

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU “B” BENCH, BENGALURU**

**Before Shri George George K., Judicial Member  
and  
Ms. Padmavathy S., Accountant Member**

<b>ITA No. 1175/Bang/2022</b> (Assessment Year: 2018-19)		
Shri Sridhar Murthy S Karle Zenith, 100 Ft Kemapura Main road, Kasaba Holbli Nagavara Village Bengaluru 560043 PAN – AWZPS8682D (Appellant)	vs	The Income Tax Officer NFAC, Delhi      (Respondent)

Assessee by:	Shri N. Rama Raju, CA
Revenue by:	Shri Gudimella VP Pavan Kumar, JCIT

Date of hearing:	27.02.2023
Date of pronouncement:	28.02.2023

**ORDER**

**Per: George George K., J.M.**

This appeal at the instance of the assessee is directed against NFAC, Delhi/CIT(A)’s order dated 28.10.2022 passed under Section 250 of the Income Tax Act, 1961 (the Act). The relevant assessment year is 2018-19.

2. The grounds raised by the assessee read as follows: -

- “1. *The order of the learned CIT(A) , is opposed to law, weight of evidence, natural justice, probabilities on facts and circumstances of case.*
2. *The Appellant denies itself liable to be levy of penalty of Rs.2,19,796/- under the provisions of section 270A of the Act under the facts and circumstances of the case.*

3. *The learned CIT(A) is not justified in not appreciating the submission of the Appellant under the facts and circumstances of the case.*
4. *The learned CIT(A) erred in law in not appreciating that - the Assessing Officer is not justified in concluding the penalty proceedings on mere surmise conjunctures and suspicion without independent application of mind which is not tenable in law under the facts and circumstances of the case.*
5. *The learned CIT(A) erred in law in not appreciating that - the learned Assessing Officer erred in law in invoking the provisions of section 270A of the Act in the absence of the either of the conditions i.e., 'Under reporting of income' or 'Misreporting of Income' under the facts and circumstances of the case. The penalty proceedings concluded in the instant case have no legs to stand and is liable to be quashed in toto.*
6. *Without prejudice learned CIT(A) erred in law in not appreciating that - the learned Assessing Officer is not justified in initiating the penalty proceedings under the limb - 'Under reporting of income' and concluding the said penalty proceedings under the limb - 'Misreporting of Income' without proper application of mind under the facts and circumstances of the case. The penalty proceedings concluded in the instant case have no legs to stand and is liable to be quashed in toto.*
7. *The learned CIT(A) erred in law in not appreciating that - learned Assessing Officer has completely lost sight in not appreciating the fact that the carried forward loss as erroneously mentioned by the then tax consultant in the return of income filed for the Assessment Year 2018-2019 was immediately withdrawn on the basis of proper advice by the new consultant who handled the penalty proceedings in the instant case by filing the revised return for the Assessment Year 2020-2021. The penalty proceedings concluded in the instant case have no legs to stand and is liable to be quashed in toto.*
8. *The learned CIT(A) erred in law in not appreciating that - learned Assessing completely erred in law in taking cognizance of the return filed for the Assessment Year 2019-2020 without taking into consideration the revised return filed for the Assessment Year 2020-2021 withdrawing the said loss. The learned Assessing Officer is not justified in not observing*

*the directions as instructed in the Circular of the Board in No. 14 (XI-35) of 1955 dated April 11, 1955 under the facts and circumstances of the case. The penalty proceedings concluded in the instant case have no legs to stand and is liable to be quashed in toto.*

9. *The learned CIT(A) erred in law in not appreciating that - learned Assessing Officer erred in law in invoking the provisions of section 270A of the Act, de hors the Appellant admittedly falling under the exceptions to provisions of section 270A of the Act as enumerated under the provisions of section 270A(6) of the Act under the facts and circumstances of the case.*
10. *Without prejudice the penalty levied in the instant case is high pitched and requires to be substantially reduced under the facts and circumstances of the case of the Appellant.*
11. *The Appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.*
12. *For the above and other grounds to be urged the Appellant prays that the appeal shall be allowed in the interest of equity and justice.”*

3. The brief facts of the case are as follows: -

The assessee is an individual. The return of income was filed for AY 2018-19 on 27.08.2018 declaring income under the head ‘salary’ and ‘rental income’. The assessment was selected for scrutiny on the issue of excess claim of house property losses. The assessment order was completed under Section 143(3) of the Act vide order dated 27.10.2020 by restricting the house property loss to be carried forward to the tune of Rs. 4,22,012/- instead of Rs. 18,87,322/- claimed in the return of income. Penalty proceedings under Section 270A of the Act was initiated for misreporting of income. During the course of penalty proceedings it was submitted that there were two housing loans and the aggregate of the interest payment amounting to Rs.21,42,882/- was claimed in the return of income by the consultant in the village. The contention of the assessee, however, was not accepted by the Assessing

Officer (AO) and he levied penalty of 50% of the tax liability amounting to Rs.2,19,796/-.

4. Aggrieved by imposition of penalty under Section 270A of the Act the assessee preferred appeal before the first appellate authority. The CIT(A) confirmed the penalty imposed by the AO. The CIT(A) after reproducing Section 270A of the Act held that the assessee has not furnished any explanation regarding the 'reasonable cause' for excess claim of carry forward of interest paid towards housing loans for AY 2018-19. The relevant finding of the CIT(A) reads as follows: -

*“The appellant has not furnished any explanation regarding the reasonable cause for claiming carry forward of interest paid towards housing loan for AY 2018-19. Merely stating that the previous counsel of appellant had made this claim, which was erroneous and that the subsequent counsel had advised appellant to revise return of income for AY 2020-21 does not change the fact that applicant had made this claim in AY 2018-19. In view of the above discussion, I find no reason to disturb the findings of the assessing officer. Accordingly **grounds of appeal 1 to 10 are dismissed.**”*

5. Aggrieved by the order of the CIT(A) confirming the imposition of penalty the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book consisting of 182 pages, inter alia, enclosing therein copies of the computation of income filed for AY 2018-19, the revised computation of income, filed for AY 2018-19, copy of the revised return of income filed for AY 2020-21, written submission filed before the first appellate authority, etc. The learned A.R. submitted that the local consultant of the assessee had made an erroneous claim by aggregating interest of housing loans of two properties (i.e. self occupied property and other where rental income of Rs.3,65,000/- was disclosed in the return of income). On realising the mistake immediately revised return was filed for AY 2020-21 withdrawing

the excess claim of loss. The learned A.R. further submitted that the loss under house property was never claimed by the assessee in any of the subsequent years. The learned A.R., by referring to Section 270A(6) of the Act, submitted that there is reasonable cause on the facts of the case and the explanation of the assessee ought to have been accepted and penalty proceedings ought to have been dropped. The learned A.R. relied on the order of the Mumbai Tribunal in the case of Venkateshwaran Krishnan vs. ACIT in ITA No. 5768/Mum/2012 (order dated 24.01.2014) and contended that on identical facts the Mumbai Tribunal had deleted the penalty under Section 271(1)(c) of the Act.

6. The learned D.R., on the other hand, submitted that the mistake in the excess claim of interest under Section 24(b) of the Act was pointed out by the AO. It was submitted by the learned D.R. that revised computation for AY 2018-19 would not absolve the assessee from imposition of penalty.

7. We have heard the rival contentions and perused the material on record. The assessee is a salaried employee. The assessee had two housing loans, one for the self occupied property and the other for the property which was let out. The rental income of the house property which was let out was disclosed in the return of income filed by the assessee. The excess loss of interest that was claimed to be carried forward was erroneous claim in the return of income filed by the local consultant of the assessee. When the mistake was pointed out, the assessee immediately withdrew the erroneous carry forward loss by filing a revised computation for AY 2018-19 and also filed a revised return of AY 2020-21. The assessee never set off the carry forward loss for any of the years as it is evident from the return of income filed by the assessee for AY 2020-21. Section 270A(6) of the Act stated that *“under reporting of income for the purpose of this section, shall not include the following, namely:—*

*(a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;”*

8. The above section 270A(6)(a) of the Act states that when explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered, then it cannot be a case of under reporting of income for the purpose of Section 270A of the Act. In the instant case as mentioned earlier the assessee being a salaried employee would have been dependent on the consultant for filing his return of income. When the erroneous claim of the excess interest income against rental income by aggregating both the housing loans was pointed out the assessee immediately filed revised computation for AY 2018-19 and also filed revised return for AY 2020-21 withdrawing the excess claim. The Mumbai Tribunal, on identical facts in the case of Venkateshwaran Krishnan (supra) had held that assessee's explanation in making the incorrect claim is bona fide and deleted the penalty under Section 271(1)(c) of the Act by following the judgement of the Hon'ble Apex Court in the case of Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC). The relevant finding of the Mumbai Bench of the Tribunal reads as follows: -

*“8. Now coming to the disallowance of Rs. 7,07,933, the assessee's entire claim, as discussed above, is not proper, however, it cannot lead to an inference that the assessee has furnished inaccurate particulars. On the facts of the assessee's case, at the most, it can be said that the assessee has made incorrect claim by not bifurcating the interest on loans taken for the self-occupied property and for he let out property. If the assessee on wrong legal advice has claimed the balance interest paid on loan for self-occupied property, while computing the rental income of the other house property, then so far as the assessee is concerned, it cannot be said that there is no bonafide of the assessee. At best, it is a*

*claim, which cannot be allowed. If the entire particulars of interest has been given and merely because some non-permissible claim has been made, then such an incorrect claim cannot tantamount to furnishing of inaccurate particulars of income, as explained by the Hon'ble Supreme Court in Reliance Petroproducts Pvt. Ltd. (supra) wherein Their Lordships observed and held as under:–*

*“A glance at the provisions of section 271(1)(c) of the Income-tax Act, 1961, suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word “particulars” used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.*

*Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.”*

*9. Thus, on the facts and circumstances of the case, we are of the opinion that no penalty can be levied. Accordingly, we set aside the impugned order passed by the learned Commissioner and allow the ground raised by the assessee. Thus, the penalty confirmed by the learned Commissioner (Appeals) stands deleted.”*

9. For the aforesaid reasons and the order of the Mumbai Tribunal in the case of Venkateshwaran Krishnan (supra) we hold that on the facts of the instant case the explanation of the assessee is bona fide and it is not a case of under reporting of income by virtue of Section 270AS(6)(a) of the Act. Therefore the penalty imposed amounting to Rs.2,19,796/- is deleted. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 28<sup>th</sup> February, 2023.

Sd/-  
**(Padmavathy S.)**  
**Accountant Member**

Sd/-  
**(George George K.)**  
**Judicial Member**

Bengaluru, Dated: 28<sup>th</sup> February, 2023

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1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

*By Order*

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*Assistant Registrar*  
*ITAT, Bengaluru*

n.p.