

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.862/Chny/2022
निर्धारण वर्ष/Assessment Year: 2017-2018

M/s. Pallava Textiles Private Limited,
27-C, Sankari Bye Pass Road,
Pallipalayam – 638 006,
Tamil Nadu.

Vs. The Income Tax Officer,
National Faceless Assessment
Centre [NaFAC], Delhi.

[PAN:AABCP9105F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 27.02.2023
घोषणा की तारीख /Date of Pronouncement : 10.03.2023

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi, dated 05.07.2022 relevant to the assessment year 2017-2018 in confirming levy of penalty under section 270A of the Income Tax Act, 1961 ["Act" in short].

2. The appeal filed by the assessee is delayed by 52 days in filing the appeal before the Tribunal. The assessee has filed a petition for

condonation of delay in the form of an affidavit and the submissions are reproduced as under:

- “1) That we received the order under section 250 of the Income Tax Act, 1961 for the assessment year 2017-18 on 05/07/2022;
- 2) That, as per the said order, it was found that the penalty order passed under section 270 on 18/09/2021 was dismissed.
- 3) The appeal against the impugned order, ought to have been filed on or before 03.09.2022, is now filed on 21/10/2022 with a delay of 48 days.
- 4) The delay was due to technical glitches in the income tax portal in downloading the order u/s. 250.
- 5) That we do not stand to gain nor do we have any intention to jeopardize the interest of the revenue by delayed filing of the appeal.”

By way of another affidavit, the assessee's submissions are as under:

*“The appeal papers were sent by courier on 21/10/2022 – vide Receipt No. 25103409 for delivery to ITAT, Chennai
From the track record of the courier service, it is learnt that it was served on 25/10/2022, thereby the delay was increased from 48 days to 52 days.
The respectful submission is that the delay on account of the delayed service by the courier company is not attributable to the appellant and the further delay of 4 days be viewed liberally.
In view of the above, it is submitted that the delay be condoned, appeal be admitted, submissions be considered and justice be rendered.”*

3. Against the above submissions, the Id. DR has not raised any serious objection. Since the assessee was prevented by reasonable cause, the delay in filing the appeal stands condoned and admitted the same for adjudication.

4. Facts are, in brief, that the assessee company filed its return of income for the assessment year 2017-18 on 27.10.2017 declaring total income at ₹.19,25,62,355/-. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, the case was

selected under CASS for complete scrutiny and notice under section 143(2) of the Act was issued calling explanation from the assessee. After considering the explanations of the assessee and verifying the records, the assessment was completed under section 143(3) of the Act dated 06.12.2019. In the assessment order, while scrutinizing the profit and loss account of the assessee, the Assessing Officer has noted that the assessee has claimed a sum of ₹.1,01,64,738/- on account of repairs and maintenance. While going through the same, it was also noted that the expenditure incurred towards repair and maintenance, contains certain capital items of expenditure to the extent of ₹.20,32,948/- for which the assessee has not offered satisfactory explanation. Therefore, the sum of ₹.20,32,948/- was disallowed and added to the returned income of the assessee.

5. Subsequently, the Assessing Officer has initiated penalty proceedings under section 270A of the Act by issue of a show-cause notice dated 06.12.2019. After considering the replies filed by the assessee, the Assessing Officer finalized the penalty proceedings and passed an order dated 18.09.2021 levying penalty of ₹.5,70,222/- under section 270A of the Act for under-reporting of income in respect of the repair & maintenance expenses of ₹.20,32,948/- subjected to

disallowance in the assessment order. On appeal, the Id. CIT(A) confirmed the penalty levied under section 270A of the Act.

6. On being aggrieved, the assessee is in appeal before the Tribunal. Before us, the Id. Counsel for the assessee has submitted that the total expenditure incurred by the assessee was ₹.1,01,64,738/- and the Assessing officer has disallowed 20% of the expenditure on estimated basis and therefore, penalty under section 270A of the Act for ₹.5,70,222/- cannot be levied. Thus, the Id. Counsel prayed for deleting the penalty confirmed by the Id. CIT(A).

7. On the other hand, the Id. DR strongly supported the orders of authorities below.

8. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the Assessing Officer has initiated penalty proceedings under section 270A of the Act for under-reported income. The Assessing Officer issued show-cause notice under section 274 r.w.s. 270A of the Act calling explanations from the assessee as to why penalty cannot be levied for under-reporting the income. The assessee has submitted that all the details before the Assessing Officer and also expenditure incurred by the assessee.

Therefore, the Assessing Officer, on estimated basis, disallowed an amount of ₹.20,32,748/- and no penalty can be levied under section 270A of the Act. We find that the Assessing Officer has disallowed 20% of the expenditure claimed by the assessee. Disallowing the expenditure cannot be said that it is an under-reporting of the income. The assessee has filed all the details and not only that the Assessing Officer, on estimated basis disallowed the expenditure. Once, the disallowance made on estimated basis, no penalty can be levied. Therefore, the penalty levied by the Assessing Officer and confirmed by the Id. CIT(A) is unsustainable and thus, the penalty levied under section 270A of the Act is deleted.

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

Order pronounced on 10th March, 2023 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 10.03.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &
6. गार्ड फाईल/GF.