

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

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| ITA No.411/Bang/2023     |
| Assessment Year: 2017-18 |

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| Akshata Vishwas Tudavekar<br>B-1304, NCC Maple Heights<br>Outer Ring Road, Mahadevapura<br>Bangalore 560 016<br><br><b>PAN NO : ADUPT0704B</b> | <b>Vs.</b> | ITO Ward-5(3)(5)<br>Bangalore |
| <b>APPELLANT</b>   |            | <b>RESPONDENT</b>             |

|                      |   |                           |
|----------------------|---|---------------------------|
| <b>Appellant by</b>  | : | Shri Kaushik M., A.R.     |
| <b>Respondent by</b> | : | Shri Subramanian S., D.R. |

|                              |   |            |
|------------------------------|---|------------|
| <b>Date of Hearing</b>       | : | 14.09.2023 |
| <b>Date of Pronouncement</b> | : | 14.09.2023 |

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of NFAC dated 15.11.2022 for the assessment year 2017-18. The assessee has raised following grounds:

- 1. The order of the NFAC dated 15.11.2022 vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1047273158(1) for the above assessment year is contrary to law, facts, and in the circumstances of the case., \_*
- 2. The NFAC erred in sustaining the levy of penalty in terms of Section 270A of the Act dated 28.08.2021 amounting to Rs. Rs.2,69,843/-without assigning proper reasons and justification.*
- 3. The NFAC failed to appreciate that the provisions of Section 270A had no application to the facts and circumstances of the case and ought to have appreciated that the levy of penalty under consideration wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.*
- 4. The NFAC failed to appreciate that the order imposing penalty was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.*

5. *The NFAC failed to appreciate that the reply filed vide letter dated 31.05.2021 during the penalty proceedings was not considered in proper perspective and ought to have appreciated that the levy of penalty was erroneously considered automatic upon completion of assessment.*
  6. *The NFAC ought to have appreciated that the findings in para 5.3 were wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.*
  7. *The NFAC failed to appreciate that presumption of under reporting of taxable income was wholly unjustified and ought to have appreciated that the reasonable cause shown for the wrong claim made in the ROI was completely overlooked and brushed aside by recording tangential findings in relation thereto.*
  8. *The NFAC went wrong in placing reliance on certain decisions which were not applicable to the facts of the present case and ought to have appreciated that the misreading of the decisions relied upon with a view to apply the ratio to the facts of the present case would vitiate the findings in para 5.3 of the impugned order.*
  9. *The NFAC failed to appreciate that there was no proper opportunity before completing the assessment as well as before passing the impugned order and ought to have appreciated that any order passed in violation of NJP would be nullity in law.*
  10. *The Appellant craves leave to file additional grounds/arguments at the time of hearing.*
2. There was a delay of 125 days in filing the appeal before this Tribunal. The assessee has filed a condonation petition before us seeking condonation of delay and it was submitted that assessee has sent the impugned order of the NFAC to the Officer of the Counsel on the record at Chennai, Tamilnadu for taking appropriate action. The Counsel on record had then prepared the appeal papers and had sent it to the assessee for getting signature for filing the said appeal in the Bengaluru Bench as could be verifiable from the Form No. 36 dated 21.11.2022. The Office of the counsel on record on receipt of the signed papers from the appellant, had inadvertently filed the appeal against the impugned order in the Registry of Income Tax Appellate Tribunal at Chennai within the stipulated time

(01.12.2022) instead of filing the appeal against the said order before the jurisdictional bench of Income Tax Appellate Tribunal at Bangalore.

2.1 The appeal filed before the Bench at Chennai against the impugned order dated 15.11.22 in ITA No. 1018/ CHNY/2022 came up for hearing on 14.05.2023 before the Income Tax Appellate Tribunal, Chennai 'B' Bench, and at the said point in time mistake committed by the Office of the Counsel on Record was noticed. The Appellate Tribunal, at Chennai in their order dated 15.05.2023 had dismissed the appeal of the assessee as un-admitted with liberty to file the correct / current appeal against impugned order before the Income Tax Appellate Tribunal, Bangalore. The said appeal against the impugned order dated 15.11.2022 is filed by the assessee along with this petition for condonation of delay with a prayer to admit the appeal by condoning the delay in filing the appeal which is on account of the mistake committed in the office of the Counsel on record and further pleaded for adjudicating the issue on merits in the interest of justice.

3. The ld. D.R. has not put any serious objection on this issue.

4. After hearing both the parties, we are of the opinion that admittedly, in this case, the assessee has filed the appeal before Chennai Tribunal and Chennai Bench in ITA No.1018/Chny/2022 dated 15.11.2022 has dismissed the appeal of the assessee by observing that jurisdiction of this appeal lies with Bangalore Benches of Tribunal as the assessment order has been framed by ITO Ward-5(3)(5), Bangalore on 30.10.2019. Consequently, the penalty u/s 270A of the Act has been levied by NFAC, Delhi on 28.8.2021, which has been confirmed by the ld. CIT(A)/NFAC vide order dated 15.11.2022. Hence, the appeal has been dismissed with the liberty to the assessee to file the appeal before the jurisdictional Bench of the Tribunal dismissing the appeal as unadmitted. In view of this, the assessee has filed the present

appeal with a delay of 125 days on 19.5.2023. In our opinion, the filing of wrong Bench of the Tribunal at Chennai neither willful nor deliberate but due to reasons beyond the control of the assessee. Hence, we are inclined to condone the delay in filing the appeal before this Bench of the Tribunal and the appeal is adjudicated for adjudication.

5. Facts of the case are that in Form 16 provided by the assessee during the course of assessment proceedings, it was found that the deduction allowable under Chapter VIA was Rs.1,50,000/-, whereas the assessee erroneously claimed chapter VIA deduction amounting to Rs.20,15,000/- in the return of income and claimed refund of Rs.5,39,690/-. The assessee thus had claimed excess deduction of Rs.18,65,000/- under Chapter VIA. Vide show cause notice dated 23.10.2019 the assessee was intimated about the proposed addition and was requested to file objections if any on or before 25.10.2019. However, the assessee failed to comply with the said show cause notice dated 25.10.2019. As the assessee had not filed any objections against the draft assessment order, the ld. AO completed the assessment by making an addition of Rs.18,65,000/-. Penalty proceedings u/s 270A of the Act was initiated for under reporting of income by issue of notice u/s 274 r.w.s. 270A of the Act dated 30.10.2019.

5.1 After issuing the show cause notice to the assessee, the ld. AO has observed as follows:

1. *The assessee had claimed deduction Chapter VIA amounting to Rs.20,15,000/-instead of Rs.1,50,000/- as mentioned in Form No.16. Thus, the assessee had claimed excess deduction of Rs.18,65,000/- under Chapter VIA resulting in refund of Rs.5,39,690/-. This fact has also been admitted by the assessee.*
2. *During the course of assessment proceedings, show cause notice dated 23.10.2019 was issued to the assessee with a request to file her objections, if any on or before 25.10.2019. However, the assessee failed to comply. Hence the assessment was completed by disallowing the excess claim of Rs.18,65,500/- and rightly initiating proceedings u/s. 270A for under-*

*reporting of income. It would also not be out of place to mention here that the assessee had made excessive claim which was legally not due to her.*

*3 The contention of the assessee that deduction claimed in the return of income was false and beyond her knowledge is not acceptable. There is no dispute that the assessee has made wrong claim in respect of all the above mentioned issues. The assessee admitted that she had made wrong claim, however, she is trying to shift the responsibility on her consultant and wants to take undue shelter of wrong advice. This has been done intentionally with the sole aim to evade tax and claim excessive undue refund. Ignorance of law and shifting of responsibility on the shoulder of others cannot save the assessee from penalty. If the case would not have been selected for scrutiny, the relevant points / issues would have gone unattended. The commission/omission of a representative is binding on the principal. No shelter can be taken on the account of wrong advice by legal counsel. The assessee failed to come forward with any genuine reason for default committed by her.”*

5.2 Against this assessee went in appeal before NFAC. He observed that the assessee was stated to be a software development manager. She is not an illiterate person. She was not a new tax assessee also. It was stated that her tax return was filed by one practitioner till AY 2016-17. From AY 2017-18, her return was claimed to be filed by her husband's tax practitioner. It is stand of assessee that the new tax practitioner claimed deductions/exemptions which were not allowable. This contention that the tax practitioner filed return claiming deduction exemption without knowledge of assessee is not tenable. Against the content of Form 16 in which deduction under Chapter VIA was shown at Rs.1,50,000/-, assessee claimed Rs.20,15,000/- in the tax return. The return must have been signed by assessee. She also must be having comparative positions of salary, Form 16 and returns of income of earlier years. The assessee had taken calculated risk of attempting to defraud the revenue since most of salary tax returns are being subject to processing u/s 143(1) only. The claim that she had filed police complaint against the tax practitioner for causing financial loss to her is totally of no moment here. It is not the case of assessee that her TDS refund on account

of bogus claim of deduction were deposited to the account of the tax practitioner and that she incurred financial loss. The assessee relied on several case laws in support of proposition that penalty was not attracted. The case law relied upon do not pertain to penalty u/s 270A of the Act. Accordingly, with these observations, the NFAC dismissed the appeal of the assessee. Against this assessee is in appeal before us.

6. Before us, the ld. A.R. submitted that the above appeal emanates from the order passed by the NFAC u/s 250 of the Act upholding the penalty orders passed u/s 270A of the Act for the Assessment year 2017-18 on the correctness of the levy of penalty at the rate of 50% in terms of Section 270A of the Act for under-reporting of income. In this regard, he submitted that the assessee had filed her return of income for the Assessment Year 2017-18 with the assistance of Tax Practitioner Ms. Praveena of Praveena & Associates. Subsequently, the returns of income were selected for scrutiny wherein it was pointed out that there was huge claim of deductions in the Returns of Income originally filed by the above-mentioned tax practitioner. During the Assessment proceedings, the deductions wrongly claimed in the Returns of income were withdrawn and the income was assessed in accordance with the Form No.16 issued by the employer. The Assessee did not file any appeal against the assessment order passed u/s 143(3) of the Act passed by the assessing officer. The Assessing officer in consequence to the above assessment orders had proceeded to initiate and levy penalty in terms of Section 270A of the Act for the assessment year 2017-18. The Assessee before the assessing officer submitted that the claim for deductions made in the original Returns of Income were claimed as per this professional advice obtained from the above-mentioned tax practitioner and the assessee was on the bonafide impression/belief that the said claims were in accordance with law. The Assessee being a salaried employee working in M/s

Tesco Bengaluru Private limited was not aware of the provisions under Income Tax Act, 1961 and hence entrusted the filing of the return of income to the above-mentioned tax practitioner who had made wrong claims / deductions in the returns of income filed for the Assessee. In fact, the assessee had filed letters obtained from the Income Tax Practitioner fortifying the above facts and also the mistake committed at their end in relation to the Returns of income filed for the Assessment year under consideration.

6.1 The Id. A.R. further submitted that the action was initiated against the Tax practitioner by filing a complaint with the police and the copy of the Acknowledgement issued in relation to the proceedings initiated before the Inspector of Police, V6 Kolathur Police Station, Chennai — 600082. The said document would further establish the fact of mistake / wrong deductions claimed by the said Tax Practitioner and the Assessee's bonafide belief that the said deductions were in accordance with the provisions of the Act. In such circumstances, the provisions of Section 270A of the Act would not apply to the facts of the present case inasmuch as the bonafide explanation offered by the assessee would fall within the ambit of exception carved out in sub clause (a) to sub section (6) of Section 270A of the Act. The Id. A.R. drew our attention to the provisions of Section 270A(6)(a) of the Act which reads as under:

*"The amount of income in respect of which the assessee offers an Explanation and the Assessing Officer or [the Joint Commissioner (Appeals) or] the **Commissioner (Appeals)** or the Commissioner or the Principal Commissioner, as the case may be, is **satisfied that the explanation is bonafide and the assessee has disclosed all the material facts to substantiate the explanation offered;**"*

6.2 The Id. A.R. submitted that the Assessee's action in engaging an Income Tax Practitioner should be construed as bonafide especially in the changed scenario of the introduction of class of persons as Income Tax Return Preparers u/s 139B of the Act with

basic training. Therefore, there is absolutely nothing wrong in approaching a ITP for the preparation of the income tax returns for both the years which would definitely fall within the scope of Section 270A(6)(a) of the Act. Hence, he pleaded for exercising the power vested in terms of Section 270A(6)(a) of the Act for not levying penalty in terms of Section 270A of the Act by accepting the bonafide explanation offered by the Assessee. As a consequence, the assessee would be entitled to immunity in terms of section 270AA of the Act especially in view of the non-filing of appeal against the assessment order and full payment of tax before the completion of the assessment. The assessee had filed manual Form No. 68 before the Assessing officer pleading for grant of immunity in terms of section 270AA of the Act. The copies of Form No. 68 manually filed for the Assessment years under consideration. Further, he submitted that the assessee with a view to comply with statutory prescription had taken steps to file Form No. 68 electronically for the above-mentioned assessment years. The Id. A.R. pleaded for exercising the power vested in terms of Section 270A(6)(a) of the Act by holding that the facts of the present case would fall within the exceptions carved out in the event of reckoning the facts as a case of under-reporting of income and delete the penalty levied for the Assessment Year 2017-18 in the interest of justice.

6.3 The Id. A.R. for the assessee alternatively submitted that having complied with the conditions prescribed u/s 270AA of the Act namely payment of tax dues if any within 30 days from the date of receipt of the order and non-filing an appeal against the assessment order passed for the Assessment Years under consideration as well as the filing of Form No. 68 initially by manual form thereafter in electronic form, it is pleaded either for entertaining the Form No. 68 filed or for creating the scenario for the competent authority / JAO

to consider and grant immunity in terms of Section 270AA of the Act and thus render justice.

7. The ld. D.R. strongly opposed the arguments of the assessee's counsel.

8. We have heard the rival submissions and perused the materials available on record. In our opinion, similar issue came for consideration before this Tribunal in the case of Sri Vinod Radhakrishna in ITA Nos.207 to 209/Bang/2023 wherein the Tribunal vide order dated 20.6.2023 held as under:

*“4. After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in the case of Shri Ravikiran Netla in ITA No.2123/Bang/2018 dated 10.9.2020 wherein held as under:*

*6. “We have heard both the parties and perused the material on record. In the quantum appeal order dated 19.2.2018, the CIT(Appeals) recorded these facts in para 5 of his order that Mr. Nagesh Shastry was instrumental in filing the revised return. However, the same facts and arguments in the penalty proceedings are not considered by the CIT(Appeals). In our opinion, it is proper to examine whether Mr. Nagesh Shastry is instrumental in claiming fraudulent refund on behalf of assessee by indulging in malpractices. If Mr. Nagesh Shastry is found solely responsible for such fraudulent act and that assessee's act is bonafide, penalty cannot be levied. With these observations, we remand this issue to the file of the CIT(Appeals) to consider all these facts and decide the issue afresh in accordance with law, after affording assessee opportunity of being heard.*

*7. In the result, the appeal of assessee is allowed for statistical purposes.”*

*4.1 Further, similar view has been taken in the case of Mr. Veereshayya Angadi in ITA Nos.10 & 11/Bang/2023 vide order dated 19.6.2023.*

*4.2 It is also followed in the case of Shri Bolar Jayaraj Shetty in ITA Nos.184 to 186/Bang2023 dated 8.5.2023 by the Tribunal.*

*4.3 In view of the above, taking a consistent view, we remit this issue in dispute to the file of AO for fresh consideration to see whether the assessee is bonafide in claiming excessive refund. If the AO finds that if the assessee is bonafide and it was acted at the*

*instigation of the tax consultant Mr. Nagesh Shastry, no penalty shall be levied u/s 271(1)(c) of the Act.*

5. *The issue in other appeals in ITA Nos.208 & 209/Bang/2023 for the AYs 2015-16 & 2016-17 are similar and applying the same ratio, the issue in these two appeals is remitted to the file of AO on similar directions.*

6. *In the result, all the appeals of the assessee in ITA Nos.207 to 209/Bang/2023 for the AYs 2014-15 to 2016-17 are partly allowed for statistical purposes.”*

8.1 The facts of the present case is similar to the facts of the case cited (supra) in the case of Sri Vinod Radhakrishna. Hence, the issue in dispute is also remitted to the file of ld. AO to decide it afresh by verifying whether assessee's consultant is instrumental in claiming excess deduction under Chapter VIA of the IT Act on behalf of assessee by indulging in malpractice or assessee is responsible for the same. If the assessee's consultant is wholly responsible for such fraudulent act and the assessee's act is bonafide, penalty cannot be levied u/s 270A of the Act. With this observation, we remit this issue in dispute to the file of ld. AO for fresh consideration after giving an opportunity of hearing to the assessee.

9. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 14<sup>th</sup> Sept, 2023

**Sd/-**  
**(Madhumita Roy)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 14<sup>th</sup> Sept, 2023.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**