

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 170/Jodh/2022
(ASSESSMENT YEAR- 2017-18)**

Deepak Kumar Rajoria F-504, Suryam Sky, Swaminarayan Park Circle, Vastral, Ahmedabad.	Vs	The ITO, Ward-1(2), Bikaner.
(Appellant)		(Respondent)
PAN NO. AJZPR 2253 E		

(Virtual hearing)

Assessee By	Shri Virendra r Jain-C.A.
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	05/07/2023
Date of Pronouncement	11/08/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

The assessee has filed an appeal against the order of the National Faceless Appeal Centre, Delhi [herein after “NFAC/Ld.CIT(A)”] dated 28.11.2022 for the assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:-

“1. On the fact and circumstances of the case worthy CIT(A) has erred in confirming the penalty order imposed by the AO as it was not a fit case for levying penalty u/s 270A on account of misreporting of income hence the penalty imposed u/s 270A may please be quashed.

2. *On the fact and circumstances of the case worthy CIT(A) has erred in confirming the un-fare action of the AO in imposing 200 percent penalty on account of misreporting income because there was nothing in this case which attract penalty u/s 270A. That the appellant had already surrendered that wrong deduction claimed earlier before assessing authority Tax was paid and adjust from TDS the appellant was aware of the fact that there is any form by filing which the penalty may be dropped so the penalty was never leviable in this case therefore the penalty u/s 270A may please be cancelled.*
3. *The appellant prays for justice and relief.*
4. *The appellant may please be permitted to raise any addition or alternative ground at or before the hearing.”*

3. Brief facts of the case are that the assessee is an individual and salaried employee. In this case, the assessment order u/s 143(3) of the IT Act was passed on 19.09.2019 determining total income at Rs. 9,29,620/-. During the year under consideration the assessee has claimed deduction of Rs. 5,00,000/- as donation u/s 80G of Income Tax Act, 1961, the assessee himself accepted the deduction claimed u/s 80G was not genuine and wrong in accordance with the Act. Therefore, deduction claimed u/s 80G of the IT Act by the assessee was disallowed and Rs. 5,00,000/- and added back of total income of assessee. Therefore, penalty proceedings was initiated for misreporting of income as per the provision of section 270A of the Income Tax Act, 1961 and show cause notice u/s 274 of the Act was

issued to the assessee on 19.09.2019. Again the assessee vide this office letter dated 06.02.2020 was given opportunity of being heard fixing the hearing on 17.02.2020. In response said notice, the assessee has filed on 24.02.2020 online written submission. Contending that when the assessee had himself surrendered the amount during the assessment proceedings and tax was deducted from TDS, No further appeal was filed. Therefore, provision of Section 270A of the Act is not applicable here. Penalty provisions have been substantially amended from A.Y. 2017-18 onwards. The said penalty provision u/s 270A is in force to replace section 271(1)(C) of the IT Act. In this relevant case the assessee had voluntarily surrendered his claim of deduction so in this case no penalty should be imposed because there was no addition on record and the voluntarily surrender never attracts penalty provision as held in various judgments penalty is unjustified in this case wherein assessee has surrender the amount voluntarily. The ld. AO noted that the reply of the assessee considered but not found tenable and since the assessee misreported his income to the extent of Rs. 5,00,000/- penalty of Rs. 1,91,500/- being the amount calculated @ 200 % of the tax payable on misreported income.

4. Aggrieved, from the said order of levying the penalty the assessee has filed an appeal before the ld. CIT(A). The ld. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“4. Decision:-

I have considered the contentions made by appellant. I have also considered the observations of the Assessing Officer while deciding the issue under consideration.

It is seen that no appeal was filed by the appellant against the assessment order from which the penalty proceedings originated. The appellant has not contested the assessment order and has accepted the assessment order. The act of not contesting the assessment order goes on to prove the ‘mens rea’ on the part of the appellant. Therefore, it is clear that there has been an intention of the appellant to defraud revenue and evade tax. Hence, there is no doubt in my mind that the appellant has willfully evaded tax for which penalty is imposed u/s 270A of the income tax act, 1961. Therefore, I find no infirmity in the order of the AO and uphold the same.

4.1 In view of the facts and circumstances of the case the penalty imposed by the AO is liable to be confirmed.

5. I hold accordingly, the appeal is dismissed.”

5. Feeling dissatisfied from the order of the ld. CIT(A), the ld. AR for the assessee has filed a detailed submissions which is reproduced hereinbelow:-

“Respected Sir,

With reference to above it is faithfully submitted that before I submit my submission I would like to narrate the brief facts of the case and here they are:-

The assessee is an individual and salaried employee. The Assessee e-filed its Return of Income u/s 139(1) on 03-08-2017 vide acknowledgement No. 123233250030817 declaring total income at Rs. 948820/-. Later assessee has revised his return on 04.10.2017 vide

acknowledgement No 230940210041017 declaring total income of Rs.429620/- The case was selected for complete scrutiny through CASS for the following reason-

1. Large difference in total income shown in Annexure II of TDS Return of employer in form 24Q and that shown in ITR.

2. Taxable income shown in revised return is less than the taxable income shown in the original return and large refund has been claimed.

Assessee has claimed deduction Rs.5, 00,000 /-as donation u/s 80G of Income-tax 1961 for the year under consideration. During the asst proceedings the assessee furnished a reply stating as under 2.

"Regarding Donation-I don't of any document slip so request you to cancel the same and offer my apology and promise to not put any kind of non documentary submission in future"

From above mentioned reply, assessee himself accepted the deduction claimed u/s 80G was not genuine and wrong in accordance with the act. Therefore, deduction claimed u/s 80G of the act by assessee was disallowed and Rs.500000/-as added back to total income of assessee. On the above facts, income of the assessee is calculated as under:-

Returned Income	4,29,620/-
Add: Addition on a/c of wrong claim of 80G	5,00,000/-
Total Income	9,29,620/-

After that Ld. AO initiated penal proceedings U/S 270A of the IT Act 1961 and imposed a penalty u/s 270A Rs. 191500/-. On before I appeal CIT(A) confirmed the penalty order. Being aggrieved to the said order I have filed an appeal before your office. Now your office has awarded me the honor to submit my reply:-

Section 270AA has been inserted into the Act as a measure to reduce the litigation and to get the speedy recovery of the tax along with interest.

In section 270AA of the Act, the Assessee has been provided with option to making application to AO for granting immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC. subject to fulfilment of following conditions: -

(a) the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of section 143 or section 147, as the case may be, has been paid within the period specified in such notice of demand; and

(b) no appeal has been filed

The application has to be made in form No. 68 within 30 days from the end of the month in which the order has been received by the Assessee. After providing opportunity to the Assessee, the AO shall pass the order either accepting the application or rejecting the same within one month from end of month in which application is made by the Assessee. The order so passed by the AO shall be final and is non appealable.

The assessee fulfilled all the requirements of the above section for dropping penalty u/s 270A of the IT Act but he was not aware to submit any letter to drop the penalty

proceedings because that was the first year for this penalty so the AO should have waived it by his discretion power and should have waived it but he had to discharge his burden by imposing the huge penalty.

The assessee surrendered and offered the income after paying tax. The penalty was not levied even when the assessee surrendered after issuance of questioner in assessment proceedings. The Court held the surrender before detection and considered to be bona fide gesture from the assessee.

[CIT vs. Harnarain (ITA No.2072 of 2010) (dtd.31.10.2011)(Delhi HC)] [ACIT vs. Ashok Raj Nath (33 taxmann.com 588) (Delhi Trib)]

When he himself surrendered the amount during the assessment proceedings and tax was deducted from TDS, No further appeal was filed. Therefore provision of section 270A is not applicable here.

Penalty provisions have been substantially amended from A.Y.2017-18 onwards. The said penalty provision u/s 270A is in force to replace section 271(1)(C) of the IT act. In this relevant case the assessee had voluntarily surrendered his claimed deduction so in this case no penalty should be imposed because there was no addition on record and the voluntary surrender never attracts penalty provision as held in various judgements "Penalty is unjustified in those cases wherein assessee has surrendered the amounts voluntarily as reported:-

CIT Vs. Suresh Chandra Mittal 251 ITR 9 (SC)

CIT VS. Mohd. Mohtram 259 ITR 132 (Raj)

ITO Vs. Subhash Kumar Jain 582/JP/1997

ITO Vs. Chetram Goyal ITA 1552/JP/97

Chandrakanta Vs. ACIT ITA 699 & 700/JP/1998

ACIT Vs. Rajasthan Machinery Store ITA 1510/JP/96

In these judgements it is held that where the assessee has surrendered income then penalty in these cases is unjustified and deserves to be cancelled. This is not a question whereas the surrender has been made in return or at the time of assessment proceedings thus in this case no penalty should be imposed because the appellant has voluntarily surrendered the amount to buy peace.

It is held in the judgement of Kishanchand Shivchand Rai VS CIT (1973) 88 ITR 293 (Punjab) that the mere fact of surrender could not be a necessary admission of the assessee that the surrendered amount were his undisclosed income so such surrender alone could not be the basis of imposing penalty.

Relying upon the above decision, Hon'ble Karnataka High Court in the case of CIT Vs SSA'S Emerald Meadows (2016) 73 taxguru.in 241 (Karnataka) dismissed appeal of the Department in which substantial question of law was as follows:

"(1) Whether, omission of assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved

beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?"

Hon'ble Supreme Court dismissed SLP of the department in the above case of CIT Vs SSA'S Emerald Meadows [2016] 73 taxguru.in 248 (SC)/[2016] 242 Taxman 180 (SC). Courts have consistently held that at the time of initiation of penalty, charge should be clearly specified. Understanding of this basic concept by the assessing officers will go a long way in correct initiating of penalty and passing of sustainable penalty orders. Each and every word in the sentence for Initiation of penalty is crucial. Hence, the assessing officers must stop, think and ponder before recording satisfaction for initiation of penalty.

As reproduced above, Hon'ble Karnataka High Court in the case of CIT Vs Manjunatha Cotton & Ginning Factory held that notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Similarly, in the printed notice u/s 274 r.w.s 270A, it is essential to tick the applicable part in printed penalty notice and strike off inapplicable part in printed penalty notice. Thus, if penalty is initiated only for under reporting of income, the printed notice must not contain mention of misreporting of income. In such a case, misreporting of income is required to be essentially struck off.

When the assessee had himself Surrendered the amount during the asst proceedings and tax was deducted from TDS, No further appeal was filed. Therefore provision of section 270A is not applicable here. The assessee fulfilled all the requirements of the above section for dropping penalty u/s 270A of the IT Act but he was not aware to submit any letter to drop the penalty proceedings because that was the first year for this penalty so the AO should have waived it by his discretion power and should have waived it so it was unfair to impose penalty u/s 270A in this case.

so in view of above cancel the penalty order u/s 270A and allow the appeal.”

6. During the course of hearing, the ld. AR for the assessee in addition to the submission made before us, the ld. CIT(A) reiterated the submission. The ld. AR for the assessee further submitted that the written submission before the ld. CIT(A) but the ld. CIT(A) has not considered the submission and the order is not speaking on the merits of the case. The findings of the ld. CIT(A) is nothing but only confirmation of the contention of the Assessing Officer and even though the assessee has submitted that he has neither the assessee

has not unreported his income, the income has already been taxed. The Only deduction which was claimed in advertently and by the guidance of counsel who is praying the return of income remained the same even there is no lose to the income as TDS has already been deducted during the assessment proceedings. The assessee has already been surrendered the claim and not persuaded considering the facts that even after the assessment there is no liability of tax. He has not filed any appeal on account of the assessment shows that there is no unreported of his income by the assessee and merely the assessee has not filed and there cannot be any automatically levy penalty u/s 271A of the Act.

7. Per contra, the ld. DR relied upon the reasoned order of the lower authorities, wherein the assessee has filed two different return of income and in the later one has filed wrong claim when the assessee wrong claim of donation and was called upon to justify the claim. Then the assessee has surrendered the excess claim. In light of the this fact, penalty levied by the lower authorities should be sustained.

8. We have heard the both parties and perused the materials available on record. It is not undisputed that the assessee is a salaried employee, the

income from all the sources are duly reflected in the return of income filed by the assessee. The assessee on ad hoc basis filed a claim of deduction u/s 80G of the Act for an amount of Rs. 5,00,000/- this claim was subjected to verification in scrutiny assessment and the assessee did not substantiate this claim of donation by filing the relevant proof of claim and in the assessment proceedings, the assessee has surrendered the said amount in assessment proceeding. Therefore, pursuant to the provisions of Section 270A of the Act, the Assessing Officer has levied penalty upon the assessee which is undisputed it is also not disputed that the fact further, withdrawal of claim. There is no additional amount remained to be payable by the assessee is the tax as income has already been paid by way of TDS and therefore since the assessee has fairly admitted in the assessment proceedings though he has without sufficient proof of claim deduction and therefore, looking to set of facts and circumstances placed before us regarding submission of deduction of claim where in the assessee has placed on record in the return of income the following details:-

B. donations entitled for 50% deduction without qualifying limit								
S. No.	Name of donee	Address	City or Town or District	State Code	Pincode	PAN of the Donee	Amount of donation	Eligible amount of donation
1.	L J Knowl	Vastrapur	Ahmedabad	Gujarat	380015	AACCL1607M	300000	150000

	Edge foundation	Ahmedabad						
2.	Ahmedabad District Probation- After car Association	Childern Home, Khanpur	Ahmedabad	Gujarat	380001	AABTT1320	300000	150000
3.	Sewa Bharti Gujarat	Knakariya Ahmedabad- 380028	Ahmedabad	Gujarat	380028	AACTS9727	400000	200000
Total B							1000000	500000

In the assessment proceeding the assessee did not produce the proof and the ld. AO based on the information placed on record nothing contrary placed on record that the claim of the assessee in real terms not given. The assessee has given the name of trust, pan number and amount of donation given was made in the return of income the assessee has withdrawn the said claim of donation and ld. AO did not investigate this matter further considered the revised computation and in that there is no further amount of tax or interest payable and the details of the donation was already available on record. But the assessee in the assessment proceeding submitted that “Regarding Donation-I don’t any document slip so request you to cancel the same and offer my apology and promise to not put any kind of nondocumentary submission in future.” This version does not establish that the claim of the assessee is bogus

or non genuine nothing contrary brough on record. Considering the facts and circumstances of the case the penalty is not sustainable in light of this circumstances of the case, we are of the considered view that the penalty of levy of the lower authorities confirmed by the ld. CIT(A) u/s 270A of the Act does not have any legs to stand, therefore, the same is deleted based on stated facts.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 11/08/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench