

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VARANASI CIRCUIT BENCH, VARANASI**

**BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER  
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.63/VNS/2023  
Assessment Year:2018-19

M/s Kahm Properties Pvt. Ltd. B-21/192, Kamaccha Varanasai	v.	The DC/ACIT Central Circle Varanasi
TAN/PAN:AACCK7739F		
(Appellant)		(Respondent)

Appellant by:	Shri V. K. Jindal		
Respondent by:	Shri A. K. Singh, D.R.		
Date of hearing:	26	09	2023
Date of pronouncement:	29	09	2023

**ORDER**

**PER AMIT SHUKLA, A.M.:**

The aforesaid appeal has been filed by the assessee against order dated 24.4.2023, passed by the Id. CIT(A)-3, Lucknow, in relation to penalty proceedings under section 270A of the Income Tax Act, 1961 for Assessment Year 2018-19. In the grounds of appeal, the assessee has challenged the levy of penalty of Rs.8,18,692/- under section 270A of the Act.

2. The brief facts of the case are that the assessee-company was running marriage lawn and was showing income from rent out of the marriage lawn. The return of income was filed under section 139(1) of the Act on 27.9.2018, declaring an income of Rs.2,72,280/-. A survey under section 133A of the Act was

conducted on 2.7.2019 on the business premises of the assessee. In the survey proceedings, the assessee admitted certain undisclosed income, amounting to Rs.15,89,684/- on account of undisclosed rent received on lawn booking. The assessee has also paid due taxes on the admitted income. Thereafter, the assessee's case was selected for scrutiny and notice under section 143(2) of the Act was issued on 25.9.2019. The Assessing Officer, in the assessment order, accepted the income exactly as offered by the assessee and completed the assessment at Rs.18,61,970/-, which included the income originally returned by the assessee, of Rs.2,72,282/- and the income offered by the assessee during the survey, of Rs.15,89,684/-.

3. The Assessing Officer initiated penalty proceedings under section 270A of the Act and levied a penalty of Rs.8,18,692/- on the income offered by the assessee, holding that penalty is to be levied for "under-reporting in consequence of misreporting as per section 270A(9) of the Act".

4. The Id. CIT(A) has confirmed the penalty imposed by the Assessing Officer after rejecting the assessee's explanation and relying on various case laws.

5. Before us, the Id. Counsel for the Assessee submitted that the time limit for revised return had already expired and after survey, the assessee had immediately offered the additional income and paid due taxes thereon. A notice under section 143(2) of the Act was issued much later before the commencement of any proceedings, therefore, it cannot be held that any misreporting or under-reporting was found by the Assessing Officer. Therefore, no penalty should have been levied.

6. On the other hand, the ld. D.R. submitted that it is a fit case for levy of penalty, as it clearly falls within the conditions laid down in sub-section (9) of section 270A of the Act, wherein the assessee has firstly made misreporting or suppression of facts and failure to record any receipt in the books of account having a bearing on total income. Here in this case, after survey, it was found that the assessee has failed to record the rent receipts from the booking of marriage lawn and therefore, it is a clear-cut case for levy of penalty under section 270A (9) of the Act. He submitted that sub-section (6) of section 270A of the Act provides for certain exceptions for under-reporting of income, which in the assessee's case do not fall and therefore, the Assessing Officer has rightly levied the penalty under section 270A of the Act, which has rightly been confirmed by the ld. CIT(A) after detailed discussion.

7. We have heard the rival submissions and also perused the findings recorded in the impugned order. It is an undisputed fact that in the survey action, which took place on 2.7.2019 under section 133A of the Act, the assessee had offered additional income of Rs.15,89,684/- on account of undisclosed rent. Though the time limit for filing the revised return had expired, but the assessee had offered the amount and paid due tax thereon prior to commencement of any proceedings by the Assessing Officer, i.e., notice under section 143(2) of the Act for selecting the case under scrutiny was issued on 25.9.2019, whereas the assessee had suo motu recomputed the income and paid entire due tax on 26.8.2019. Section 270A of the Act reads as under:

**“Penalty for under reporting and misreporting of income.**

**270A.** (1) *The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.*

(2) *A person shall be considered to have under-reported his income, if—*

*(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;*

*(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;*

*(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;*

*(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;*

*(e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;*

*(f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;*

*(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.*

(3) *The amount of under-reported income shall be,—*

*(i) in a case where income has been assessed for the first time,—*

*(a) if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of sub-section (1) of section 143;*

*(b) in a case where no return has been furnished,—*

*(A) the amount of income assessed, in the case of a company, firm or local authority; and*

*(B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);*

*(ii) in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order:*

**Provided** *that where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under-reported income shall be determined in accordance with the following formula—*

$$(A - B) + (C - D)$$

*where,*

*A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);*

*B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;*

*C = the total income assessed as per the provisions contained in section 115JB or section 115JC;*

*D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income:*

**Provided further** that where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

*Explanation.—For the purposes of this section,—*

*(a) "preceding order" means an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated;*

*(b) in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.*

*(4) Subject to the provisions of sub-section (6), where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as "preceding year") and no penalty was levied for such preceding year, then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.*

*(5) The amount referred to in sub-section (4) shall be deemed to be amount of income under-reported for the preceding year in the following order—*

(a) *the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and*

(b) *where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.*

(6) *The under-reported income, for the purposes of this section, shall not include the following, namely:—*

(a) *the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;*

(b) *the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;*

(c) *the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;*

(d) *the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and*

(e) *the amount of undisclosed income referred to in section 271AAB.*

(7) *The penalty referred to in sub-section (1) shall be a sum equal to fifty per cent of the amount of tax payable on under-reported income.*

(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.*

(10) *The tax payable in respect of the under-reported income shall be—*

(a) *where no return of income has been furnished and the income has been assessed for the first time, the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income;*

(b) *where the total income determined under clause (a) of sub-section (1) of section 143 or assessed, reassessed or*

*recomputed in a preceding order is a loss, the amount of tax calculated on the under-reported income as if it were the total income;*

*(c) in any other case determined in accordance with the formula—*

*(X-Y)*

*where,*

*X = the amount of tax calculated on the under-reported income as increased by the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order as if it were the total income; and*

*Y = the amount of tax calculated on the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order.*

*(11) No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.*

*(12) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by the Assessing Officer, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be.”*

8. Sub-section (1) of section 270A of the Act provides that the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income. The basic ingredient to trigger the penal provision under this section is that

there has to be any proceedings under the Act, during the course of which the Assessing Officer or any other authority mentioned therein finds under-reporting of income, then only penalty is leviable. Here in this case, the proceedings itself was initiated post-issuance and service of notice under section 143(2) of the Act on 25.9.2019. Prior to commencement of assessment proceedings, the assessee had filed the revised computation of income and has already paid due taxes thereon. It is not the case that the Assessing Officer, during the course of any proceedings under the Act, has found any under-reporting of income. The Survey under section 133A of the Act is process of enquiry, which has nothing to do with the commencement of proceedings under the Act. It is only when the return has been filed and notice under section 143(2) of the Act is issued, the proceedings are initiated. Under the provisions of the Income Tax Act, the proceedings can be initiated by issuance of notice under section 143(2), notice under section 148, notice under section 153A or 153C or revisionary proceedings under section 263 of the Act. Search and seizure action under section 132 of the Act and survey under section 133A of the Act are not the proceedings initiated by the Assessing Officer, albeit are the power of the Income-tax authorities to conduct enquiry, which can be prior to the commencement of any assessment proceedings. Thus, here in this case, once the proceedings of assessment have not been commenced and the assessee had already offered the income and paid due taxes thereon, it cannot be a case of under-reporting of income.

9. Further, sub-section (8) of section 270A of the Act provides, where under-reporting of income is in consequence of

any misreporting, then penalty referred to in sub-section (1) shall be equal to 200% of the amount of tax payable on under-reported income. Thus, this sub-section refers to penalty in sub-section (1) which, as discussed above, will only get triggered when the Assessing Officer may, during the course of the assessment proceedings, direct that any person who has under-reported his income shall be liable to pay penalty in addition to tax. A pre-requisite condition is under-reporting or misreporting of income has to be found during the course of any proceedings, which here in this case, has not been found, albeit, the assessee had already offered the income and paid due taxes thereon before commencement of the proceedings. Accordingly, on the facts of the given case, no penalty under section 270A of the Act can be levied and the same is directed to be deleted.

10. In the result, the appeal of the assessee is allowed.  
Order pronounced in the open court on 29.9.2023.

Sd/-  
[B. R. BASKARAN]  
ACCOUNTANT MEMBER

Sd/-  
[AMIT SHUKLA]  
JUDICIAL MEMBER

DATED: 29<sup>th</sup> SEP, 2023

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR