2007-08	*25,184/-*
2008-09	*1,47,702/-*
2009-10	*84,291/-*
2010-11	*1,35,820/-*

2. The assessee in the present case is an individual who is engaged in the business of construction as well as the labour contractor. The returns of income for all the four years under consideration were

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originally filed by him under section 139(1) declaring gross receipts from business and total income as under:

Assessment Year	*Gross Receipts*	*Total Income*
2007-08	*36,00,000/-*	*1,81,860/-*
2008-09	*37,13,848/-*	*1,84,600/-*
2009-10	*38,85,280/-*	*2,15,803/-*
2010-11	*37,12,069/-*	*2,32,005/-*

All the four returns of income filed by the assessee for the years under consideration were initially processed by the A.O. under section 143(1) accepting the income declared by the assessee. During the course of assessment proceedings for A.Y. 2011-12, the A.O. however found from the information available in 26AS that the gross receipts of the assessee for all the four years under consideration were actually more than the gross receipts declared by the assessee in his returns of income. He, therefore, reopened the assessments for all the four years under consideration and in response to the notices issued by the A.O. under section 148, the returns were filed by the assessee declaring his total income for all the four years as under:

Assessment Year	*Amount*
2007-08	*3,09,830/-*
2008-09	*9,53,992/-*
2009-10	*6,42,988/-*
2010-11	*10,13,054/-*

Thereafter, assessments for all the four years under consideration were completed by the A.O. under section 147/143(3) wherein he estimated the business income of the assessee by applying the net profit rate on the revised gross receipts of Rs. 50,36,700/-, Rs. 2,95,40,582/-, Rs. 1,68,58,239/- and Rs. 2,71,63,464/- for A.Y. 2007-08, 2008-09, 2009-10 and 2010-11 respectively. On appeal, the Ld. CIT(A) as well as Tribunal allowed part relief to the assessee by

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reducing the rate of net profit applied by the A.O. for estimating the business income of the assessee.

3. Since the revised gross receipts of the assessee for all the four years under consideration had exceeded the amounts specified under section 44AB of the Act and the assessee had failed to get his books of account audited before the due date as required by section 44AB, penalty proceedings under section 271B of the Act were initiated by the A.O. for all the four years under consideration. In this regard, explanation offered by the assessee in response to the show cause notices issued during the course of penalty proceedings was not found acceptable by the A.O. He accordingly proceeded to impose penalty under section 271B for all the four years under consideration as under:

Assessment Year	*Amount*
2007-08	*25,184/-*
2008-09	*1,47,702/-*
2009-10	*84,291/-*
2010-11	*1,35,820/-*

4. The penalties imposed by the A.O. under section 271B for all the four years under consideration were challenged by the assessee in the appeal filed before the Ld. CIT(A) and since the submissions made by the assessee in support of its case on this issue did not find favour with the Ld. CIT(A), he confirmed the penalties imposed by the A.O. under section 271B for all the four years under consideration for the identical reason given in all his impugned four orders as under:

> *I have carefully considered the action of the Ld.AO in imposing the impugned penalty, as also analysed the submissions as made by the appellant. It is seen that the appellant has both contractual receipts and sales as a [art of the turnover. Being the sole proprietor the assessee-*

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individual was definitely aware of the entire turnover of his own business, or in the very least he is expected to be aware of his own statement of affairs, Every businessman small or big, a novice or a veteran always aspires for greater turnover, which contributes to more business and consequently higher profits. Any innocence in the matter is unbelievable. Amy ignorance in the matter difficult to accept, less of condone. Law is all pervading. Almost all actions in life are regulated by law, baring a few reflex actions. There are all sorts of laws like personal, family, civil, criminal, revenue, commercial, taxation, public and private international law and so on and so forth. Laws can be statutory, customary, moral or ethical, ecclesiastical etc. However, it is well established that ignorance of any of these laws cannot constitute an excuse. None are permitted to plead ignorance as a defense to escape the rigors of law. If that be acceptable, it is very easy for any person can put forward ignorance as a defense even though he was actually aware of the law and its full consequences. The law enforcement machinery shall come to a grinding halt if ignorance is accepted as a defense. Being a negative fact, court cannot insist on proof also, It requires the study of the mental position of the law breaker which is a real difficult exercise if not an impossible proposition. For all these reasons the policy of law has always been to reject the plea of ignorance of law. Lord Ellenborough said ***"there is no saying to what extent the excuse of ignorance might not be carried, it would be urged in almost every case."*** *Thus, the above discussion explains the philosophy or rationale behind the latin maxirn "Ignorantia legis neminem excusat" which means that ignorance of law shall not excuse a person. That said, it has also to be observed that the maxim has to be applied only in fit cases and that too facts and circumstance of the case warrants its application. The study of the status of the maxim in England, US and India clearly indicates that courts are reluctant to accept the maxim bluntly, but it*
cannot be wished away. In my considered view, it has to be applied in fit cases when circumstances clearly warrant it, the maxim need not be applied and a person may be excused for his ignorance. It may not be admissible in criminal matters but in other areas of law it can be applied only if it is warranted. In the present case, I am of the considered view it has to be applied, otherwise there would be escapement of revenue on a regular basis. In the present case, had there been no scrutiny, the matter would have escaped without note, as the appellant would have gone on in his own ways, whether ignorant or deliberate. In the case of Anahaita Nalin Shah Vs DCIT, Mumbai, reported in [2014] 43 taxmann.com 2O5 (Mumbai - Trib.), the Hon'ble Mumbai ITAT – A – bench. In ITA No.7972/2010, date of judgment being 29.01.2014, have observed in a

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similar factual matrix that a penalty u/s 271B would be imposable. Section 44AB, read with section 271B of the Income-tax Act, 1961 – Tax audit (Penalty) - Assessment year 2004-05 - Assessee entered into speculative business of shares - Transactions entered into by her were more than prescribed monetary limit for tax audit under section 44AB - No bonafide reasons were furnished by assessee, for not getting books of accounts audited, before Assessing Officer or first appellate authority - Whether considering principles governing imposition of penalty under section 271B Assessing Officer was justified in levying penalty for not getting her books of account audited - Held, yes [Para 7] [In favour of revenue].

In the present appeal, also in view of the facts and circumstances, I am of the view that the Ld. AO has rightly levied the penalty u/s 271B and therefore such action of the Ld. AO is confirmed. The grounds taken by the appellant are accordingly dismissed."

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. The first contention raised by the learned counsel for the assessee in support of the assessee's case is that the gross receipts of his business as declared by the assessee in his returns of income originally filed for all the four years under consideration under section 139(1) being less than the limit prescribed in section 44AB, he was not required to get his accounts audited as per section 44AB and there would be no question of imposition of penalty under section 271B. However as rightly pointed out by the learned DR from the relevant provisions of section 44AB, every person carrying on business is required to get his accounts audited if his total sales turnover or gross receipts, as the case may be, in business exceeds Rs. 40,00,000/- upto A.Y. 2010-11. What is therefore relevant for the purpose of application of section

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44AB is the actual gross receipts or turnover of the business of the assessee for the relevant year and not the turnover as declared by the assessee in his returns of income filed under section 139(1). In the present case, the gross receipts or turnover of the business of the assessee for all the four years under consideration was found to be actually more than the limit of Rs. 40,00,000/- prescribed in section 44AB and the said quantum having been upheld even in appeal by the Tribunal, we are of the view that the provisions of section 44AB were clearly attracted going by the actual turnover or gross receipts of the assessee's business.

6. The second contention raised by the learned counsel for the assessee is that no books of account having been regularly maintained by the assessee for all the four years under consideration, no penalty under section 271B could be imposed for violation of section 44AB. In support on this contention, he has relied on the decision of Hon'ble Gauhati High Court in the case of Suraj Mal Parasuram Todi vs CIT 222 ITR 691 as well as the decision of Hon'ble Allahabad High Court in the case of CIT vs Bisauli Tractors 299 ITR 219 wherein it was held that the requirement of getting books of account audited can arise only where the books of account are maintained and where no books of account are maintained, penalty should be imposed for non-maintenance of books of account under section 271A and no penalty can be imposed under section 271B for violation of section 44AB. In this regard, the learned DR has invited our attention to page no 3 of the assessment order passed by the A.O. under section 147/143(3) to point out that the restructured books of account were maintained by the assessee and on the basis of the same, fresh final accounts were

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prepared. He has also pointed out that the said restructured books of account of the assessee were rejected by the A.O. under section 145(3) of the Act and his business income for all the four years under consideration was estimated by applying a net profit rate. The learned counsel for the assessee, on the other hand, has contended that even though there is a mention of the restructured books of account of the assessee and rejection of the same by the A.O. in the assessment orders, no such books of account were ever maintained by the assessee and what was prepared and furnished by the assessee during the course of assessment proceedings is only the restructured trading accounts on the basis of higher gross receipts found by the A.O. on the basis of information available in Form 26AS. Keeping in view this stand by the learned counsel for the assessee which is not in conformity with the observations recorded by the A.O. in the assessment orders, we are of the view that the stand taken by the learned counsel for the assessee requires verification. We, therefore, restore this matter to the file of the A.O. with the direction to verify the claim of the assessee of having not maintained any regular books of account for all the four years under consideration from the relevant record and decide the issue in the light of the decision of Hon'ble Gauhati High Court in the case of Suraj Mal Parasuram Todi (supra) and Allahabad High Court in the case of Bisauli Tractors (supra). The A.O. is also directed to verify another contention raised by the learned counsel for the assessee that the penalties of Rs. 1,47,702/- and Rs. 1,35,820/- imposed for A.Y. 2008-09 and 2009-10 respectively are more than the maximum penalty of Rs. 1,00,000/- leviable for the said years and allow appropriate relief to the assessee accordingly.

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7. In the result, all the four appeals of the assessee are treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 13th April 2018.

Sd/-	Sd/-
(S.S. Viswanethra Ravi) JUDICIAL MEMBER	(P.M. Jagtap) ACCOUNTANT MEMBER

Dated: 13/04/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. Rajesh Agarwal, C/o S.L. Kochar, Advocate, 86, Canning Street, Kolkata – 700 001.
2. ITO Ward 36(1), 110, Shantipally, Kolkata – 700 107.
3. The CIT(A)
4. The CIT
5. DR

True Copy, By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata