

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

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

I.T.A. Nos. 151 to 156/Asr/2022

Assessment Years: 2011-12 to 2012-13 & 2014-15 to 2016-17

Sh. Yasir Bilal Khan,
R/o H. No. 72, Alnoor Signed
Colony, Hyderpora,
Srinagar-190001

[PAN: AQKPK 9895P]

(Appellant)

Vs. Dy. Commissioner Income Tax,
Central Circle, Jammu

(Respondent)

Appellant by : None

Respondent by: Mrs. Kanchan Garg, Sr. DR

Date of Hearing: 16.02.2023

Date of Pronouncement: 17.02.2023

ORDER

Per Bench:

A bunch of appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana, [in brevity CIT(A)] order passed u/s. 250(6) of the Income Tax Act, 1961 (in brevity the Act) for assessment years 2011-12, 2012-13, 2014-15 to 2016-17. The impugned orders are emanated from the orders of the Id. Dy. Commissioner of Income Tax, Central Circle, Jammu (in brevity AO) order passed u/s. 271B and 271A of the Act.

2. During the hearing the Registry pointed out the defect for payment of challan for filing the appeal before ITAT and also the delay for filing of the appeal for 31 days. The defect of the appeal was placed before the Bench. We considered the defect and, in any case, the assessee paid appeal fee in different head. For shake of justice we consider the defect of challan payment head& accept the appeal.

Further the appeal is filed with delay for 31 days. Related to the delay in filing appeal the assessee filed a petition for condonation of delay, the assessee's relative was seriously ill and assessee was forget to submit the appeal as his primary focus about the treatment of the relative. The Id. SR Dr had not made any objection relating the condonation of delay. Accordingly, the delay for 31 days is condoned.

3. The case was called for hearing, but none was present on behalf of the assessee. Where assessee was duly served the notice and is also provided sufficient opportunities to appear before bench. However, none appeared on behalf of assessee& no adjournment petition was filed before the bench. In view of the above and considering the nature of dispute, we proceed to dispose the appeal *ex-parte qua* the assessee after hearing the learned Sr. DR and on the basis of material available on the record.

4. Brief fact of the case is that the assessee filed an appeal for AY 2011-12, 2012-13, 2014-15 2015-16 & 2016-17 relating to penalty u/s. 271B of the Act. Only for assessment year 2015-16 ITA no. 154/ASR/2022 is related to penalty u/s. 271A of the Act. The penalty notice was initiated by the Id. AO for all the assessment years. In response to notice, no compliance was made by the assessee. The penalty was levied by the Id. AOU/s 271B amount of Rs. 1,50,000/- for each year for non-furnishing of Audit Report U/s 44AB of the

Act & penalty U/s 271A amount of Rs. 25,000/-for non-submission of books of accounts in AY 2015-16. The assessee filed appeal but remained unsuccessful. Being aggrieved the assessee filed appeal before us. With the consent of the Id. Sr-Dr, **ITA NO. 151/ASR/2022** is taken as lead case related to penalty U/s 271B.

ITA 151/ASR/2022

5. The assessee has taken the following grounds of appeal:

- “01. That the order passed by the worthy Commissioner of Income Tax (Appeals) - 5, Ludhiana on 29.03.2022 has been received by the Appellant on 11th April, 2022. Aggrieved the Appellant has preferred to file appeal before the HON’BLE INCOME TAX TRIBUNAL, AMRITSAR.*
- 02. That the Ld. Commissioner of Income Tax (Appeals) has erred both in law and facts of the case in sustained the PENALTY IMPOSED by the Ld. A.O. u/s. 271B of the Income Tax Act, 1961 at Rs.1,50,000/-. The penalty, so sustained is contrary to the facts and circumstances of the case and may kindly be QUASHED / DELETED.*
- 03. The Appellant reserves the right to add, amend, withdraw, or alter the grounds of appeal, before it is heard and disposed of.”*

6. We heard the submissions of the Revenue and considered the documents available in the record and taken care the order of the revenue Authorities.

The Id. SR-Dr relied on the order of Id. CIT(A) relevant paragraph of the order, page-7 is extracted as below:

“.....However, it is evident that even during the present appellant proceedings also, the AR has not given any documents to substantiate the claim that the books of accounts of the assessee were audited by the accountant before the specified date and a report was furnished by the specified date of such audit in the prescribed form duly signed and verified by the Auditor as per the provision of Section 44AB of the Income

*Tax Act, 1961. The wordings of the section are very clear, and the assessee is required to fulfil both the conditions i.e. to get the accounts audited and to **furnish by the specified date**, the report of such audit in the prescribed form duly signed and verified by the auditor as per section 44AB. There was a change in section 44AB and the word 'obtain before' has been replaced by the word 'furnished by' to bring a transparency in this regard with a view to avoid litigation. Earlier the required was that the assessee would get the account audited and obtain before the specified date the audit report, however under the changed provision application to the year under consideration, the assessee was required not only to get the accounts audited by also to furnish the Audit Report by the specified date applicable to the case of the assessee. The audit report is dated 11.07.2011 but the return was filed electronically on 29.03.2012 and there is no proof that the Audit report was filed before the filing of the return by the assessee. The requirement of the law is that the assessee after getting the accounts audited is also required to furnish to the department the audit report by the specified date. The AR has failed to substantiate the claim that any such report was obtained and **furnished by the specified date** applicable to this case. Considering these facts of the case, the argument of the AR appears unacceptable. The action of the AO is found as per law and hence the penalty imposed under section 271 in this case amounting to Rs.1,50,000/-, sustainable and hence confirmed.*

Accordingly, these grounds of appeal are dismissed."

6.1. The penalty is levied u/s. 271B for non-completion of the Audit within specified date. The assessee prayed that due to devastated flood of Kashmir Valley on the year 2014, the assessee was unable to complete the audit. But there was no such any evidence was filed before the authority to prove that there is nexus with the non-completion of the audit report u/s. 44AB with the flood of Kashmir. There is no such any acceptable reason for assessee for non-furnish of the audit report u/s. 44AB of the Act, to get the account audited and to furnish by specific date. We find no infirmity in the order of the Id. CIT(A). So the penalty levied by the Id. AO u/s. 271B is upheld.

7. Accordingly, the appeal of the assessee in **ITA No. 151/Asr/2022** is dismissed. The ITA No. 151/Asr/2022 is *mutatis mutandis* applicable for the appeal of the assessee ITA Nos. **152/Asr/2022, 153/Asr/2022, 155/Asr/2022 & 156/Asr/2022** which are dismissed.

ITA 154/ASR/2022:

8. This appeal is related to non-submission of the books of accounts before the assessing authority, during the assessment proceedings. The penalty was levied by the AO amount of Rs.25,000/- for assessment year 2015-16. The assessee has placed the reason that due to the devastated flood for the September, 2014 in Kashmir valley the books of accounts are destroyed. This is the only reason for non-submission of books of account before the authority during the time of assessment. But the assessee was unable to bring any material fact before the any of the authority.

9. The Id. Sr. DR vehemently argued and relied on the order of the Id. CIT(A), relevant part of paragraph 5.2 is extracted as below:-

“The facts of the case, the basis of penalty imposed by the A.O and the arguments of the AR during the appellate proceedings have been considered. The AO has levied the penalty u/s. 271A on account of the fact that the assessee could not produce complete books of accounts during the assessment proceedings and as well as during the course of penalty proceedings. It is further mentioned that it was submitted before the AO that audit books of accounts was completed within the time allowed and on that basis, the assessee filed return on 11.12.2015. As per the submission filed during the appellate proceedings, it was also submitted before the AO that the floods of 2014 damaged & destroyed the records and other up keep including offices which were submerged in the flow water for weeks together. It was also mentioned that raid was conducted by National Investigation Agency (NIA) in June, 2017 who did not find anything adverse in the premise. The arguments of the AR are not account acceptable because the floods occurred in September 2014 and in the audit report dated 03.09.2015, the auditors has given the details of the books of accounts maintained/ examined during the year ended 31.0.2015 as cashbook, general ledger, bank book input VAT register, output VAT register etc. Therefore, this stand of the assessee that the books were destroyed in the floods of September 2014 is not supported by the report of the auditor who has mentioned that he examined the books before giving the audit report dated 08.09.2015. Considering these facts of the case, the argument of the AR appears unacceptable. The action of the AO is found as

per law and hence the penalty imposed under section 241A in this case amounting to Rs. 25,000/- is sustainable and hence confirmed.

Accordingly, this ground of appeal is dismissed.”

10. We heard the submissions of the revenue and considered the order of the revenue authorities. The penalty for non-submission of books of account before the assessing authority was levied amount to Rs.25,000/- u/s. 271A. The assessee was not able to depict any proper and reasonable cause for non-submissions of the books of account before the revenue authorities. In hearing before ITAT, assessee was not able to file any proper reasons before the Bench in favour of his argument. We find no infirmity in the order of the ld. CIT(A). Accordingly, the penalty u/s.271A amount to Rs.25,000/- is upheld. Considering above, the appeal of the assessee **ITA No. 154/ASR/ASR** is dismissed.

11. In the result, the appeals of the assessee in **ITA Nos. 151 to 156/ASR/2022** are dismissed.

Order pronounced in the open court on 17.02.2023

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

**Sd/-
(Anikesh Banerjee)
Judicial Member**

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Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(A),
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T
- (6) The Guard File

True Copy

By Order