

**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.526/PUN/2023**  
**निर्धारण वर्ष / Assessment Year : 2017-18**

Rajesh Ananda Sonawane, Plot No.19, S.No.10/85B, Gauri Bunglow, Abhiyanta Nagar, Kamatwade Shiwar, Nashik – 422008. PAN: ADBPS 3894 A	V s	The Income Tax Officer, Nashik.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Yogesh Gawali – AR
Revenue by	Shri Shashank Deogadkar – DR
Date of hearing	22/05/2023
Date of pronouncement	24/07/2023

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax (Appeal)National Faceless Appeal Centre, Delhi dated 21.03.2023 emanating from the penalty order dated 07.01.2022 under section 270A of the Income Tax Act, 1961 for the A.Y.2017-18. The Assessee for has raised the following grounds of appeal :

“1. The learned CIT is not justified in raising penalty u/s 270A of

*Rs.1,73,508/- 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 assesses 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 assesses and therefore, the raised penalty u/s 270A without rebutting the explanation offered by the assesses 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 assesses were established from the fact that the assesses, 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 :**

3. In this case, assessee is an individual derived income from salaries and other sources who filed Return of Income for A.Y. 2017-18 on 22.07.2017 declaring total income of Rs.6,96,609/- and claimed deduction under Chapter VI-A of Rs.2,36,542/-; taxable total income at Rs.4,60,070/- and refund of Rs.84,690/-.

The case was reopened and issued notice under section 148 of the Act dated 14.02.2020. The assessee filed return in response to notice under section 148 of the Act on 11.03.2020, wherein Assessee revised the claim of deduction under Chapter-VIA to Rs.1,52,385/- in place of Rs.2,36,542/- claimed in original return. After considering the submissions of the assessee, the Assessing Officer(AO) framed the assessment order under section 143(3) r.w.s 147 of the Act, 1961 determining the total income of the Assessee at Rs.8,76,170/-.

3.1 A survey action under section 133A of the Act was in the premises of Kishore Patil who e-filed ITR's of various persons wherein bogus deduction under Chapter VIA was claimed and the assessee was one among such cases. Kishor Patil, who files IT returns of the salaried employees of various companies and PSUs. That survey collectively revealed calming of bogus deductions under Chapter VI-A, i.e. deductions under section 80D, 80DDE, 80G, 80GG, 80E and 80EE and also claiming of bogus house property loss i.e. payments towards interest for borrowing loan by Mr. Patil in the IT Returns filed. The ITO (Inv.), along with his report also submitted a list of cases in

which Mr. Patil admittedly filed IT returns making bogus claims. In that list, the name of the assessee was also mentioned.

3.2 The Assessing Officer(AO) initiated penalty proceeding u/s.270A of the I.T. Act for misreporting of gross total income. Accordingly, AO levied penalty u/s.270A at Rs.1,73,508/- (being 200% of concealed tax). Aggrieved by the penalty order, the assessee filed appeal before the ld.CIT(A). The ld.CIT(A) upheld the penalty order.

**Submission of ld.AR :**

4. The ld.AR stated that AO has failed to specify the limbs of section 270A(9) of the Act. The ld.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 ld.AR relied on the order of this Co-ordinate Bench in the case Kishor Digambar Patil Vs. ITO in ITA No's.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 Id.DR :**

5. The Id.DR relied on the order of the Lower Authorities. The Id.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 :**

6. In this case, in the assessment order under section 147 r.w.s 143(3) dated 24.03.2021 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.”*

7. 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.

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

Order pronounced in the open Court on 24<sup>th</sup> July, 2023.

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

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

पुणे / Pune; दिनांक / Dated : 24<sup>th</sup> 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, आयकर अपीलीय अधिकरण, "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.