

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 51/Ind/2023
Assessment Year:2018-19

Badaud Shri Vardhaman Shiksha Samiti, Badaud (Assessee / Appellant)	<u>बनाम/</u> Vs.	ITO, NFAC, DELHI (Revenue / Respondent)
PAN: AACAB5370		
Assessee by	Shri Sharad Jain, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	19.07.2023	
Date of Pronouncement	25.07.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 16.12.2022 passed by learned Commissioner of Income-tax, National Faceless Appeal Centre, Delhi ["Ld. CIT(A)"], which in turn arises out of penalty-order dated 02.02.2022 passed by learned Assessing Officer, National Faceless Assessment Centre, Delhi ["Ld. AO"] u/s 270A of Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2018-19, the assessee has filed this appeal on the grounds raised in Appeal-Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts leading to present appeal are such that the assessee is an educational society which filed Income-tax Return (ITR) of relevant AY 2018-19 on 30.03.2019 declaring a total income of Rs. Nil. The case was subjected to scrutiny through notices u/s 143(2)/142(1). While framing assessment vide order dated 18.05.2021 u/s 143(3), the AO disallowed depreciation of Rs. 4,93,672/- one Building at Tal on the footing that the said building was not put to use during the year. Accordingly, the AO determined total income at Rs. Nil as under:

Income (loss) claimed in ITR	-	(Rs. 6,28,061)
Add: Depreciation on Building	-	Rs. 4,93,672/-
Assessed Income	-	Rs. Nil

4. Simultaneously, the AO initiated penalty-proceeding u/s 270A and issue show-cause notice dated 18.05.2021 to which the assessee filed reply. However, the AO being un-satisfied with submissions of assessee, treated the impugned disallowance of depreciation of Rs. 4,94,672/- as 'under-reported income' u/s 270A(2), computed tax payable thereon at Rs. 1,52,545/- and thereby imposed penalty @ 200% of Rs. 1,52,545/- = Rs. 3,05,090/- u/s 270A(8).

5. Aggrieved, the assessee filed first-appeal to CIT(A) but could not succeed. Now, the assessee has come in next appeal before us assailing the orders of lower-authorities.

6. Ld. AR for the assessee has filed a Paper-Book running over 119 which mainly includes a (i) Gist of his submissions, (ii) Copies of ITRs of AY 2018-19 and 2019-20 as submitted by assessee to Income-tax Department and (iii) Submissions made by assessee before lower-authorities. Drawing our attention to same, Ld. AR presented following analysis of ITRs filed by assessee for AY 2018-19 under consideration and subsequent AY 2019-20:

(i) **ITR of AY 2018-19:** At Page No. 41 of ITR, the assessee has furnished loss of Rs. 6,28,061/- under the head "Income from other sources"

which includes the disallowed depreciation of Rs. 4,94,672/-. But thereafter the assessee has ignored the entire loss of Rs. 6,28,061/- and not claimed effect thereof in any manner i.e. neither the assessee claimed set off in current year nor carry-forward to next year. According to Ld. AR, this is evident from following figures appearing at various places in ITR:

- (a) At Page No. 19 and 20 of ITR, the assessee furnished "4. Income from other sources – 0", "6. Loss of current year to be set off against 5 – 0". Loss of current year to be carried forward – 0".
 - (b) At Page No. 41 and 42, in the Schedule relating to Set-off of Current Year Losses, the assessee has furnished "i. Loss to be set off – Rs. 6,28,061/-" and "xiv. Loss remaining after set off – Rs. 6,28,061/-". This clearly indicates that the assessee has not claimed any set off in current year.
 - (c) At Page No. 43 and 44, in the Schedule of "Losses to be Carried Forward to future years", the assessee has not claimed any kind of carry forward of loss.
 - (d) The acknowledgement of ITR shows "3a. Current Year loss, if any – 0".
- (ii) **Return of AY 2019-20:** The assessee has not claimed any brought forward loss which is evident from all pages of ITR viz. Page No. 1 to 32, filed by assessee.

7. In nutshell, by carrying us through the returns of AY 2018-19 and 2019-20, Ld. AR tried to establish that though the assessee has furnished loss of Rs. 6,28,061/- under "Income from Other Sources" at Page No. 41 of ITR (which includes the disallowed depreciation of Rs. 4,93,672/- as well) but that loss has no meaning when the assessee has ultimately ignored the same by neither claiming set off in current AY 2018-19 nor carry-

forward/brought-forward benefit in next AY 2019-20. Ld. AR pointed out that the assessee has returned Total Income at Rs. Nil and the AO has himself mentioned in Para No. 1 of assessment-order that the assessee filed ITR with Total Income of Rs. Nil. But in the last Para No. 6 of assessment-order, the AO has wrongly started with loss of Rs. 6,28,061/- as if the assessee had claimed loss in ITR which is not a case at all. However, there also the AO has assessed Total Income at Rs. Nil.

8. Then, Ld. AR submitted carried us to the provision of section 270A and submitted that when the assessee has returned Total Income at Rs. Nil and the AO has also assessed the same at Rs. Nil, there is no variation in the Total Income of assessee. Ld. AR submitted that to attract penalty u/s 270A, there has to be any of the situations of under-reported income falling within clauses (a) to (g) of section 270A(2) and in the present case, there is no such situation. He submitted that the clause (g) of section 270A(2) is also not applicable because in the present case for the reason that the total income was reported by assessee at Rs. Nil which remained Rs. Nil at the time of assessment, it is not a case where the assessment has the effect of reducing the loss or converting loss into income. Ld. AR submitted that the penalty imposed by AO is, therefore, not correct in present case; the same must be deleted.

9. Ld. DR for the Revenue relied upon the orders of lower-authorities and prayed to uphold the penalty.

10. We have considered rival submissions of both sides and perused the documents to which our attention is drawn. On consideration of the analysis of ITRs for AY 2018-19 and 2019-20 submitted by Ld. AR as narrated in foregoing paragraph, we prima facie observe that although the assessee has declared loss of Rs. 6,28,061/- under the head "Income from Other Sources" and the said loss includes the disallowed depreciation of Rs. 4,94,672/-, but thereafter neither the assessee has claimed set off in current year nor carried forward it to next year and the Total Income of

assessee is Rs. Nil. We were anxious to understand as to how could it happen that the assessee has himself shown loss under "Income from Other Sources" in one part of ITR but ultimately ignored the same in set-off and carry forward portion. Our anxiety is propelled due to the fact the ITR for AY 2018-19 was prepared through automated software and e-filed to Income-tax Department in a structured format as per such software, then the loss would automatically be given effect to for set off and carry-forward and the assessee could not ignore the same. Our anxiety is resolved when we made a deeper scrutiny of the provisions of section 70 to 80 of Income-tax Act, 1961 relating to set off and carry forward of losses. On a careful study, we find that the loss computed by an assessee under the head "Income from other sources" can be set off against any other income in current year u/s 70 and 71 but in the present case, the assessee was not having any other income, hence unable to claim set off. Further, the carry-forward of loss of "Income from other sources" head to next year is permitted u/s 74A and that section permits carry-forward of a particular type of loss i.e. loss from owning and maintaining race horses. Since the assessee's loss had not arisen from such a source, there was no enabling provision to allow carry forward benefit. Therefore, the software utility itself did not allow set off in current year or even carry forward.

11. Be that as it may, irrespective of whether it was the assessee who voluntarily did not claim any set off or carry forward of loss of "Income from Other Sources" or it was automatic in the situation by virtue of law, the fact remains that the Total Income as per return was Rs. Nil and the AO has also assessed Total Income at Rs. Nil. Coupled with this, it is also a fact that the assessee is not having any benefit of set off or carry forward of loss. When it is so, we agree with the submission of Ld. AR that the situation does not fall within any of the clauses of section 270A(2), not even under clause (g) of

section 270A(2). Being so, the present case does not attract penalty provision in terms of section 270A(2) read with section 270A(8). We are therefore inclined to delete the penalty imposed upon assessee and we do so. The assessee succeeds in this appeal.

12. Resultantly, this appeal is allowed.

Order pronounced in the open court on 25.07.2023

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 25.07.2023.

CPU/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore