

ITA No.369/Bang/2023
Suresh Sharma, Bangalore

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.369/Bang/2023
Assessment Year: 2017-18

Suresh Sharma Prop: Vesper Pharmaceuticals No.1, Singapura Village Vidyaranyapura Post Bangalore 560 097 PAN NO : AHWPS5525K	Vs.	ITO/DCIT Circle-6(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Ms. Suman Lunkar, A.R.
Respondent by	:	Smt. Supriya Rao O.N., D.R.

Date of Hearing	:	22.06.2023
Date of Pronouncement	:	22.06.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC u/s 250 of the Income-tax Act, 1961 [‘the Act’ for short] for the assessment year 2017-18 dated 25.4.2023. The only issue in this appeal is with regard to levy of penalty u/s 271A of the Act.

2. Facts of the case are that the assessee is an Individual. The appeal is being filed by the assessee for Assessment Year 2017-18 on being aggrieved by an order dated 09.08.2021 passed u/s. 271A r.w.s 44AA of the Act, levying a sum of Rs. 25,000/- as penalty for failure to maintain books of accounts. The penalty proceedings were initiated in the assessment order passed u/s. 143(3) of the Act dated 25.10.2019. The assessment order was passed accepting the income as returned by the assessee. In this connection the ld. A.R. for the

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assessee stated that for the year under consideration, the assessee has maintained regular books of account and has even got the books of accounts audited u/s. 44AB of the Act. The very pre-requisite of an audit to be carried out is that the assessee maintains proper books of accounts and if there are no books of accounts then there is no question of getting the audit done. The assessee had in the course of assessment proceedings, submitted the copy of the Audit report in Form 3CB-3CD obtained from the Chartered Accountant. In the course of assessment proceedings, the assessee had also submitted various ledger extracts of the expenditure claimed. Therefore, there is no question of non-maintenance of books of accounts. The assessee has maintained books of account in accordance with the regular accounting system followed and in accordance with the law. The Id. A.R. further stated that in the order that show cause notices were issued on the assessee. The notices could not be seen and replied due to lockdown in the state of Karnataka due to prevalent pandemic situation on account of Covid-19. However, the Id. AO has not considered the above facts and circumstances and has passed an order u/s 271A of the Act levying penalty of Rs.25,000/-. Aggrieved by this order, the assessee went in appeal before NFAC. NFAC confirmed the levy of penalty order of AO passed u/s 271A of the Act. Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. In this case, it is admitted fact that assessee has filed the audit report before the AO. The filing of audit report is possible only after auditing of books of accounts. Thus, it means that assessee has maintained the books of accounts. In the present case, penalty has been levied for non-maintenance of books of accounts u/s 271A of the Act. The section 271A of the Act stipulates that if there is a default found by the revenue authorities

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that assessee has not maintained the books of accounts for the relevant assessment year. In the present case, only default committed by assessee was that assessee has not produced the books of accounts before AO and the revenue authorities have accepted that the assessee has maintained the books of accounts in the assessment year under consideration, which is evident from the following observations of the ld. CIT(A):

“4.5 From the statement of the appellant, it transpires that audit of books of accounts had been done which, as he also claims, was not possible without the books of accounts. This contention of the appellant is seen to be valid. However, on the other hand, the penalty proceedings were initiated at the conclusion of the scrutiny assessment proceedings with the reason that books of accounts were not produced at the time of scrutiny hearing.

4.6 Possession of audit report does imply maintenance of books of accounts but, non-production of the books of accounts and more specifically, the primary books of accounts viz., Cash Book and Ledger or General Ledger however implies that the assessee has failed to retain such books of accounts as stipulated by section 44 AA of the Act. Sub-section (1) and Sub-section (2) of Section 44 AA of the Act clearly states that every person shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with provisions of this Act.”

3.1 Being so, in our opinion, the assessee's case is squarely covered by the order of coordinate bench of Pune in the case of Dr. Vinay T. Karnavat Sillod Vs. ITO (2007) 104 ITD 108 (Pune) wherein held as follows:

“Section 44AA provides in general that the persons qualified as professionals carrying on the business such as legal, medical, Engineering, etc., are expected to keep and maintain such books of account as may enable the Assessing Officer to compute his total income in accordance with the provisions of Income-tax Act. Sub-section (3) of section 44AA empowers the Board to prescribe rules for the purpose of maintenance of books of account. Thus, rule 6F prescribes firm and the manner in which and the place at which such books of account shall be kept and maintained. This rule prescribes'

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that the medical professionals has to maintain Form 3C as a daily case register but the most important part of this sub-rule (4) is that a taxpayer is required to keep and maintain the books at the place where he is carrying on the profession. A taxpayer is not required to keep the books of account relating to a previous year which has come to an end. In the statute, reference of rule 6F is not only in section 44AA but there was a mention of existence of rule in the penal provision as well, i.e., section 271A. Section 271A prescribes that the documents as required by section 44AA of the rules made thereunder in respect of any previous year have to be maintained. So, the applicability of rule has to be kept in mind even at the time of imposition of penalty. In other words, penalty under section 271A cannot be imposed in isolation, only with reference to section 44AA, by ignoring rule 6F. However, the penalties had been imposed for the assessment years 1997-98 to 2002-03, i.e., assessment years which came to an end on the date of survey, i.e., 20-3-2003. No penalty was imposed for the assessment year 2003-04. Rule 6F(4) is unambiguous and clearly indicates the intention of the Legislature that a taxpayer is required to keep and maintain the books of account other than those relating to a previous year which has come to an end at the place of profession. From the above discussion and on careful analysis of the sections involved, the law emerges in clear terms that a taxpayer is required to keep books of account, at the place of business or profession, of the current year other than those books of account relating to a previous year which has come to an end. [Para 8]

The only default which was found by the revenue authorities was that the assessee had not produced the books of account at the time of survey. Not only the first appellate authority but the Assessing Officer had also admitted that the books of account of the relevant assessment years were produced though after lapse of 386 days.

On the basis of the factual matrix, it was manifest that the books of account of earlier years were admittedly maintained by the assessee and the profit and loss account, etc. were annexed along with the returns filed in the regular course of profession; however, those books of account were not available at the time of survey and were beyond the reach of the Assessing Officer on the date of survey. As per rule 6F(4), the assessee had not committed any default of non-production of books of account at the time of survey. The legal position is amply clear that an assessee is expected to keep the books of account of the current year and not pertaining to the years which have come to an end. No penalty had been imposed for the current year i.e. 2003-04 as the survey was conducted on 20-3-2003. Penalties had been imposed for the assessment years which have come to an end and for all those years, the returns had already been filed much before the date of survey as the date of filing of returns had duly been acknowledged in the impugned penalty orders itself. Penalties had been wrongly imposed on both the counts firstly, the

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same were asked to be produced beyond the jurisdiction of rule 6 F(4) and secondly, the revenue authorities had accepted the maintenance of books of account of the assessment years for which penalty was imposed for non-maintenance of accounts. No default was committed by the assessee of non-production of books of accounts pertaining to the past assessment years which had already come to an end at the time of survey. With the above observations and in view of the detailed discussion made, the penalties levied by the revenue authorities were to be quashed. [Para 9]

In the result, all the appeals filed by the two assesseees to be allowed [para 10].”

3.2 In view of the above order of the Tribunal, taking a consistent view we delete the penalty levied by the AO u/s 271A of the Act.

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

Order pronounced in the open court on 22nd June, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 22nd June, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.