



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT



Faceless Penalty: India

1.	PAN	AACTB3742N
2.	Name of the assessee	BASUKINATH SHIV MANDIR NYAS SAMITY
3.	Address of the assessee	- BASUKINATH TEMPLE, BASUKINATH DUMKA , DUMKA 814101, Jharkhand , India
4.	Assessment Year	2015-16
5.	Status	Trust
6.	Amount of Penalty	Rs. 59051
7.	Date of Order	21/09/2023
8.	DIN	ITBA/PNL/F/271B/2023-24/1056391566(1)

**Order under section 271B of the Income Tax Act, 1961**

**1. Description of back-ground facts and proceedings leading to initiation of penalty:**

The assessee, a trust, did not file the return of income for the AY 2015-16.

1.1 As per the information on record, the assessee made cash deposits amounting to Rs.89,84,573/- during the previous year relevant to the AY 2015-16. Since the assessee did not file the return of income u/s 139 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the cash deposits remained unexplained. Since the income chargeable to tax escaped assessment, the case was re-opened for assessment by passing the order u/s 148A(d) of the Act on 31.03.2022 and the notice u/s 148 of the Act was issued on 31.03.2022.

1.2 The assessee did not respond to the notices issued u/s 142(1) of the Act during the course of assessment proceedings. However, the assessee complied with the show-cause notice issued on 03.03.2023 and the letter issued on 27.03.2023 by submitting the financial statements and bank account statements.

1.3 Since the assessee-trust was not registered u/s 12AA of the Act, the assessee was treated as AOP and the excess of income of Rs.88,886/- over expenditure was assessed as the total income of the assessee for the AY 2015-16. As observed from the financial statements and the statement of bank accounts, the total receipts exceeded one crore rupees and hence, the assessee was liable to get accounts audited and furnish audit report as required u/s 44AB of the Act. Consequently, the Penalty Proceedings were initiated on 31.03.2023 for failure to get accounts audited or failure to furnish a report of such audit as required under section 44AB of the Income

**Note:-** The website address of the e-filing portal has been changed from [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) to [www.incometax.gov.in](http://www.incometax.gov.in).

Tax Act, 1961.

**2. Details of opportunities given:** The summary of show causes notices issued during the course of penalty proceedings is as under:

Notice u/s	Date of notice	Date of compliance given	Response of the assessee received/ not received	Date of Response	Response type (Full/part/ adjournment)
SCN u/s 274 r.w.s. 271B	31.03.2023	28.04.2023	Received	27.04.2023	Part
SCN u/s 271B	05.09.2023	11.09.2023	Not Received	Not Applicable	Not Applicable

Vide the show cause notice dated 31.03.2023, the assessee was requested to explain as to why the penalty should not be imposed u/s 271B of the Act for failure to get accounts audited or failed to furnish a report of such audit as required under section 44AB of the Act. The assessee submitted response on 27.04.2023. Another show-cause notice was issued to the assessee on 05.09.2023 which was not complied to by the assessee.

**3. Analysis of issues involved (issue wise):**

**3.1 Description of the issue:** As per the information on record, the assessee made cash deposits amounting to Rs.89,84,573/- during the previous year relevant to the AY 2015-16. Since, the assessee did not file the return of income for the AY 2015-16, the nature and source of cash deposits was not known and the case was re-opened for assessment u/s 148 of the Act. In response to the shoe-cause notice issued on 03.03.2023 and the letter issued on 27.03.2023, the assessee submitted the financial statements and account statement of the bank account held during the year under consideration. Though the assessee was a trust engaged in charitable activities, it was not registered u/s 12AA of the Act during the year under consideration. Hence, it was considered as AOP and the excess income of Rs.88,886/- over expenditure was assessed as the total income of the assessee for the AY 2015-16 and the assessment order u/s 147 r.w.s 144 of the Act was passed on 31.03.2023. Since the total amount of receipts reflected in the bank account statement and as per financial statements submitted by assessee exceeded Rs.1 Crore, the assessee was required to get accounts audited and to furnish report of such audit as required u/s 44AB of the Act. The failure on the part of the assessee to get the accounts audited warranted initiation of penalty proceedings u/s 271B of the Act.

**3.2 Synopsis of all submissions of the assessee relating to the issue indicating the dates of submission:** Vide the show cause notice dated 31.03.2023, the assessee was requested to explain as to why the penalty should not be imposed u/s 271B of the Act for failure to get accounts audited or failed to furnish a report of such audit as required under section 44AB of the Act. The assessee submitted response on 27.04.2023 stating that it is a religious trust and not carrying on any business and is not covered under provisions of section 44AB of the Act.

**3.3 Synopsis of submissions made by the assessee during personal hearing through VC, if any:** Not applicable

**3.4 Summary of information/evidence including comments from report of VU/TU:** Not applicable.

**3.5 Point-wise rebuttal of reply of the assessee including analysis of case law relied upon:** It has been contended by the assessee that it is a religious trust and not carrying on any business. It has been submitted by the assessee that its sources of income are donations from the devotees and the interest from bank. It has been requested by the assessee not to invoke the provisions u/s 271B for failure to get the accounts audited as required u/s 44AB of the Act since it was not engaged in any business activity.

**3.5.1** The relevant part of the reply of the assessee is reproduced hereunder:

*With reference to the above I on behalf of the said assessee most humbly and respectfully would like to submit before your honour as under:- 1. That scrutiny proceedings has been completed vide assessment order dated 31.03.2023 in which Income to the tune of Rs. 88,866 has been assessed and simultaneously said notice has been issued by initiating the application of said section. 2. That the assessee is a religious trust and not carrying on any business . The only source of revenue is the voluntary donation from the pilgrims and interest from Bank account. 3. Section 44AB of the Income Tax Act,1961 states Every person carrying on business and if total turnover exceeds one crore rupees is required to get its accounts audited. Further section 274 read with section 271B states .If any person fails, without reasonable cause, to get his accounts audited in respect of any previous year or years relevant to an assessment year or obtain a report of such audit as required under section 44AB, the Income-tax Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent. of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred thousand rupees, whichever is less. Under the circumstances the*

*assessee is not required to get its accounts audited under section 44AB of Income Tax Act , 1961 since there is no business activity in the trust. 3 The assessee requests your kind honour to drop the penalty proceedings under section 271B of the Income Tax Act 1961 as the applicability of the said section shall be unjustified to the assessee. And for this act of kindness , we shall ever pray.*

3.5.2 Though the assessee is a trust engaged in religious activities, it was not registered u/s 12AA of the Act during the year under consideration. Hence, it was assessed as AOP for the year and the excess of income over the expenditure was brought to tax. As seen from the statement of bank account and the financial statements submitted by assessee itself during the course of assessment proceedings , the total amount of receipts during the year exceeded the threshold limit of Rs.1 Cr which necessitates the assessee to get the books of accounts audited as required under the provisions of section 44AB of the Act. The assessee was required to file audit report in Form 10B in case it was claiming exemption as religious trust. However, the assessee did not possess any such registration for the year and hence, assessed in the status of AOP. Since the total amount of receipts clearly exceeded Rs.1 Crore, the assessee was required to get the accounts audited and the get the audit report filed u/s 44AB of the Act.

**3.6 Citation of relevant case laws:** Not applicable

**3.7 Conclusion drawn for Imposition of Penalty:** As discussed in para 3.5.2 above, the assessee was required to get the accounts audited and furnish report of such audit u/s 44AB of the Act and failure to do so warrants imposition of penalty u/s 271B of the Act. As such, I am satisfied that this is a fit case for imposition of penalty u/s 271B of the Act.

#### **4. Computation of Penalty:**

4.1 The provisions of section 271B of the Act are reproduced as under:

*"If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred fifty thousand rupees, whichever is less."*

4.2 Accordingly, the penalty to be imposed u/s 271B of the Act is computed as under:

Total receipts for the year [General Income Rs.35,74,138 + Interest Income Rs.10,71,588 + Development Fund Rs.71,64,578]	(i)	1,18,10,304
One -half percent of total receipts	(ii)	59,051
Penalty to be imposed, lower of (ii) or Rs.1,50,000	(iii)	59,051

5. I, therefore, direct the assessee to pay by way of penalty, a sum of Rs.59,051/- (Rupees Fifty Nine Thousand and Fifty One only) for failure to get accounts audited and furnish report of such audit as required under section 44AB of the Act. This order is passed with the approval of competent authority.

Demand Notice is issued accordingly.

Assessment Unit  
Income Tax Department

