

**IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCHES, "SMC" JAIPUR**

**BEFORE SH. SANDEP GOSAIN, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

I.T.A. No. 683/JPR/2023
Assessment Year: 2010-11

Manisha Gahlot,
C-14, Sita Ram Puri,
Hida Ki Mohri, Ramganj
Jaipur-302023

[PAN: ARJPG 0399N]

(Appellant)

Vs. ACIT Ward1(3),
Jaipur

(Respondent)

Appellant by : Sh. Arun Trivedi, CA
Respondent by : Sh. Monisha Chaudhary, Addl. CIT

Date of Hearing : 06.02.2024
Date of Pronouncement : 15.02.2024

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 15.09.2023 in respect of Assessment Year: 2010-2011 challenging

therein confirmation of levy of penalty of Rs.25000/- u/s 271A of the Income Tax Act, 1961 in arbitrary manner.

2. At the outset, the Id. Counsel for the assessee has submitted that the assessee was not liable to maintaining books of account u/s 44AA of the IT Act, 1961 as it applies to those assessee who is having income from business or profession wherein the appellant assessee has filed return of income showing income from capital gains and other sources which has been accepted by the Id. Assessing Officer (APB pg. 5-6). He contended that the assessee has submitted a copy of statement of IIFL for the period under consideration with the details of his share transactions and copy of bank pass book. After due verification of detailed documents filed, the AO has accepted the income disclosed in the return of income under the head, short term capital loss of Rs.(-) 52,476/- as per para 2 of assessment order (APB pg. 6). The counsel further argued that the AO has assessed income of the assessee u/s 143(3)/148 on total income at Rs. Zero. The Id. AR argued that as the assessee is not required to maintain books of account u/s 44AA of the IT Act as it was not engaged in any business or profession activities as she has made investment in shares and incurred a short term capital loss of Rs.52,476/- on delivery based investment and has been duly accepted by the Assesing Officer. The Id. Counsel has taken an alternate

argument if on assumption the income from intraday transaction is taken under the head business and profession even then the assessee is not liable to maintain books of account because turnover in the case of intraday transaction is total profit in intraday trading and total loss an intraday trading as per guidance note on tax audit u/s 44AA of the Income Tax Act, 1961 issued by the Chartered Accountant (APB pg. 9). Accordingly, he has pleaded that the decision of the Id. CIT(A) NFAC is illegal being passed in arbitrary manner and against the facts of the case. He pleaded that the penalty imposed u/s 271A amounting to Rs.25000/- may be deleted.

3. Per contra, the Id. DR relied on the impugned order.

4. We have heard the rival contention, perused the material on record, and the impugned order. It is undisputed fact on record that the Assessing Officer has accepted the income disclosed in the return of income as short term capital loss of Rs. (-) 52,476/- after satisfying itself on due verification of the documentary evidence. The Id. CIT(A) has observed vide para 6 that the penalty has not been imposed for violation of section 44AA of the Act on account of income being more than 1,50,000/- but the appellant has violated the provisions of section 44AA of the Act on account of non keeping of books of account, though the turnover exceeded the limit given

u/s 44AA of the Act, ignoring the finding of the AO as regarding the acceptance of the return of income under the short term capital loss of Rs.(-) 52,476/- declared with the supporting documentary evidences as stands verified during the assessment proceedings. Further, the Id. CIT(A) has not addressed the fact that the assessee was not engaged in the business activity of share trading rather he was an investors in the shares and incurred a capital loss as above. The Id. CIT(A) has merely mentioned that the appellant had submitted statements of share trading toward appellate proceedings where total turnover has been worked out as Rs.22,81,746/-. However, the statement share reveals that there is not frequent trading of shares in the account of assessee to presume in the nature of business amounting to purchase of shares worth of Rs. 1,000,1,798/-. We find that the Id. CIT(A) has not rebutted the contention of the Id. AR that the assessee was dealing in share investment and not in the business activities as the department also accepted the loss of return filed by the assessee. In our view, when the assessee has filed a return on account of short term capital loss duly accepted by the Id. AO, then there wouldn't be any question of business activity being carried out by the assessee, meaning thereby the provisions of section 44AA of the Act would not arise in the case of the appellant assessee and no penalty u/s 271A

would be initiated. Accordingly, we hold that the Id. CIT(A) decision is infirm and perverse to the facts on record and the same would be liable to be set aside.

5. In the above view, we accept the grievance of the assessee as genuine and as such penalty levied of Rs.25,000/- u/s 271A of the Income Tax Act, 1961 is hereby deleted.

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

Order pronounced in the open court on 15.02.2024

**Sd/-
(Sandeep Gosain)
Judicial Member**

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

GP/Sr.PS

Copy of the order forwarded to:

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

By Order,

Asstt. Registrar