

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

आ.अपी.सं / **ITA No. 529/Hyd/2023**
(निर्धारण वर्ष/Assessment Year: 2018-19)

Green Bio Tech Hyderabad PAN:AAIFG4254G (Appellant)	Vs.	Income Tax Officer Ward 15(1) Hyderabad (Respondent)
निर्धारित द्वारा/Assessee by: Advocate T. Chaitanya Kumar		
राजस्व द्वारा/Revenue by: Smt. Sheetal Sarin, DR		
सुनवाई की तारीख/Date of hearing: 18/01/2024		
घोषणा की तारीख/Pronouncement: 18/01/2024		

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the ex-parte order dated of the learned CIT (A)-NFAC Delhi, relating to A.Y.2018-19.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the ex-parte order of the learned CIT (A) NFAC in confirming the penalty of Rs.22,78,444/- levied by the Assessing Officer u/s 270A of the Act.

3. Facts of the case, in brief, are that the assessee is a partnership firm carrying on the business of manufacturing and trading in bio agricultural products and filed its return of income on 11.10.2018 declaring total income of Rs.36,72,970/-. The

Assessing Officer passed the order u/s 143(3) on 29.5.2021 determining the total income at Rs.74,02,698/-. During the course of assesment proceedings the Assessing Officer had noted that the assessee has under reported/misreported certain items for which the Assessing Officer had initiated penalty proceedings u/s 270A of the I.T. Act, 1961. Accordingly, notice was issued to the assessee asking it to explain as to why the penalty u/s 270A of the Act shall not be imposed. It was explained by the assessee that its targeted business area of operation is over Telangana, Andhra Pradesh, Karnataka & West Bengal States. The Assessing Officer observed that this does not necessitate the promotion of products abroad and that the expenditure related to foreign tour is incidental to the business expenditure. The Assessing Officer further noted that the assessee has claimed expenses of Rs.31,88,290/- under the head "Sales Promotion" as paid to "Le Passage to India Tours & Travels Pvt. Ltd" on account of Russia Tour and that expenses of Rs.3,69,738/- under the head "Sales Promotion" has been paid to "Sri Sai Maruthi Travel" on account of Thailand Tour. Further various sales promotion expenses were paid in cash. Since the assessee failed to submit any documentary evidence to substantiate with evidence to the satisfaction such as name of the person who visited, purpose of visit, which entity visited by the person in Russia and Thailand and documentary evidence for meetings and countries etc., the Assessing Officer had disallowed all these expenses being in admissible. Therefore, penalty proceedings u/s 270A were initiated for under reporting of income which is in consequence of misreporting thereof. Further there was a violation of provisions of section 40A(3) for a sum of Rs.1,71,700/-. Considering the facts and circumstances of the case and rejecting the various explanation given by the assessee,

the Assessing Officer levied penalty of Rs.22,78,444/- u/s 270A of the Act, the details of which are as under:

1.[a] Income determined as per provision of Section 270A for under-reported Rs
35,58,028/-

in consequence of misreporting [35,58,028/- (Rs. 31,88,290/- and Rs.3,69,738/-)]

[b] Tax including Education Cess on Rs 35,58,028/-
Rs 10,99,431/-

[c] Amount of Penalty, i.e., 200% of Rs 10,99,431/-
Rs 21,98,862/-

2. [a]Income determined as per provision of Section 270A for under-reported Rs.
1,71,700/

[b] Tax including Education Cess on Rs 1,71,700/-
Rs 53,055/-

[c] Amount of Penalty, i.e., 50% of Rs 53055/-
Rs 26,527/-

In view of the fact and circumstances of the case, I do hereby impose a penalty of Rs. 22,25,389/- being calculated @200% on Rs 10,99,431/- & 50% of Rs 53055/- taxes as mentioned above for under reported income as per Section 270A of the I.T.Act 1961. Copy of the order and demand notice are issued to the assessee.

4. Since the assessee did not appear before the learned CIT (A) NFAC despite number of opportunities granted, the learned CIT (A) NFAC in the ex-parte order passed by him dismissed the appeal filed by the assessee and upheld the penalty levied by the Assessing Officer.

5. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

- 1 Groun1) The order of the learned Commissioner of Income-tax (Appeals) is erroneous both on facts and in law, without giving any proper opportunity.
- 2 in confirming the action of the assessing in levying the penalty u/s 270A an amount of Rs 2225389 without giving proper opportunity.
- 3 3) The learned Commissioner of Income-tax (Appeals) ought to have provided proper opportunity before passing the order u/s 250 r.w.s 270A for the assessment year 2018-19 year under consideration.
- 4 4) The learned Commissioner of Income-tax (Appeals) failed to see that the, main quantum appeal against the assessment order u/s 143(3)dt 29-05-2021 filed by the appellant before NFAC is pending i.e same authorities, which is arbitrarily illegal and is not maintainable against principles of natural justice.
- 5 5) The learned Commissioner of Income-tax (Appeals) erred considering the action of the assessing officer in levying penalty u/s 270A of Rs 2223285/ is arbitrarily illegal and is not maintainable against principles of natural justice.
- 6 Any other grounds/grounds that may be presented at the time of the hearing

6. The learned Counsel for the assessee at the outset submitted that the learned CIT (A) NFAC had not granted proper opportunity to the assessee to substantiate its case. He submitted that given an opportunity the assessee is in a position to substantiate with evidence to the satisfaction of the learned CIT (A) NFAC. He accordingly submitted that in the interest of justice, the assessee should be given an opportunity to represent its case before the learned CIT (A) NFAC.

7. The learned DR, on the other hand, strongly opposed the arguments advanced by the assessee. Referring to the order of the learned CIT (A) NFAC, she submitted that the assessee was given number of opportunities to substantiate its case which the assessee did not avail of. She accordingly submitted that the order of the learned CIT (A) NFAC should be upheld.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both the sides. We find the assessee in the instant case filed the return of income on 11.10.2019 declaring total income of Rs.36,72,970/- and the case was selected for limited scrutiny under CASS. The assessment was completed u/s 143(3) of the Act determining the total income at Rs.74,02,698/-. We find the Assessing Officer on the basis of various additions made in the assessment order, initiated penalty proceedings u/s 270A of the Act for misreporting of income. Rejecting various explanations given by the assessee the Assessing Officer levied penalty of Rs.22,78,444/- u/s 270A of the Act. We find due to non- appearance before the learned CIT (A) NFAC despite three opportunities granted, the learned CIT (A) NFAC, following the decision of the Tribunal in the case of CIT vs. Multiplan India Pvt. Ltd (381 ITD 320), the decision of the Hon'ble M.P High Court in the case Tukoji Rao Holkar vs. CWT (223 ITR 480) and the decision of the Hon'ble Supreme Court in the case of CIT vs. B.N. Bhattacharya (118 ITR 461) dismissed the appeal for want of prosecution. From the perusal of the order of the learned CIT (A) NFAC we find learned CIT (A) NFAC had issued notice on 17.05.2022, however, there was no compliance. On the next date of hearing on 6.7.2023, the assessee filed an application for

adjournment and the matter was adjourned 23.07.2023 and again there was also non-compliance for which the learned CIT (A) NFAC dismissed the appeal filed by the assessee for want of prosecution. It is the submission of the learned Counsel for the assessee that given an opportunity in the interest of justice, the assessee is in a position to substantiate its case by producing the relevant details before the learned CIT (A) NFAC. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the learned CIT (A) NFAC with a direction to grant one final opportunity to the assessee to substantiate its case by filing the necessary documents and decide the issue as per fact and law. The assessee is also hereby directed to participate in the appeal proceedings before the learned CIT (A) NFAC by filing the requisite details without seeking any adjournment under any pretext failing which the learned CIT (A) NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court at the time of hearing itself i.e. on 18th January, 2024.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 18th January, 2024
Vinodan/sps

Copy to:

S.No	Addresses
1	Green Bio Tech, H.No.3-6-195/B, Flat No.102, Gowri Apts, Urdu Hall Lane, Himayatnagar, Telangana 500029
2	Income Tax Officer Ward 15(1) IT Towers, AC Guards, Masab Tank,Hyderabad 500004
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order