

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.2420/Del/2025, A.Y. 2017-18
ITA No.2421/Del/2025, A.Y. 2017-18**

Shri Antriksh Gupta 360-A, Dhaka Johar Dr. Mukharjee Nagar New Delhi- 110009 PAN: BKBPG6870N (Appellant)	Vs.	Income Tax Officer Ward-35(4), Income Tax Office, Civic Centre, Minto Road, New Delhi (Respondent)
Appellant by	Sh. Lalit Mohan, CA Sh. Ankit Kumar, Advocate	
Respondent by	Sh. Pramod Kumar, SR. DR	
Date of Hearing	30/09/2025	
Date of Pronouncement	30/10/2025	

ORDER

PER AVDHESH KUMAR MISHRA, AM

Facts are common in the above captioned appeals of the assessee; therefore, these appeals were heard together and are being disposed off by this common order.

2. Both appeals for the Assessment Year ('AY') 2017-18 filed by the assessee are directed against orders dated 19.03.2025 passed by the Commissioner of Income Tax (Appeals), NFAC, Delhi ['CIT(A)'].

3. The levy of penalty under section 271A of the Income Tax Act, 1961 ('Act') is the sole issue raised in the ITA No. 2421/Del/2025 and the levy of penalty under section 271B of the Act is the sole issue raised in the ITA No. 2420/Del/2025.

4. The relevant facts giving rise to these appeals are that the assessee, a Proprietor of Amul Milk dairy booth, filed his Income Tax Return ('ITR') on 26.07.2017 declaring income of Rs.2,69,190/-. The case was picked up for scrutiny. Consequentially, the scrutiny assessment was completed accepting the returned income. During the course of assessment proceedings, the Assessing Officer ('AO') noticed that the assessee had neither maintained books of accounts for his business nor got the said books of accounts duly audited though he was required to do so as his admitted turnover was Rs.2,66,8,989/-. Therefore, the AO initiated penalty proceedings under sections 271A and 271B of the Act for non-maintenance of books of accounts and failure to get books of accounts duly audited in accordance with provisions of sections 44AA and 44AB of the Act respectively. During the course of penalty proceeding, the assessee did not ensure any compliance, therefore, the AO had no option except to conclude penalty proceedings under sections 271A and 271B of the Act as these proceedings were getting barred by limitations. Consequentially, the AO levied penalties of Rs. 25,000/- and Rs.1,3,30,444/- (0.5% of the turnover of Rs.2,66,8,989/-) under sections 271A and 271B of the Act for non-maintenance of books of

accounts and failure to get books of accounts duly audited respectively. Aggrieved, the assessee filed appeals against both penalty orders; but did not succeed. Hence, these appeals are here.

5. At the outset, the Ld. Authorised Representative ('AR') submitted that the assessee failed in ensuring compliance before the Ld. CIT(A) because the e-mail of his father was mentioned in Form-35 (Appeal Memo) for correspondence. Since the father of the assessee expired on 17.03.2024; therefore, the said e-mail was not operated for quite long time. It was submitted that since communications for hearing received from the office of Ld. CIT(A) (NFAC) during illness and after-death of the father of the assessee were not seen for long time; therefore, the assessee failed to ensure timely compliances. Technically, the Ld. CIT(A) therefore, passed exparte orders as the assessee had not made any compliance before him.

5.1 Before us, the Ld. Authorised Representative ('AR') submitted that the assessee was of the belief that the surplus/commission income derived from sale of Amul Dairy Products was his business receipts and the remaining sale proceeds were the receipts of the supplier/Amul Cooperative Milk Federation from whom the dairy products were purchased. It was further submitted that since the majority of sums received from customers were paid back to the Amul Cooperative Milk Federation; therefore, the assessee, in bona fide belief, did not maintain the books of accounts. Further, it was

contended that when the assessee had not maintained any books of accounts; hence, the question of getting the said books of accounts audited did not arise. The Ld. AR drew our attention to the narration at page 9 of the ITR (above point No. 53); wherein it was specifically mentioned as “no-account case”.

5.2 It was also contended by the Ld. AR that once the penalty under section 271A of the Act was levied for non-maintenance of books of accounts, the penalty under section 271B of the Act was not leviable because there were no books of accounts maintained which the assessee could get audited. The pre-condition for levy of penalty under section 271B of the Act was failure to get the books of accounts audited. The Ld. AR placed reliance on following decisions of coordinate benches in the cases of:

- i. Md. Daud; ITA No. 1691/Del/2022
- ii. Md. Javed; ITA No. 961/Del/2022
- iii. Naresh Kumar; ITA No. 122/Del/2023
- iv. Ved Singh; ITA No. 998/Del/2023
- v. Nikki Tyagi; ITA No. 5508/Del/2019
- vi. Dharm Singh; ITA No. 167 taxmann.com 289 (del. Trib.)
- vii. Mohit Garg; ITA No. 3355/Del/2017

6. On the other hand, the Ld. Senior Departmental Representative ('Sr. DR'), drawing our attention to the narrations mentioned at page 9 of the ITR (Point No. 1 of Other Information) and in the Computation of income annexed with the ITR; wherein the method of accounting was specifically mentioned as "Mercantile" and income as per the Profit & Loss Account (page 2 and page 13 of the Paper Book), defended orders of the Authorities below and prayed for dismissal of both appeals.

7. We have heard both parties at length and have perused the material available on record. The Hon'ble Supreme Court, in the case of Hindustan steel Ltd. 83 ITR 26 has held that an order-imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of his obligation.

8. Section 44AA of the Act read with rule 6F of the Income Tax Rules requires certain specified persons, carrying on business or profession, to mandatorily keep/maintain books of accounts or other documents. In case such person fails to keep/maintain or retain the required books of accounts or other documents, then, the person, subject to provisions to section 274 of the Act, would be liable to pay the penalty under section 271A of the Act to the extent of INR 25,000/-. Here, the defense taken by the assessee is only

the reasonable cause; the belief that the surplus/commission income derived from sale of Amul Dairy Products is the business receipts of the assessee. Since this year is the first year when the penalty has been levied on the assessee under section 271A of the Act; therefore, the assessee's reasoning for non-maintenance of books of accounts can not be doubted as the Ld. Sr. DR does not bring any material on the record that proves that the assessee has acted deliberately in defiance of law or is guilty of conduct contumacious or dishonest or has acted in conscious disregard of his obligation. We therefore, considering facts of the case and above referred case laws, are of the considered view that the assessee has reasonable cause for not maintaining books of accounts. Therefore; as a one-time measure, we hereby delete the penalty levied under section 271A of the Act. The assessee gets consequential relief. Before parting out, it is hereby clarified that the assessee is required to maintain books of accounts in accordance with the provisions of Section 44AA of the Act.

ITA No. 2420/del/2025:

9. We find force in the arguments of the Ld. AR that once the penalty under section 271A of the Act was levied for non-maintenance of books of accounts, the penalty under section 271B of the Act was not leviable. We have taken note of the decision of the Hon'ble Allahabad High Court in the case of Bisauli Tractors [2008] 299 ITR 219, which reads as under:

“7. It may be mentioned here that separate penalty has been provided for non-maintenance of accounts, i.e., under Section 271A of the Act and for not getting the accounts audited and not furnishing the audit report i.e., under Section 271B of the Act. In the present case, the assessing officer did not impose penalty under Section 271A of the Act and instead proceeded to impose penalty under Section 271B of the Act. If a person has not maintained the accounts book or any accounts the question of its audit does not arise. In such an event the imposition of penalty under the provision contained in Section 271A for the alleged noncompliance of Section 44AA may arise but the provisions of Section 44AB does not get violated in case where the accounts have not been maintained at all and, therefore, penal provisions of Section 271B would not apply. It is well settled by the Apex Court in the case of CIT v. Vegetable Products Ltd. (SC) that if the language is ambiguous or capable of meanings more than one, then we have to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty. The Constitution Bench of the Apex Court in the case of J.K. Synthetics Ltd. v. CTO has held that penalty provision in a taxing statute has to be strictly construed. Penalty is exigible only where a person falls within the four corners of the penal provisions otherwise not. Further in the tax matter interpretation in favour of the assessee has to be adopted. We may mention here that in case where the returns are not being filed, there is unanimous judicial view that no penalty can be imposed for concealment of income and that is why the Parliament had to make suitable amendment in the penalty provision by inserting Explanation 3 to Section 271 of the Act and Explanation 3 to Section 18 of the Wealth Tax Act, 1957.

8. The question as to whether an assessee has concealed the particulars of his turnover where he has not filed the return came up for consideration before the Apex Court in the case of Narain Das SurajBhan v. CST (1968) 21 STC 104 (SC). The Apex Court while considering the provisions regarding the imposition of penalty provided under Clause (b) of Section 15A(1) of the U.P. Sales Tax Act has held as follows:

In our opinion, Clause (b) of Section 15A(1) is attracted as soon as it is shown that the assessee has concealed the particulars of its turnover or deliberately furnished inaccurate particulars of such turnover in the return filed under Section 7 of the Act. It is manifest that from the

grammatical point of view the words 'inaccurate particulars of such turnover' in Clause (b) of Section 15A(1) refer back to Clause (a) where the return under Section 7 is specified. In other words, Clause (b) refers to default in respect of a return furnished under Section 7 and cannot possibly refer to any default in respect of anything done by the assessee in a proceeding under Section 21. As there is no question of furnishing a return of a turnover in a proceeding under Section 21, the assessee cannot be guilty of concealing particulars of its turnover from, or of furnishing inaccurate particulars in a proceeding under Section 21. The concealment or furnishing inaccurate particulars must be in the return furnished under Section 7. Clause (a) of Section 15A(1) deals with the failure of the assessee to furnish the return of the turnover, which he is required to furnish under Section 7 or the failure of the assessee to furnish it within the time allowed or in the manner prescribed. Clause (b) of the Section deals with the concealment or inaccurate furnishing of particulars of the turnover in respect of which the return was required to be filed and which is referred to in Clause (a)?

9. This Court, in the case of CST v. Shahid Hussain Rakesh Kumar (1977) 39 STC 520 has held that in a case where no return has been filed penal proceedings can be initiated only under Section 15A(1)(a) and not 15A(1)(b) of the U.P. Sales Tax Act, 1948. It has held as follows:

A perusal of the two parts clearly establishes that Section 15A(1)(a) applies in a case where the dealer has failed to furnish the return under Section 7, where Sub-clause (b) applies in a case where the return has been furnished but there is deliberate concealment or the return furnished is inaccurate. The Legislature has in the two sub-clauses mentioned two different categories and has also laid down different penalties in subclause (c). They deal with different situations, and the Sales Tax Officer in this case proceeded under Section 15A(1)(a) and from the amount of penalty imposed, it is clear that he exercised his jurisdiction under Section 15A(1)(b) and not under Section 15A(1)(a). The language of the Section clearly indicates that in a case where no return has been filed penal proceedings can be initiated only under Section 15A(1)(a). There are observations in a decision of the Supreme Court in Narain Das Suraj Bhan v. CST which supports the view that we are taking.

10. In the case of *Thoppil Kutti Eroor v. CIT the Kerala High court* while considering the question of imposition of penalty under Section 38(1)(c) of the Cochin Income Tax Act which provides imposition of penalty for concealment or for furnishing inaccurate particulars has held as follows:

It is impossible to say that when a person has failed to furnish any return at all what he has done is to conceal the particulars of income or to deliberately furnish inaccurate particulars of such income within the meaning of Clause (c) of Section 38(1) of the Act. We entertain no doubt that the offence in such a case should be considered as one coming under Clause (a) and not under Clause (c) of Sub-section (1) of Section 38.

11. In the case of *S. Narayanappa & Bros. v. CIT the Mysore High Court* has held as follows:

What was urged before us was that in a case where an assessee has furnished no return at all before the Income Tax Officer, it should be presumed for the purposes of Section 28(1)(b) that he has furnished a return of his income intimating the Income Tax Officer that his income is nil. It seems to me that the language of Section 28(1) does not admit of any such construction since the clear requirement of the provisions of this sub-section is that an assessee on whom a penalty is proposed to be imposed under Section 28(1)(b) should have in the first instance furnished his return. That, in my opinion, is the ordinary and grammatical meaning of the words occurring in the Act. To interpret the language of this provision in the manner suggested by the learned Government Pleader would, in my opinion, be too artificial and too far-fetched to commend itself for acceptance. Although it is true that the provisions of a statute like those contained in Section 28(1)(b) have to receive to construction so as to promote the object of the statute, it is clear that when we interpret a penal provision like that contained in Section 28(1)(b), the interpretation we should place upon it must accord with reason and justice and must be in accordance with the plain ordinary and rational meaning of the words contained in those provisions. So interpreted, I would not, in my opinion, be right in placing on Section 28(1)(b) the construction for which the learned Government Pleader contends.

12. The Madras High Court in the case *S. Santhosa Nadarv. First Addl ITO* has gone to the extent that a voluntary return filed after the period of four

years from the close of the assessment year is not a valid return and such a case should be regarded as if no return has been filed at all and it cannot be said in such a case that there has been a concealment of the particulars of income or deliberate furnishing of inaccurate particulars and Section 28(1)(c) of the Income Tax Act, 1922 would not be applicable. The Madras High Court has held as follows:

When we come to Section 28(1)(c), it deals specifically with the concealment of 'particulars' of income or the deliberate furnishing of inaccurate 'particulars' of income. In the setting in which this sub-section finds place it is impossible to construe Section 28(1)(c) except as relating to a case where a return has been filed but from which return particulars of income have been omitted or any particulars have been deliberately inaccurately furnished. The use of the expression 'particulars of his income' and 'particulars of such income' would be wholly inapposite in a case where no return has at all been filed; such a case would clearly come within the scope of Section 28(1)(a) alone.

13. This Court in CWT v. Yadu Raj Narain Singh also taken the same view. It has held as follows:

Thus applying the strict construction of penalty provisions contained in clause (1) of Sub-section (c) of Section 18 of the Act, we find that prior to the amendment in Explanation 3 by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1989 in a case where the person who has previously been assessed under the Act does not file any return in response to the notice or even where time for filing the return has expired has not filed any return there cannot be any concealment for which penalty provision can be imposed. In view of the foregoing discussions, we are of the considered opinion that in the present case the respondent assessee has not concealed the particulars of his income for which wealth no penalty under Clause (1) of Sub-section (c) of Section 18 of the Act is exigible.

14. Therefore, Section 27IB of the Act is not attracted in a case where no account has been maintained and instead recourse under Section 271A can be taken.”

10. Following the decisions of the Hon'ble Allahabad High Court in the case of Bisauli Tractors (supra), above cited case laws and decision of the Jaipur Bench of the Tribunal in the case of Kumud Chand Jain ITA No. 120/JP/2016, we are of the considered view that once it has been held that the assessee has not maintained the books of accounts, getting books of accounts audited does not arise at all. Hence, the penalty levied under section 271B is also deleted. The assessee gets consequential relief.

11. In the result, both appeals of the assessee are allowed as above.

Order pronounced in open Court on 30th October, 2025

Sd/-

**(VIJAY PAL RAO)
VICE PRESIDENT**

Sd/-

**(AVDRESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 30/10/2025
Binita, Sr. PS

Copy forwarded to:

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2. Respondent
3. CIT/PCIT
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ASSISTANT REGISTRAR
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