

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3187/Del/2023  
Asstt. Year: 2013-14

Sanjeev Kumar Goyal, 607, Railway Road, Patel Nagar, Hapur, Uttar Pradesh 245 101 PAN AATPG1790N	Vs.	ITO, Ward-3(5), Hapur.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	None
Department by:	Shri Piyush Tripathi, Sr.DR
Date of Hearing:	14.02.2024
Date of pronouncement:	07.03.2024

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 26.09.2023 of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi [**"CIT(A)"**] whereby he confirmed the penalty of Rs. 1,50,000/- imposed by the Ld. Assessing Officer (**"AO"**) u/s 271B of the Income Tax Act, 1961 (**the "Act"**) for Assessment Year (**"A.Y."**) 2013-14.

2. The assessee is an individual who is engaged in the business of trading and manufacturing of timber products and fire woods. He e-filed his return for

A.Y. 2013-14 on 04.10.2023 declaring income of Rs. 4,82,499/- later revised to Rs. 6,34,500/- on 17.06.2014. During the course of assessment proceedings, it was noticed that as per the copy of audited P & L Account furnished with revised return, the gross receipts were Rs. 17,89,07,251/-. Since the assessee had failed to get his account audited u/s 44AB of the Act, proceedings u/s 271B of the Act were initiated in the assessment order dated 22.03.2016 passed u/s 143(3) of the Act.

3. During penalty proceedings before the Ld. AO, the assessee requested the Ld. AO to keep the proceedings in abeyance till disposal of his quantum first appeal pending before the Ld. CIT(A), Muzafarnagar. After the disposal of the quantum first appeal, the Ld. AO issued show cause notice on 11.02.2019. The Ld. AO imposed the impugned penalty for want of compliance by the assessee vide order dated 29.03.2019 u/s 271B of the Act.

4. The appeal filed by the assessee has been dismissed by the Ld. CIT(A). This has brought the assessee before the Tribunal.

5. The appeal was called for physical hearing but none attended for the assessee, though the Ld. Sr. DR was present. We, therefore proceeded to decide the appeal after hearing the Ld. Sr. DR.

6. We have considered the arguments advanced by the Ld. Sr. DR in support of the order(s) of the Ld. AO / CIT(A) and perused the records. It is revealed from the assessment order dated 22.03.2016 that the assessee filed Tax Audit Report dated 04.08.2013 along with the revised return on 17.06.2014 which has been duly considered. Para 3 of the assessment order refers. In para 4 of the assessment order, the Ld. AO himself observed that the Audit Report has been furnished on 17.06.2014 with the revised return and hence it is not filed within the stipulated time. The Ld. AO initiated the penalty

proceedings u/s 271B for non-furnishing of Tax Audit Report in time. Section 44AB casts an obligation upon the assessee to get accounts audited before the specified date and furnish by that date the report of such audit. It is not the case of the Revenue that the original return e-filed on 04.10.2013 was not within time prescribed u/s 139(1) of the Act. Section 139(5) of the Act permits an assessee to file revised return before the completion of assessment. The assessee has filed revised return within the legally permissible time along with Audit Report. During the course of assessment proceedings itself it was explained by the assessee that delay was caused due to the death of his elder brother who was looking after the financial affairs of the assessee's business. Before the Ld. CIT(A) in reply uploaded on the ITBA Portal on 06.10.2021, it was submitted that the assessee himself was going through a critical medical condition in the year under consideration. It was also submitted that the delay in furnishing Audit Report in time was caused due to inadvertent mistake committed by his Chartered Accountant. The assessee's explanation has merely been disbelieved. In our opinion, there was reasonable cause for failure in furnishing the Tax Audit Report in time. As stated earlier, it is not a case of not getting the accounts audited in time. We, therefore, hold that the impugned penalty u/s 271B is not exigible which we hereby vacate.

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

**Order pronounced in the open court on 7<sup>th</sup> March, 2024.**

**sd/-**  
**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 07/03/2024  
**Pooja**

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	