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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 847/2018
BRIJ GOPAL CHAUHAN Appellant
Through: Mr. K.R. Manjani, Advocate
versus
INCOME TAX OFFICER WARD 36(4) Respondent
Through: Mr. Ashok Manchanda, Senior
Standing Counsel

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **10.08.2018**

The appellant, Brij Gopal Chauhan, impugns order dated 22.05.2018 passed by the Income Tax Appellate Tribunal (Tribunal, for short) upholding levy of penalty under Section 271B of the Income Tax Act, 1961 (Act, for short).

2. Appellant, an individual, deals in sale/purchase of paints and sanitary ware.

3. Return of income for assessment year 2010-11 was filed by the appellant on 11.06.2010 declaring a total income of Rs.4,62,460/-. Return was taken up for scrutiny assessment by issue of notice.

4. In the course of the assessment proceedings the appellant assessee had professed that, in order to get a loan of Rs.2 crore from a bank, he had got prepared a bogus audit report and had shown pseudo turnover of Rs.9,50,01,256/- in his return for the assessment year 2010-2011.

5. Assessing Officer, vide notice dated 30.03.2013, initiated penalty proceedings under Section 271B of the Act as the appellant failed to produce books of account and audit report under Section 44AB of the Act.
6. In response to the penalty notice, the appellant placed on record the tax audit report dated 06.06.2010.
7. Assessing Officer observed that the report was admittedly fabricated. He referred to statement of the Chartered Accountant accepting that the report was prepared without examining the books of account. Assessing Officer imposed and levied penalty of Rs. 1,00,000/- as the appellant-assessee had violated provisions of Section 44AB of the Act .
8. On appeal, the Commissioner of Income Tax(Appeals) [CIT(Appeals), for short], vide order dated 09.02.2015 observed that the onus was on the appellant-assessee to show that the actual sales were below Rs.40,00,000/-, to prove and establish that provisions of Section 44AB of the Act were not attracted. The CIT(Appeals) upheld the penalty order under Section 271B of the Act, rejecting the plea that the actual sales in the year were Rs.35,39,740/-.
9. Tribunal, vide order dated 22.05.2018 upholding the penalty order has observed as under:-

“6. We have considered the submissions of the Learned Counsel for the Assessee and perused the material on record. The assessee filed return of income showing the gross receipts/turnover of Rs.9.50 crores. Substantial loans and capital have also been shown. Shri Sundeep Kumar, C.A. attended the proceedings before A.O. time to time but books of account have not been produced. The

assessee vide letter dated 11.12.2012 submitted before A.O. that books of account could not be produced because the same are misplaced. The audit report was also not made available under section 44AB of the IT Act before A.O. Learned Counsel for the Assessee submitted that this reply is filed by the C.A. of the assessee. This is no ground to challenge the authority of counsel for Assessee. Learned Counsel for the Assessee submitted that Shri Sundeep Kumar, C.A. was duly authorised by the assessee to appear before A.O. at assessment stage. Therefore, whatever reply is filed at assessment stage, has been filed on behalf of the assessee which specifically states that books of account could not be produced as the same have misplaced, It would, therefore, show that assessee maintained books of account but same have not been produced before A.O. No audit report was filed or produced before A.O. as required under section 44AB of the IT Act. The statement of Shri Sundeep Kumar, C.A. was also recorded in which he has denied to have prepared tax audit report under section 44AB of the IT Act for assessment year under appeal. When he was confronted that the tax audit report under section 44AB of the IT Act is prepared, he has replied that he has signed audit report without examining of the books of account. The A.O, therefore, correctly noted that assessee has fabricated the documents which were produced at assessment stage. The AO also correctly noted that no tax audit in terms of Section 44AB was carried out and whatever documents have been produced before A.O. were not genuine documents. The authorities below, therefore, correctly noted that provisions of Section 271B are clearly attracted in this case. Learned Counsel for the Assessee admitted that assessee obtained loan of Rs.2 crores from the Bank during assessment year under appeal on the basis of the documents prepared by the same Chartered Accountant. Whenever any benefit is to be obtained, assessee owned acts of his Chartered Accountant, however, when some liability is put upon

assessee, assessee denies the role of his Chartered Accountant. Such explanation of assessee cannot be accepted. The assessee further explained before Ld. CIT(A) that his turnover is below the prescribed limit. However, nothing substantial material have been produced before authorities below in support of the above contention. In this case, P&L A/c filed by the assessee with return indicates that assessee was liable to get his books of account audited as per provisions of Section 44AB of the IT Act. However, the assessee deliberately did not get his books of account audited as required under section 44AB of the IT Act. Whatever report was produced is clearly manipulated and fabricated and was not based upon any evidence or material on record. Since the assessee failed to get his accounts audited as per Section 44AB of the IT Act, therefore, assessee is liable to penalty under section 271B of the IT Act. The contentions of the assessee would not disclose any reasonable cause for failure to comply with the provisions of law. The contention of assessee that since no books of account have been prepared, therefore, accounts could not be audited, cannot be accepted in the facts and circumstances of the case because assessee admitted before A.O. that books of account cannot be produced on the pretext being misplaced. In view of the above, the appeal of assessee has no merit and the same is accordingly dismissed.”

10. Impugned order records that appellant-assessee, in the return of income for the assessment year 2010-2011, had declared a turnover of Rs.9.50 crores. Substantial loans and capital had been introduced. However, the appellant-assessee contends that these figures were incorrect and wrong and false declaration on oath were made in the income tax return on advice given by a Chartered Accountant. This was contradicted and controverted by the Chartered Accountant in his

statement, who had stated that he had not examined books of accounts. Reasoning given by the Tribunal is plausible and cogent, and is not required to be repeated. The facts reveal blatant and brazen defiance of law and Section 44AB of the Act. The contention of the appellant-assessee that he had not maintained books of accounts etc. and, therefore, penalty under Section 271B of the Act for failure to get books of accounts audited, is unacceptable. Appellant-assessee, in making this submission, contradicts his earlier version that the books of accounts had been misplaced. Even otherwise, failure to maintain the books of accounts was a lapse and a failure to comply with statutory provisions. This argument in the context of the present case must be rejected.

11. We therefore find no reason or ground to issue notice in the present appeal questioning levy of penalty under Section 271B of the Act. Appeal has no merit and is accordingly dismissed. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

AUGUST 10, 2018

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