

**(1999) 11 AHC CK 0169**

**Allahabad High Court**

**Case No:** Income-tax Appeal No. 17 (defective) of 1999

Commissioner of Income Tax

APPELLANT

Vs

Gramin Sadhan

RESPONDENT

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**Date of Decision:** Nov. 24, 1999

**Acts Referred:**

- Finance Act, 1995 - Section 260A, 271B
- Income Tax Act, 1961 - Section 44B

**Citation:** (2000) 164 CTR 226 : (2000) 245 ITR 563 : (2001) 116 TAXMAN 222

**Hon'ble Judges:** S. Rafat Alam, J; M.C. Agarwal, J

**Bench:** Division Bench

**Advocate:** Shambhu Chopra, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

1. This is an appeal u/s 260A of the Income Tax Act, 1961, against an order dated January 11, 1998, passed by the Income Tax Appellate Tribunal, Allahabad, in I. T. A. No. 1736 (All.) of 1994, for the assessment year 1991-92 whereby it upheld an order passed by the Commissioner (Appeals) cancelling a penalty levied by the Assessing Officer u/s 271B of the Act.

2. We have heard Sri Shambhu Chopra, learned standing counsel for the Commissioner-appellant.

3. u/s 44AB, as it stood during the assessment year under consideration, the assessee was required to get its accounts audited by an accountant before the specified date. This specified date was October 31, 1991. The assessee filed its return of income for the assessment year under consideration on February 11, 1992, and the audit report in terms of Section 44AB was filed along with the return. The Assessing Officer treated it to be a default on the part of the assessee u/s 271B and levied penalty in the sum of Rs. 1 lakh. The Commissioner of Income Tax (Appeals)

held that the obligation of the assessee was merely to procure a report before the specified date and there was no obligation u/s 44AB to furnish that report to the Assessing Officer before the specified date. He, therefore, allowed the assessee's appeal and cancelled the penalty. On further appeal by the Assessing Officer, the Tribunal has upheld the view taken by the Commissioner (Appeals).

4. Patently, during the assessment year concerned, the obligation u/s 44AB was merely to get the accounts audited by the specified date. It was not disputed that this was done and the audit report was procured before the specified date. u/s 271B also the penalty was leviable only if the assessee failed to get his accounts audited as required u/s 44AB, Thus, patently, at the relevant time, there was no obligation further requiring an assessee to furnish the report to the Assessing Officer before the specified date. This obligation has been provided subsequently by an amendment effected by the Finance Act, 1995, with effect from July 1, 1995. Therefore, the legal position as enunciated by the Commissioner (Appeals) and the Appellate, Tribunal is abundantly self-evident and no substantial question of law is involved. The appeal is, therefore, dismissed in limine.