

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No's.361 & 362/PUN/2023
निर्धारण वर्ष / Assessment Years : 2017-18 & 2018-19

Satish Pandurang Pawar, 602, Royal Orchid, Near Indian Oil Petrol Pump, Katraj Bypass, Ambegaon, Pune – 411046. PAN: ABFPP 1207 Q	Vs	The Income Tax Officer, Ward-2(1), Nashik.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Yogesh Gawali – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	03/05/2023
Date of pronouncement	05/07/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These two appeals filed by the Assessee are directed against the separate orders of Id.Commissioner of Income Tax (Appeal)National Faceless Appeal Centre, Delhi both dated 27.02.2023 emanating from the penalty order dated 19.01.2022 & 18.01.2022 under section 270A of the Income Tax Act, 1961 for the A.Y.2017-18 & 2018-19 respectively. The Assessee for A.Y.2017-18 has raised the following grounds of appeal:

“1. The learned CIT is not justified in raising penalty u/s 270A of Rs.1,57,400/- on the ground that the assesses has furnish

inaccurate particulars of Income without appreciating that the said levy of penalty was not justified in law.

2. *The learned CIT failed to appreciate that before the CIT, the assessee had duly explained that reporting of income in his case was attributable to wrong action of tax consultant and all the material facts relating thereto along with substantiating evidences in form of complaint filed against Tax Consultant before Economic Wing of Police Department etc. were also furnished by the assessee and therefore, the raised penalty u/s 270A without rebutting the explanation offered by the assessee was not justified in view of provisions of the said Act.*

3. *The learned CIT ought to have appreciated that the bona fides of the explanation offered by assessee were established from the fact that the assessee, being salaried employee from technical background, was totally dependent upon the tax consultant for filing income tax return and no such incorrect claim was ever made by the assessee either in past years or in subsequent years and therefore, the levy of penalty u/s 270A was not justified in view of the explanation offered by the assessee.”*

2. The Assessee for A.Y. 2018-19 has raised the following grounds of appeal:

“1. The learned CIT is not justified in raising penalty u/s 270A of Rs.1,35,268/- on the ground that the assessee has furnish inaccurate particulars of Income without appreciating that the said levy of penalty was not justified in law.

2. *The learned CIT failed to appreciate that before the CIT, the assessee had duly explained that reporting of income in his case was attributable to wrong action of tax consultant and all the material facts relating thereto along with substantiating evidences in form of complaint filed against Tax Consultant before Economic Wing of Police Department etc. were also furnished by the assessee and therefore, the raised penalty u/s 270A without rebutting the explanation offered by the assessee was not justified in view of provisions of the said Act.*

3. *The learned CIT ought to have appreciated that the bona fides of the explanation offered by assessee were established from the fact that the assessee, being salaried employee from technical background, was totally dependent upon the tax consultant for filing income tax return and no such incorrect claim was ever made*

by the assesses either in past years or in subsequent years and therefore, the levy of penalty u/s 270A was not justified in view of the explanation offered by the assesses.”

Brief facts of the case (ITA No.361/PUN/2023) :

3. In this case, assessee is an employee in a company. Assessee filed original Return for A.Y. 2017-18 electronically on 18.07.2017 declaring total income of Rs.6,63,160/-. Then, he filed revised Return of Income for A.Y. 2017-18 electronically on 23.08.2017 declaring total income of Rs.7,55,190/-. The assessee again filed revised Return of Income for A.Y.2017-18 electronically on 28.11.2017 declaring total income of Rs.3,17,740/-, in this Return, he claimed deduction of Rs.3,42,560/- which included deduction of Rs.2,00,000/- on account of interest paid under the head “Income from House Property”.

4. Income Tax Department had conducted a survey under section 133A in the case of Mr.Kishore Patil, a Tax Practitioner. During the survey, it was observed that the Tax Practitioner, Mr.Kishore Patil had filed Returns claiming bogus deductions. In this context, notice under section 148 dated 26.02.2020 was issued in the case of assessee. In response to the notice under section 148 assessee filed electronically Return dated 06.03.2020 declaring total income of Rs.7,65,910/-. In this said Return filed in response to notice under section 148, assessee has not claimed any interest payment under the

head “Income from House Property”. The AO accepted the Return of Income filed in response to notice under section 148 without making any addition, accordingly, the AO passed an order under section 143(3) r.w.s. 147 of the Act. However, AO issued penalty notice under section 270A of the Act. The AO levied penalty under section 270A of the Act vide order dated 19.01.2022. In the penalty order, it is mentioned that assessee has under reported his income which in consequence of mis-reporting. Accordingly, AO levied penalty of 200%. Aggrieved by the penalty order, the assessee filed appeal before the Id.CIT(A). The Id.CIT(A) upheld the penalty order.

Submission of Id.AR :

5. The Id.AR stated that AO has failed to specify the limbs of section 270A(9) of the Act. The Id.AR explained that in the assessment order there is no addition and AO had accepted the Return of Income shown in the Return filed in response to notice under section 148. Once the AO has accepted the Return of Income, there cannot be any under reporting or mis-reporting. The Id.AR relied on the order of this Co-ordinate Bench in the case Kishor Digambar Patil Vs. ITO in ITA No.54 & 55/PUN/2023 and ITAT

Mumbai decision in Saltwater Studio LLP Vs. NFAC in ITA No.13/Mum/2023. Ld.AR submitted that penalty may be deleted.

Submission ld.DR :

6. The ld.DR relied on the order of the Lower Authorities. The ld.DR submitted that assessee consciously filed Return of Income claiming deduction under Chapter-VIA fraudulently. It was only because of the survey, the fraudulent act was detected.

Findings & Analysis :

7. In this case, in the assessment order dated 13.09.2021 the AO has accepted Return of Income shown in the Return filed in response to notice under section 148. Nowhere in the assessment order, the AO has discussed how the assessee has mis-reported the income. The AO has not identified the specific limb of section 270A(9) of the Act, either in the penalty order or in the assessment order which is applicable in the case of assessee. We find that ITAT Pune in the case of Kishor Digambar Patil(supra) has held that failure on the part of the AO to showcase which of the specific action of the assessee from Clause(a-f) of section 270A(9) was determinant before imposing the impugned penalty under section 270A of the Act has rendered the entire proceedings invalid and untenable. Similarly,

ITAT Mumbai in the case of Saltwater Studio LLP(supra) has held as under :

“The question is whether the AO’s action to levy penalty u/s 270A(9) of the Act is sustainable in the given facts of the case. In order to examine that let us have a look at relevant provisions of Section 270(8) &(9) of the Act which reads as under: -

“Penalty for under-reporting and misreporting of income. 270A. (1)

(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income.

(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—

- (a) misrepresentation or suppression of facts;*
- (b) failure to record investments in the books of account;*
- (c) claim of expenditure not substantiated by any evidence;*
- (d) recording of any false entry in the books of account;*
- (e) failure to record any receipt in books of account having a bearing on total income; and*
- (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.”*

13. The AO has levied the higher penalty of 200% of tax payable of misreporting income. Then in such a scenario, the AO has to bring the action/omission on the part of the assessee in the ken of sub-section (9) of section 270A of the Act which are given (supra), viz (a) to (f) of section 270A(9) of the Act. However, a reading of the reasons given by the AO to levy penalty for misreporting (supra) it is discerned that he has failed to spell out as to how the assessee’s case/additions falls within the ken of instances given in clause (a) to (f) of sub-section (9) of section 270A of the Act. Since AO failed to bring the addition/disallowance he made in quantum assessment, under the ken of (a) to (f) of the sub-section(9) of section 270A of the Act, the penalty levied for misreporting @ 200% cannot be sustained because it is trite law that penalty provisions have to be strictly interpreted. And therefore, taking into consideration, the

facts and circumstances of the case, we find that the levy of penalty by the AO u/s 270A of the Act suffers from the vice of non-application of mind as well as violates principles of natural justice. And therefore, the penalty levied on addition of sustained quantum addition of Rs.67,970/- cannot survive. And therefore, it is directed to be deleted.”

8. In the case under consideration, the AO has failed to identify the specific Clauses from Clause (a-f) of section 270A(9) of the Act. Therefore, respectfully following ITAT Pune and ITAT Mumbai decisions the AO is directed to delete the penalty under section 270A of the Act. Accordingly, grounds of appeal raised by the assessee are allowed.

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

ITA No.362/PUN/2023 :

10. The facts for A.Y.2018-19 are identical to A.Y.2017-18, therefore, our decision in ITA No.361/PUN/2023 would apply *mutatis-mutandis* to ITA No.362/PUN/2023, accordingly, appeal of the assessee is allowed.

11. To sum up, both appeals of the assessee are allowed.

Order pronounced in the open Court on 5th July, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 5th July, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.