

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI D BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),
and Sandeep Singh Karhail (Judicial Member)]**

ITA No. 2072/Mum/2021
Assessment year: 2017-18

Desmond Savio Theodore Fernandes**Appellant**
35 ESA Ali Palace, Dr. Ambedkar Road Byculla
Mumbai 400 027[PAN: AAGPF3099J]

Vs.

Income Tax Officer, 34(1)
Mumbai**Respondent**

Appearances by:

Dipesh M Poptani *for the appellant*
T Shankar *for the respondent*

Date of concluding the hearing : 05/05/2022
Date of pronouncing the order : 17/05/2022

O R D E R

Per Pramod Kumar VP

1. When this appeal was called out for hearing, Shri Shankar, learned Departmental Representative, pointed out that this appeal is filed against the penalty order under section 270A of the Income Tax Act, 1961, passed by the Assessing Officer, directly before us whereas the assessee ought to have approached the learned Commissioner (Appeals) first. Learned counsel for the assessee, on the other hand, submits that Section 246A, which lists out the appealable orders before the CIT(A) does not refer to an order passed by the Assessing Officer under section 270A, whereas Section 253(1)(a), which sets out provisions for appeals before the Income Tax Appellate Tribunal, does specifically refer to the orders passed under section 270A. Learned counsel thus submits that in his humble understanding the appeal has been rightly filed before the Tribunal. He, however, hastens to submit that he is a relatively new to the tax appeals, and he prays for our guidance to make any amends, if so necessary.

2. The objection taken by the learned Departmental Representative is indeed correct. Section 246A(1)(q) specifically includes, in orders appealable before the learned Commissioner (Appeals), “**an order imposing a penalty under chapter XXI**”, and chapter XXI of the Income Tax Act, 1961 covers Sections 270 to 275- Section 270A, dealing with underreporting

and misreporting of income, is thus covered by the said provision. Clearly, therefore, the appeal against an order imposing penalty under section 270A, as passed by the Assessing Officer, is appealable before the Commissioner (Appeals). As for the reference to the order passed under section 270A being appealable before this Tribunal, under section 253(1)(a), is specifically with reference to such orders being passed by the Commissioner (Appeals), and that is the limited extent to which general provisions of the Section 246A(1)(q) must make way for the specific provisions of the Section 253(1)(a). The order sought to be impugned in this appeal is passed by the Assessing Officer, and, therefore, this exception does not come into play. Learned counsel's understanding of the legal position, even if bonafide- particularly considering his young age and limited experience, is clearly incorrect. The appeal filed before us is thus indeed not maintainable in law.

3. When the above legal position was explained to the learned counsel for the assessee, he sought liberty to file the appeal before the CIT(A) and submitted that the error was in good faith and it should not prejudice the legitimate interests of the assessee concerned.

4. It is for the learned counsel to file the appeal, alongwith condonation petition setting out the requisite details resulting in the delay in filing of appeal before the CIT(A), as soon as possible now, and it is for the learned CIT(A) to take a call thereon in accordance with the law, by way of a speaking order and after giving a due and reasonable opportunity to the assessee. As on now, there is no cause of action for our interference in the matter, nor do we hope that it will be necessary. We leave it at that for the time being.

5. In the result, the appeal is dismissed as non-maintainable. Pronounced in the open court today on the 17th day of May, 2022.

Sd/-

Sandeep Singh Karhail
(Judicial Member)

Sd/-

Pramod Kumar
(Vice President)

Mumbai, dated the 17th day of May, 2022

Copies to:

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order etc

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai