

ITAT upheld levy of penalty for tax audit default as assessee failed to furnish bona-fide reasons for default

Summary – The Mumbai ITAT in a recent case of Anahaita Nalin Shah, (the Assessee) held that where value of speculative share transactions exceeded prescribed limit for tax audit under section 44AB, levy of penalty under section 271B for tax audit default was justified.

Facts

- The assessee an individual entered in to speculative business of the shares.
- The transactions entered in to by her were more than the prescribed monetary limit as envisaged by the provisions of section 44AB for tax audit.
- However, no bonafide reasons were furnished by the assessee, for not getting the books of accounts audited, before the Assessing Officer or the first appellate authority.
- Thus, the Assessing Officer levied penalty for not having her books of accounts audited which was confirmed by the first appellate authority.
- On appeal:

Held

- Section 271B is an enabling provision empowering the Assessing Officer to direct payment of penalty for non-compliance with the provisions of section 44AB. Section 271B has to be read with provisions of section 44AB. Section 44AB requires assessee to get their accounts audited by an accountant before the specified date and furnish by the date, the report of such audit in the prescribed form duly signed and verified by such accountant. Section 271B stipulates imposition of penalty if an assessee fails to furnish such report. A harmonious consideration of both the provisions requires the assessee to assign reasonable cause his 'failure'. Reasonable cause of failure depends on the facts and circumstances of the case concerned. The exercise of power under section 271B is discretionary, not mandatory. Word used in the section is 'may' and not 'shall'. Courts expect the Assessing Officers to exercise the discretion judicially and take a decision, about imposing penalty, after considering all the relevant circumstances. The question of penalty for non-compliance cannot be inquired into without reading the provisions of sections 271B and 273B together as both are integrally connected. As the proof relating to reasonable cause is a matter of factual details, so burden has been cast upon the assessee to produce evidence in this regard.
- In the instant case the assessee had entered in to speculative business of the shares, that the transactions entered in to by her were more than the prescribed monetary limit as envisaged by the provisions of section 44AB, that no *bona fide* reasons was furnished by the assessee, for not getting the books of account audited, before the Assessing Officer or the first appellate authority. The words total turnover indicate the aggregate price of the commodities received by an assessee during

the course of his trading or business activities. It does not differentiate between commodities sold under the head speculative business/normal business. Transfer of immovable or movable property by way of investment is not included by the provisions of section 44AB. Provisions of the Act are clear that all revenue receipts are covered by the words turnover, wherever capital receipts are not to be considered a part of the turnover for the purposes of the said section. In other words, receipts which are not relatable to business and may fall under the expression income to be subjected to tax as income from other sources do not form part of total turnover. Considering the principles governing the imposition of penalty under section 271B and the facts of the case the Assessing Officer was justified in levying penalty for not getting her books of account audited. Thus, confirming the order of the first appellate authority, levy of penalty was upheld.