

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 173/Asr/2022**  
Assessment Year: 2017-18

Smt. Kamlesh Seth  
W/o Dharamvir Seth,  
Mohalla Attarian,  
Batala 143505

[PAN: ABPPS 9775C]

**(Appellant)**

**V.** ACIT/DCIT,  
Central Circle,  
Amritsar

**(Respondent)**

Appellant by           None  
Respondent by       Ms. Priyanka Singla, Sr. DR

Date of Hearing       : 21.12.2022  
Date of Pronouncement : 31.01.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 15.06.2022 in respect of Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:

“1. *The Id. ACIT/DCIT, Central Circle, Amritsar has unlawfully imposed & worthy CIT(A) Ludhiana has unlawfully confirmed penalty amounting to*

INR 1,65,998/- u/s 270A of the Income Tax Act vide order dated 15.06.2022.

2. That Ld. ACIT/DCIT and worthy CIT(A) 5, LDH have erred in law and facts of the case by imposing/confirming penalty u/s 270A of the Income Tax Act, 1961 ignoring the fact that I am senior citizen suffering from so many ailments and after death of my son in Jan 2016 my accounts and tax matters were looked after by my husband, who himself is senior citizen. That the learned A.O and worthy CIT (A) -5, LDH has ignored the fact that there was no mala fide intention without which penalty cannot be imposed.
3. That the order is bad in law and on facts of the case.
4. That the appellant prays that the order passed by CIT (A) Ludhiana may kindly be treated as null and void on the merits of case.
5. The assessee craves to amend/modify or add any ground of appeal.”

3. None appeared for the assessee, considering peculiar fact, it is decided to heard the Ld. DR and decide the appeal on merits. In this case, assessment was completed u/s 153A r.w.s 143(3) vide order dated 09.12.2019 by making an addition on INR 12,16,748/- as per detail given below:

<i>Particulars</i>	<i>Amount(INR)</i>
<i>Credits in Bank account of INR 599477 and saving bank amounting to INR 48260</i>	<i>647737</i>
<i>Opening balance in saving account with post office</i>	<i>441280</i>
<i>Interest on saving bank account (951165+32566)</i>	<i>127731</i>
<b>TOTAL</b>	<b>12,16,748/-</b>

4. Consequential penalty imposed u/s 270A of the Income Tax Act, vide order dated 17.04.2022 by AO, was confirmed by Ld. CIT(A) Ludhiana vide

order dated 15.06.2022. The CIT (A) while confirming the penalty has observed as under:

*“The AO mentioned that vide notice dated 09.12.2019, the assessee was asked to show cause u/s 270A r.w.s 274 of the Income-tax Act why the penalty should not be imposed but the assessee did not file any reply. Further as per the AO, in response to notice dated 02.12.2020, the assessee filed a very general reply but failed to provide any reasonable cause as to why the penalty u/s 270A of the Act may not be imposed upon her. Therefore, in the absence of any plausible reply it was presumed by the AO that the assessee has nothing to say in the matter and has willfully under reported the income. The AO reproduced the provision of Section 270A and mentioned that in the present case it is seen that the assessee has failed to furnish any tenable explanation or any cogent reason for not levying of penalty u/s 270A of the Income-tax Act, 1961 for 'under reporting of income' and hence was liable for penal action u/s 270A. In view of the above, the minimum penalty of Rs. 165998/- @ 50% of tax payable on 'under reported income' was imposed by the AO.*

*The facts of the case, basis of penalty imposed by the AO and the arguments of the appellant during the course of appellate proceedings have been considered. The appellant submitted that she is an old person of 75 years of age and work relating to maintenance of bank account and filing of income tax return was being looked after by her son Late Sh. Arun Seth who died in January, 2016 and after his death, Income tax matter was looked after by her husband who is also more than 80 years old and is suffering from various diseases. The assessee submitted that due to old age and shock of her son's death some of the bank account or entries in bank account remained unreflected in Income Tax return and it was unintentional and there was no malafide intention to avoid or evade Income Tax by showing inaccurate or incomplete particulars of income which is prerequisite for imposition of penalty. The above argument of the appellant are considered but not found acceptable in the light of provision of Section 270A. It is fact on record that the assessee was maintaining the bank account and the source of deposit has not been explained and neither the interest income has been offered for taxation. The AO has levied the penalty u/s 270A for under-reporting of income by the assessee and as per provision of Section 270A(2)(a) a person shall be considered to have under reported his income, if the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of Section 143 of the Income Tax Act, 1961. In this case, the assessee filed return declaring income of Rs. 4,66,520/- and the assessment was completed at an income of Rs. 17,13,270/- and hence, the case is duly covered under the provision of Section*

*270A making the assessee liable for penalty of a sum equal to 50% of the amount of tax payable on 'under reported income' which is the difference between the 'assessed income' and the 'returned income'. Under the facts & circumstances of the case and in view of the observation of the AO in the penalty order, the penalty of Rs. 1,65,998/- levied in this case is found sustainable and hence confirmed."*

5. The appellant assessee objected to the action of the Ld. CIT (A) contending in the grounds that Ld. ACIT/DCIT and worthy CIT(A) 5, LDH have erred in law and facts of the case by imposing/confirming penalty u/s 270A of the Income Tax Act, 1961 ignoring the fact that the appellant was a citizen suffering from so many ailments and after death of her son in Jan 2016 her accounts and tax matters were looked after by my husband, who himself is senior citizen. That the learned A.O and worthy CIT (A) -5, LDH has further ignored the fact that there was no malafide intention without which penalty cannot be imposed.

6. The Ld. DR stands by the impugned order.

7. Having heard the Ld. DR at length and perusal of facts, we note that the appellant has been a senior citizen suffering from many ailments and after death of her son in Jan 2016, its accounts and tax matters were looked after by her husband, who was also a senior citizen. The appellant assessee has paid the tax demand, immediately after passing of the assessment order. In our view, the assessee has no malafide intention of

short payment of tax by way of error in tax computation in the return of income as alleged cause for violation of section 270A.

8. The old age factor of the appellant assessee besides the death of her son who was looking after the income tax matter and her bank accounts certainly constitute a reasonable cause which may leads to under reporting the income for the year under consideration. It is worthy mention that the appellant assessee has paid the tax demand immediately after passing of the assessment order. In our view, the assessee has a reasonable cause without malafide intention for non reflection of some bank credit entries in the return of income pertaining to interest income. From the record, it is evident that there has been no such repetitive instance of under reporting of income by way of non reflection of such bank entries in the return of income of the appellant. Thus, the appellant assessee has reasonable cause and had no malafide intention or intend to avoid or abate income tax.

9. The Hon'ble Delhi High Court in the case of *Azadi Bachao Andolan v. Union of India* [2011] 116 taxman.com 249/252 ITR 471 (Delhi) observed that a reasonable cause can be reasonably said to be a cause which prevents 'a man of an average intelligence and ordinary prudence Act under normal circumstances, without intelligence or in action or want of bonafide'.

10. In another case of CIT(A) v. Triumph International Finance India Ltd. [2012] 22<sup>nd</sup> taxman.com 138/348 ITR 270 (Delhi) It is held that expression reasonable cause in section 273B for non imposing of penalty u/s 271E is to be construed elaborately depending upon the facts of each case.

11. The CBDT Circular14 (XL-35) dated 11/04/1955 clearly instructed that Department must not take advantage of ignorance of assessee to collect more than what is legitimately due.

12. In the above view and the peculiar facts of the case we hold that the impugned order confirming the penalty order, imposing penalty of Rs. 1,65,998/- is unsustainable under law. Therefore, the penalty levied U/s 270A of the Income Tax Act, 1961 amounting to Rs. 1,65,998/- is hereby deleted.

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

*Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 31.01.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr./P.S.\**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order