



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.254/RJT/2025

निर्धारण वर्ष/Assessment Year : 2018-19

Bhaveshbhai Haribhai Kanani, Plot No.E211, GIDC Phase-2 Dared, Jamnagar-361008	बनाम/ Vs	Income Tax Officer, Ward-1(3), Jamnagar, Taranjali Building, Income Tax Officer, Nr. Amber Cinema, Pt. Nehru Marg, Hospital Rod, Jamanagar-361 008
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACYPK 5085 F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारित की ओर से/Assessee by : Shri Chetan Agarwal, AR
राजस्व की ओर से/Revenue by : Shri Dheeraj Kumr Gupta, Sr-DR
सुनवाई की तारीख/Date of Hearing : 15/05/2025
घोषणा की तारीख/Date of Pronouncement : 05/08/2025

आदेश/Order

Per, Dr. Arjun Lal Saini, AM

Captioned appeal filed by the assessee, pertaining to Assessment Year 2018-19, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 18.11.2024, which in turn arises out of a penalty levied u/s 271B of the Act, dated 23.11.2021.

2. The grounds of appeal raised by the assessee are as follows:

"The ld. CIT(A) erred in law as well on fact in upholding penalty of Rs.1,50,000 imposed by ld.AO u/s 271B of the Act."

3. Succinctly, the factual panorama of the case is that assessee before us is an individual. The assessee's case was selected for scrutiny under CASS and a notice u/s 143(2) of the Act dated 22/09/2019, was issued and served on the



assessee. Subsequently, notice u/s 142(1) of the Act and questionnaire was issued and served on the assessee. During the course of assessment proceedings, it was found by the assessing officer that the assessee is engaged in the business of trading of "brass scrap". On verification of the details of return of income filed by the assessee, it was seen that the assessee has declared the turnover of Rs.1,03,43,628/- and offered Net profit at Rs.7,91,012/- as his income. The income declared in the return on the admitted turnover works out at 7.65%. During the scrutiny, the assessing officer noticed more turnover of Rs.11,93,30,453/- and since the assessee has declared the income under "no account case" u/s 44AD of the Act in the return of income filed. Further, the assessee has not complied with the provisions of section 44AB of the Act, to get his accounts audited, as required u/s 44AB of the Act therefore, Assessing Officer issued a show cause notice to the assessee.

4. Thereafter, the Assessing Officer having gone through the reply of assessee estimated the income of the assessee at 4% of the total turnover of Rs.11,93,30,453/- which worked out to Rs.44,73,218/-. As the assessee has already declared income of Rs.7,91,012/- the balance of Rs.39,82,206/- (Rs.44,73,218- Rs.7,91,012) was added to the total income declared and brought to tax. In view of the above, the assessment was completed by making an addition of Rs.39,82,206/-. Further it was noted that the assessee has not furnished an audit report in Form 3CA, as required u/s. 44AB within the stipulated due date. Therefore, penalty proceedings u/s 271B of the Act was initiated during the course of assessment proceedings and notice u/s 274 r.w.s 271B of the Act dated 20/04/2021, was issued to the assessee.

5. In response to the show cause notice, the assessee submitted his reply on 20/07/2021, before the assessing officer stating that failure of assessee or default u/s 44AB was on account of mistake of accountant of assessee under wrong belief, and mistake on the part of accountant cannot put assessee to



jeopardy. It was also contended that since the assessing officer estimated the addition of the assessee, at the rate of 4% on turnover, therefore, no penalty should be imposed on the assessee.

6. However, the Assessing Officer rejected the above contention of the assessee and observed that the failure of assessee or default u/s 44AB on account of mistake of accountant of assessee is not a reasonable cause for dropping penalty u/s 271B of the Act, therefore, assessing officer imposed penalty u/s 271B of the Act of Rs.1,50,000/-.

7. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the penalty imposed by the assessing officer. The Ld.CIT(A) observed that the reason for not getting the books of accounts audited u/s 44AB of the Act, explained by the assessee, was not sufficient and cogent ground to avoid penal provision u/s 271B of the Act.

8. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

9. The Ld. Counsel for the assessee, vehemently argued that the assessee did not maintain the books of accounts and in fact, the assessee filed the return of income, u/s 44AD of the Income Tax Act, therefore, the assessee is not responsible to maintain the books of accounts. Hence, the penalty u/s 271B does not attract. The Ld. Counsel for the assessee, further submitted that Assessing Officer has made the addition on estimated basis, at the rate of 4% on the turnover, therefore, on estimation, there should not be any penalty. Therefore, the Ld. Counsel contended that since the assessee has filed the return of income u/s 44AD of the Act, the assessee is a small trader, therefore, the assessee is not maintaining the books of account, and moreover, the Assessing Officer has



estimated the profit, hence on the estimation, no question of penalty arises, therefore, penalty imposed by the Assessing Officer may be deleted.

10. On the other hand, the Ld. Sr. DR for the revenue submitted that the assessee has concealed the income and therefore the Assessing Officer has estimated the profit at the 4% on the turnover, therefore, on estimation of profit penalty should be imposed. The ld. Sr. DR further submits that assessee has not shown any reasonable cause for not levying penalty, therefore, penalty imposed by the Assessing Officer may be confirmed.

11. I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. I note that the assessee has filed the return of income u/s 44AD of the Act, and as per the scheme of section 44AD of the Act, the assessee need not to maintain the books of accounts. Since, the assessee did not maintain the books of account, therefore, no penalty should be imposed u/s. 271B of the Act. I note that in the case of **CIT v. Bisauli Tractors** [(2008) 299 ITR 219 (All.)], the Hon'ble Allahabad High Court held that when the assessee had not maintained books of account, the question of getting the books audited under Section 44AB would not arise. Therefore, penalty under Section 271B was not leviable. Therefore, I note that if no books are maintained, the foundation of audit collapses, and hence penalty cannot be imposed. Apart from this, during the assessment proceedings itself, the Assessing Officer has estimated the income of the assessee, therefore, the penalty on estimation should not be levied. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or guilty of conduct,



contumacious or dishonest, or acted in conscious disregard to its obligation. The penalty will also not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provision of the Act. Therefore, I find that the assessee did not suppose to maintain the books of account u/s. 44AD of the Act, therefore, penalty should not be imposed u/s. 271B of the Act. Hence, considering the above facts and circumstances, I delete the penalty of Rs.1,50,000/- imposed by the Assessing Officer.

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

Order pronounced in the open court on 05/08/2025.

Sd/-

(Dr. A.L. SAINI)

लेखा सदस्य/ACCOUNTANT MEMBER

राजकोट/Rajkot

दिनांक/ Date: 05/08/2025

DKP Outsourcing Sr.P.S

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्ड फाईल/ Guard File

By order/आदेश से,

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सहायक पंजीकार

आयकर अपीलीय अधिकरण, राजकोट