

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष
BEFORE

RAJESH KUMAR, ACCOUNTANT MEMBER
&

SONJOY SARMA, JUDICIAL MEMBER

आयकर अपील संख्या: 355/कोल/2022

निर्धारण वर्ष: 2018-19

I.T.A. No.: 355/Kol/2022

Assessment Year: 2018-19

Prince Jain.....Appellant
[PAN: AOCPJ 3637 G]

Vs.

ITO, NFAC, Delhi.....Respondent

Appearances by:

Shri Rites Goel, Advocate appeared on behalf of the Assessee.

Shri Vijay Kumar, Addl. CIT (Sr. DR) appeared on behalf of the Revenue.

Date of concluding the hearing : October 11, 2022

Date of pronouncing the order : November 23, 2022

आदेश / O R D E R

PER SONJOY SARMA, JUDICIAL MEMBER:

This is appeal filed by the assessee against the order of Ld. CIT(A), National Faceless Appeal Centre dated 02.06.2022 for A.Y. 2018-19. The assessee in this appeal has taken the following revised grounds of appeal:

i. For that the CIT(A) and Assessing Officer both erred in law and facts of the case.

ii. For that the CIT(A) erred in upholding and confirming the penalty under section 270A of Rs. 1,19,132/-.

iii. For that the penalty order passed under section 270A is barred by limitation and is liable to be quashed.

iv. For that no order imposing a penalty shall be passed after the expiry of the period as stipulated in section 275 of the Income Tax Act, 1961.

v. For that the CIT(A) erred in holding that claim of immunity under section 270AA fails as the appellant had not made any application under section 270AA of the act where appellant himself accepted the bonafide mistake and submitted revised computation during the course of assessment.

vi. For that the appellant craves leave to add to, alter, amend and/or modify the grounds taken herein.”

2. Brief facts of the case are that the assessee filed his original return of income on 28.08.2018 declaring total income of Rs. 15,02,760/- for the Financial Year 2017-18 relevant to Assessment Year 2018-19. The case of the assessee was selected for scrutiny under CASS. During the course of assessment proceedings, it was noticed that the assessee was deducted an amount of Rs. 1,92,770/- towards House Rent Allowance whereas the actual House Rent Allowance allowable is Rs. NIL. In response to Show Cause Notice, the assessee submitted reply furnishing fresh HRA calculation accepting the mistake in calculation of HRA and the AO added the amount of Rs. 1,92,770/- and initiated penalty u/s 270A of the Act.

3. Dissatisfied with the above order, the assessee is in appeal before the Id. CIT(A) where the appeal of the assessee was dismissed.

4. Aggrieved, by the above order, assessee is in appeal before this Tribunal raising various grounds of appeal.

5. At the time of hearing, the Id. AR of the assessee submitted before us that it is not disputed that the assessee filed revised computation of income and offering the aforesaid amount of Rs. 1,92,770/- for addition in the course of assessment proceedings before the Assessing Officer. It is also submitted by the AR that this was happened on the bonafide

mistake on the part of the assessee. On the other hand, the Id. DR relied upon the orders of the Id. CIT(A) and Assessing Officer. The Id. AR of the assessee contended that in the facts of the case it does not mean that the assessee is guilty either by offering inaccurate particulars or attempting to conceal its income. He further contended that the order imposition of penalty u/s 270A is barred by limitation u/s 275(1)(c) which reads as under:

“275. ⁴⁷[(1)] No order imposing a penalty under this Chapter shall be passed—

(a) *****

(b) *****

(c) *in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.”*

6. It was the submission of the assessee that the order u/s 143(3) was passed on 29.12.2020 and became final and therefore, in terms of first part of section 275(1)(c) of the Act starting point will be 29.12.2020 and end point will be 31.03.2021 i.e. end of financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated are completed. It was the plea of the assessee that in terms of section 271(1)(c) of the Act, the penalty order could not only passed on or before 30.06.2021 and since the order for imposition of penalty was passed on 09.09.2021, the penalty order was barred by limitation.

7. We have considered the rival submission and considering the facts of the case, there is no dispute that the period of limitation to be examined in the light of the provisions of section 275(1)(c) of the Act. The assessment proceeding u/s 143(3) was completed on 29.12.2020

and the assessee accepted the said order passed u/s 143(3) of the Act and did not prefer any further appeal. Going by this date, the penalty order would not have been passed later than 30.06.2021 but in the present case, the penalty order was passed on 09.09.2021. Therefore, it was barred by limitation. Accordingly, we set aside the impugned order dated 02.06.2022 of Id. CIT(A) and cancel the aforesaid penalty amounting to Rs. 1,19,132/- levied by the AO in the penalty order dated 09.09.2021 passed u/s 270A of the Act.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 23.11.2022

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Dated : 23.11.2022
Biswajit, Sr. P.S.

आदेशकीप्रतिलिपिअग्रेषित / Copy of Order Forwarded to:-

- 1.अपीलार्थी/Appellant/: **Prince Jain, Near Jain Temple, Post Bandel, Hooghly-712123.**
2. प्रत्यर्थी/Respondent/: **Income Tax Officer, NFAC, Delhi.**
3. संबंधितआयकरआयुक्त/ Concerned CIT
- 4.आयकरआयुक्त- अपील / CIT (A)
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरणकोलकाता / DR, ITAT, Kolkata
- 6.गार्डफाइल/ Guard file.

True Copy/

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata