

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "D", KOLKATA**

**BEFORE SH. P.M.JAGTAP, VICE PRESIDENT &
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.640/KOL/2018
(ASSESSMENT YEAR-2013-14)**

Somnath Ghosh, 54/2/1/1/1, Panchanantala Road, Howrah-711101. PAN-AIUPG9649K	vs	ITO, Ward-47(1), 3, Govt. Place (West), Kolkata-700001.
(Appellant)		(Respondent)
Appellant by	Smt. P.Shaw, CA	
Respondent by	Sh. Sankar Kr. Halder, ACIT DR	
Date of Hearing	01.01.2019	
Date of Pronouncement	27.03.2019	

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

This appeal filed by the assessee against the order dated 31.01.2018 passed by CIT(A)-14, Kolkata u/s 143(3) of the Income Tax Act, 1961 (in short "Act") for AY 2013-14.

2. The only issue is to be decided as to whether the CIT(A) as justified in confirming the penalty imposed by the AO u/s 271B of the Act.

3. The brief facts of the case are that the assessee is an individual and engaged in the business of trading of Iron and Steel. The assessee filed its return of income declaring a total income of Rs.3,86,050/-. The notice u/s 143(2) & 142(1) were issued. The AO determined the income of the assessee at Rs.8,06,820/- vide its order dated 21.01.2016 passed u/s 143(3) of the Act.

4. Heard both parties and perused the material available on record. The AO initiated penalty proceedings against the assessee by issuing a notice

u/s 274/274B of the Act in response to which the assessee made submissions wherein it is clearly admitted that no books of accounts maintained by the assessee. We find an admission by the assessee to this effect in the assessment proceedings which is reflected at page No.2 of the AO's order. It is observed from the record that the assessee has shown a sale under the head for the trading in P&L account of Rs.10,75,76,516/-. According to AO, the assessee is required to get his books of accounts audited for the reason as his total sales exceeded Rs.1 crore which is a monetary limit as provided u/s 44AB of the Act. Before us, Ld.AR contended that when there are no books and getting the same audits does not arise. He argued that no penalty could be imposed u/s 271B of the Act and the penalty confirmed by the CIT(A) is to be levied. The Ld.AR further relied on the decision of Hon'ble High Court of Allahabad in the case of *CIT vs Bisauli Tractors [2008] 299 ITR 219 (All.)*. Further Ld. AR argued when a separate penalty provision is provided for non-maintenance of accounts, the AO should have imposed penalty u/s 271A of the Act but no penalty u/s 271B of the Act and submitted the penalty imposed by the AO as confirmed by the CIT(A) is not maintainable.

5. The Ld. DR argued that it is a statutory obligation to maintain books of accounts when the AO did not resort to levy penalty u/s 271A of the Act and the penalty imposed u/s 271B of the Act is maintainable.

6. As discussed above, that the AO himself recorded that no books were maintained by the assessee and penalty u/s 271B of the Act is to be imposed when any person fails to get his accounts audited. Admittedly there is no dispute that no books were maintained by the assessee and as rightly argued by the Ld.AR getting the same audited does not arise at all. Therefore, we find force in the arguments of Ld.AR and taking the support from the decision of Hon'ble High Court of Allahabad in the case of *CIT vs*

Bisauli Tractors [2008] 299 ITR 219 (All.). For better understanding, the relevant portion is reproduced herein below:-

4. *“Aggrieved, the assessee went in first appeal before the Commissioner (Appeals), who vide his common dated 27-10-1995 has cancelled the penalty so imposed by the assessing officer for each of the three assessment years on the ground that there were no books of account with the appellant for the above three assessment years and when there were no books of account, the question of their auditing does not arise. Thereafter, the department preferred appeals before the Tribunal. After taking into consideration on the entire conspectus of the case the Tribunal held as under:*

I have heard the Learned Departmental Representative and have perused the records. Undisputedly, the assessee is not maintaining books of account. Commissioner (Appeals) verified this fact with reference to sales tax records also. When there are no books of account, the question of their audit does not arise. If there is any fault in the matter, the said fault can be examined with reference to non-maintenance of Books of Account. There are certainly no defaults for not obtaining the said Audit Reports for years under consideration. The requirement of audit is in relation to the books maintained. When there are no books, there is nothing to audit. I have perused the impugned orders. In my opinion the Commissioner (Appeals) took a correct view in the matter and his order calls for no interference.”

7. In view of the above, we set aside the order of CIT(A) and cancel the penalty imposed by the AO u/s 271B of the Act. Thus, Ground Nos. 1 to 3 raised by the assessee are allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27.03.2019.

Sd/-
(P.M.JAGTAP)
VICE PRESIDENT

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Date:- 27.03.2019
Amit Kumar

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1. Appellant- Somnath Ghosh, 54/2/1/1/1, Panchanantala Road, Howrah-711101.
2. Respondent- ITO, Ward-47(1), 3, Govt. Place (West), Kolkata-700001.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

AR/H.O.O
ITAT, KOLKATA