

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 314/RPR/2023
निर्धारण वर्ष / Assessment Year : 2017-18

M/s. South Eastern Coalfields Limited
Seepat Road, Sarkanda,
Bilaspur (C.G.)-495006
PAN: AADCS2066E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-1(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : S/shri Ajit Korde, Advocate &
Ankur Goel, CA

Revenue by : Shri Debashis Lahiri, CIT-DR

सुनवाई की तारीख / Date of Hearing : 24.11.2023

घोषणा की तारीख / Date of Pronouncement : 30.11.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 24.08.2023, which in turn arises from the order passed by the A.O under Sec. 270A of the Income-tax Act, 1961 (in short 'the Act') dated 01.04.2022 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. (a) That, on the facts and in the circumstances of the case and in law. impugned penalty order dated 01 April 2022 passed by the Assistant Commissioner of Income Tax, Circle-1, Bilaspur ('Ld. AO') levying penalty under section 270A of the Act is bad in law and liable to be quashed.

(b) That on the facts and in the circumstances of the case and in law, the Ld. AO has erred in levying penalty on additions made on a legal issue.

2. That on the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ['Ld. CIT(A), NFAC'] erred in mis-interpreting its jurisdiction conferred to him under-section 246A and thereby dismissing the appeal without adjudicating any of the grounds of appeal raised before him.

3. Without prejudice to the above grounds of appeal and in the facts and circumstances of the case and in law. penalty levied under section 270A is void-ab-initio as no penalty under section 270A was initiated during the course of assessment proceedings.

4. Without prejudice to the above grounds of appeal and in the facts and circumstances of the case and in law, the Ld. AO in violation of principles of natural justice and without application of mind, levied penalty for misreporting under-section 270A without specifying any of the circumstances or actions as provided in section 270A(9) in the penalty show-

cause notice: rendering penalty order passed by him bad-in-law, which is liable to be quashed.

5. That on the facts and in the circumstances of the case and in law, the Ld. AO has erred by computed misreported income at Rs.18,06,70,76,627 arbitrarily, without providing any breakup of the same.

6. That on the facts and in the circumstances of the case and in law. the Ld. CIT(A), NFAC erred in not adjudicating the ground of appeal challenging the validity of show cause-, notice issued by the Ld. AO before levying penalty u/s 270A.

(a) That or. the facts and in the circumstances of the case and in law. the Ld. CIT(A), NFAC erred in not adjudicating the ground of appeal raised on initiating penalty proceedings on account of disallowance of provision for mine closure.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(c) Without prejudice to the above, the Ld. AO has erred in law and in facts, in levying penalty u/s.270A without establishing that the explanation furnished by the appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

8. (a) That on the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC erred in not adjudicating the ground raised for initiating penalty proceedings on account of disallowance of OBR expenses.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(d) Without prejudice to the above, the Ld. AO has erred in law and in facts, in levying penalty u/s 270A without establishing that the explanation furnished by the Appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

9. (a) That on the facts and in the circumstances on the case and in law, the Ld. CIT(A), NFAC erred in not adjudicating the ground raised for initiating penalty proceedings on account of disallowance of expenditure incurred on power and fuel on ad-hoc basis.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(c) Without prejudice to the above, the Ld. AO has erred in law and in facts, in levying penalty u/s 270A without establishing that the explanation furnished by the Appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

10. (a) That on the facts and in the circumstances of the case and in law, the Ld. CIT(A). NFAC erred in not adjudicating the ground raised for initiating penalty proceedings on account of disallowance of provision made for pay revision of the executives.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(c) Without prejudice to the above, the Ld. AO has erred in law and in facts, in levying penalty u/s 270A without establishing that the explanation furnished by the Appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

11. (a) That on the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC erred in not adjudicating the ground raised for initiating penalty proceedings on account of disallowance of expenditure incurred on coal transportation through ex-servicemen transport companies on ad-hoc basis.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(f) Without prejudice to the above, the Ld. AO has erred in law and in facts, in levying penalty u/s 270A without establishing that the explanation furnished by the Appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

12. (a) That on the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC erred in not adjudicating the ground raised for initiating penalty proceedings on account of disallowance of depreciation on railway siding leased to M/s Aryan Coal Beneficiation Pvt. Ltd. M/s Gujarat State Electricity Board and M/s Spectrum Coal & Power Limited.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(g) Without prejudice to the above, the Ld. AO has erred in law and in facts, in levying penalty u/s 270A without establishing that the explanation furnished by the Appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

13. (a) That on the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC erred in not adjudicating the ground raised for initiating penalty proceedings on account of disallowance of compensation paid to employees based on actuarial valuation.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(h) Without prejudice to the above, the Ld. AO has erred in law and in facts, in levying penalty u/s 270A without establishing that the explanation furnished by the Appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

14. (a) That on the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC erred in not adjudicating the ground raised for initiating penalty proceedings on account of disallowance of expenditure incurred on land compensation and rehabilitation.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(i) Without prejudice to the above, the Ld. AO has erred in law and in facts, in levying penalty u/s 27CA without establishing that the explanation furnished by the Appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

15. (a) That on the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC erred in not adjudicating ground raised for initiation, penalty proceedings on account of LD penalty received.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(j) Without prejudice to the above, the Ld. AO has erred in law and facts, in levying penalty u/s. 270A without establishing that the explanation furnished by the Appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

16. (a) That on the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC erred in not adjudicating the ground raised for initiating penalty proceedings on account of additions made due to shore credit of interest income.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(k) Without prejudice to the above, the Ld. AO has erred in law and in facts, in levying penalty u/s. 270A without establishing that the explanation furnished by the Appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

17. (a) That on the facts and in the circumstances on the case and in law, the Ld. CIT(A), NFAC erred in not adjudicating the ground raised for initiating penalty proceedings on account of disallowance of depreciation on hospital building leased to Apollo Hospitals.

(b) Without prejudice to the above, the Ld. AO has erred in law and in facts, by levying penalty on disallowance inflicted by him in the assessment order on the above issue.

(c) Without prejudice to the above. the Ld. AO has erred in law and in facts, in levying penalty u/s.270A without establishing that the explanation furnished by the Appellant was not bona fide and Appellant did not disclose all material facts to substantiate explanation offered by it.

18. (a) That the appellant craves leave to add and/or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal.

(b) The Appellant submits that each of the above grounds are mutually exclusive and without prejudice to one another.”

2. Succinctly stated, the assessee company which is involved in the activities relating to development of mines and extraction of coal from various mines had filed its return of income for A.Y.2017-18 on 31.10.2017, disclosing a total income of Rs.4288,49,05,749/-. Subsequently, the case of the assessee company was selected for scrutiny assessment u/s.143(2) of the Act.

3. Thereafter, assessment was framed by the A.O vide his order passed u/s.143(3) of the Act dated 17.03.2019 wherein the income of the assessee company was determined at Rs.6365.55 crore (approx.). Although, the A.O while culminating the assessment initiated penalty proceedings u/s. 271(1)(c) of the Act, but issued "Show Cause Notice" (SCN) dated 17.03.2019 u/s. 274 r.w.s. 270A of the Act. The A.O, thus, called upon the assessee to put forth an explanation that as to why penalty for under reporting/misreporting of income may not be imposed upon it u/s. 270A of the Act. Thereafter, the A.O issued 'SCN' u/s. 274 r.w.s. 270A of the Act, dated 02.01.2020 and 24.02.2021. As the explanation advanced by the assessee company (filed on 17.01.2020 and 26.02.2021) did not find favour with the A.O, therefore, he vide his order passed u/s. 270A dated 01.04.2022 imposed penalty of Rs.1250.53 crore u/s.270A of the Act on the assessee company.

4. Aggrieved the assessee carried the order passed by the A.O u/s.270A of the Act dated 01.04.2022 before the CIT(Appeals). The CIT(Appeals) holding a conviction that the penalty imposed by the A.O u/s. 270A did not fall within the

realm of the orders which were appealable before him, thus dismissed the appeal by treating the same as infructuous.

5. The assessee company being aggrieved with the order of the CIT (Appeals) has carried the matter in appeal before us.

6. We have heard the Id. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

7. Shri Ajit Korde, Ld. Authorized Representative (for short 'AR') for the assessee company at the very outset submitted that the CIT(Appeals) had grossly erred in law and facts of the case in dismissing the appeal of the assessee company by treating the same as infructuous. Elaborating on his contention, it was submitted by the Ld. AR that the CIT(Appeals) had grossly misconceived the settled position of law and observed that no appeal against penalty imposed u/s. 270A of the Act was maintainable before him. Our attention was drawn by the Ld. AR to the provisions of Section 246A(1)(q) of the Act. It was averred by him that as penalty imposed u/s. 270A of the Act was clearly an appealable order, therefore, the CIT(Appeals) had wrongly dismissed the appeal on the basis of misconceived appreciation of law. Apart from that, it was submitted by the Ld. AR that even otherwise the A.O had wrongly imposed penalty u/s.270A of the Act for the reason that the same was not initiated by him while framing the assessment vide his order

passed u/s.143(3) dated 17.03.2019. Our attention was drawn by the Ld. AR to the body of the assessment order which revealed that the A.O had initiated penalty u/s. 271(1)(c) of the Act.

8. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

9. We have given a thoughtful consideration and find substance in the claim of the Ld. AR that the CIT(Appeals) had on the basis of his perverse observations dismissed the appeal of the assessee company and held the same as infructuous. As is discernible from the order of the CIT(Appeals), the appeal filed by the assessee was dismissed by him for the reason that he held a conviction that the same did not fall within the realm of the orders which were appealable before him. For the sake of clarity, the observation of the CIT(Appeals) is culled out as under:

“5. Appellate order:

The legal mandate available to The Commissioner of Income Tax (Appeal) is clearly mentioned under Section 246(1) of IT Act.

Section 246(1)(1) mention the types of penalties which are called for adjudication by Commissioner of Income Tax (Appeal).

The order imposing the penalties under-

(i) Section 221, or

(ii) Section 271, Section 271A, Section 271B[section 272A, Section 272AA or Section 272BB],

(iii) Section 272,Section 272B or Section 273 as they stood immediately before the 1st day of April 1989, in respect of any assessment for the assessment year commencing on the 1st day of April 1988 or any earlier assessment year.

Thus Section 246(1)(I) demarcates the power adjudication on penalties. The current appeal is on the order of penalty levied under section 270A which was specifically excluded from the jurisdiction of Commissioner of Income Tax of Appeals. Hence, the appeal filed is infructuous and cannot be adjudicated.”

(emphasis supplied by us)

10. Ostensibly the aforesaid observation of the CIT(Appeals) is found to be perverse. As stated by the Ld. AR and, rightly so, penalty imposed u/s. 270A of the Act clearly falls within the realm of orders appealable before the CIT(Appeals) u/s. 246A of the Act. We, say so, for the reason that as per Clause (q) to sub-section (1) of Section 246A an order imposing penalty under Chapter XXI of the Act finds place in the orders which are appealable before the CIT(Appeals). For the sake of clarity, Section 246A(1) of the Act is culled out as under:

“246A. (1) Any assessee or any deductor or any collector aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

(a) an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143 or sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(aa) an order of assessment under sub-section (3) of section 115WE or section 115WF, where the assessee, being an employer objects to the value of fringe benefits assessed;

(ab) an order of assessment or reassessment under section 115WG;

(b) an order of assessment, reassessment or recomputation under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 150;

- (ba) an order of assessment or reassessment under section 153A except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA;
- (bb) an order ⁵[made] under sub-section (3) of section 92CD;
- (c) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections except an order referred to in sub-section (12) of section 144BA;
- (d) an order made under section 163 treating the assessee as the agent of a non-resident;
- (e) an order made under sub-section (2) or sub-section (3) of section 170;
- (f) an order made under section 171;
- (g) an order made under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;
- (h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;
- (ha) an order made under section 201;
- (hb) an order made under sub-section (6A) of section 206C;
- (i) an order made under section 237;
- (j) an order imposing a penalty under—
- (A) section 221; or
- (B) section 271, section 271A, section 271AAA, section 271AAB, section 271F, section 271FB, section 272AA or section 272BB;
- (C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;
- (ja) an order of imposing or enhancing penalty under sub-section (1A) of section 275;
- (k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;
- (l) an order imposing a penalty under sub-section (2) of section 158BFA;
- (m) an order imposing a penalty under section 271B or section 271BB;
- (n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271CA, section 271D or section 271E;
- (o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

(p) an order made by a Deputy Commissioner imposing a penalty under section 272AA;

(q) an order imposing a penalty under Chapter XXI;

(r) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

Explanation. —For the purposes of this sub-section, where on or after the 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for "Deputy Commissioner" and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively."

(emphasis supplied by us)

11. We, thus, on the basis of the aforesaid clear mandate of law, are of the considered view that as an order imposing penalty u/s. 270A of the Act, which in turn finds place in Chapter XXI of the Act, is in clear and unequivocal terms an order appealable before the CIT(Appeals), therefore, a view to the contrary taken by the CIT(Appeals) in the present case before us cannot be sustained and is liable to be vacated. Also, on a careful perusal of the order of the CIT(Appeals), it transpires that he had while concluding as hereinabove wrongly referred to provisions of Section 246(1) of the Act, which we may herein observe are no more applicable after 01.06.2000.

12. Be that as it may, we are of the considered view that as the penalty imposed by the A.O vide his order passed u/s.270A of the Act dated 01.04.2022 clearly falls within the realm of the orders appealable before the CIT(Appeals) u/s 246A of the Act, therefore, the dismissal of the appeal of the present assessee company by taking a view to the contrary by the CIT(Appeals) cannot be sustained. We, thus, in terms of our aforesaid observations set-aside the order of the CIT(Appeals) and

restore the matter to his file with a direction to him to dispose off the appeal afresh. Needless to say, the CIT(Appeals) shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee appellant.

13. As we have restored the matter to the file of the CIT(Appeals) with a direction to re-adjudicate the same afresh, therefore, we refrain from dealing with the contention of the Ld. AR that the A.O had wrongly assumed jurisdiction and *dehors* initiation of impugned penalty u/s. 270A of the Act in the body of the assessment order, imposed the same vide order dated 01.04.2022, which, thus, is left open.

14. In the result, appeal of the assessee company is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 30th day of November, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 30th November, 2023

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलिय अधिकरण, रायपुर / ITAT, Raipur.