

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 642/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Suresh Productions,
Hyderabad
[PAN No. AAJFS7306J]

Dy. Commissioner of
Income Tax,
Central Circle-1(2),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri A. Srinivas, AR

राजस्व द्वारा/Revenue by: Shri Waseem UR Rehman, DR

सुनवाई की तारीख/Date of hearing: 29/02/2024

घोषणा की तारीख/Pronouncement on: 29/02/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad, ("Learned CIT(A)"), in the case of Suresh Productions ("the assessee") for the assessment year 2017-18, assessee preferred this appeal with a delay of one day. Learned AR explained that the delay is due to calculation error. Heard learned DR. Delay is condoned.

2. Penalty in this matter is levied under section 270A(9) of the Act on the ground of under reported income in consequence of any misreporting thereof by the assessee. Learned AR argued that the learned Assessing Officer did not specify the distinct instance of under reporting or misreporting as enumerated under section 270A(9) of the Act and, therefore, the penalty order is bad under law and is liable to be quashed. He placed reliance on the view taken by the Co-ordinate Bench of the Mumbai Tribunal in the case of Saltwater Studio LLP, in ITA No. 13/Mum/2023, vide order dated 22/05/2023.

3. Learned DR vehemently relied upon the orders of the Revenue authorities and submitted that certain times the instances will be overlapping and suffice it to refer the head under which the penalty is levied, which in this matter happens to be under reporting as a consequence of misreporting, covered by section 270A(9) of the Act.

4. We have gone through the record in the light of the submissions made on either side. Relevant portion of the penalty order in this case reads that,-

“8. By considering facts of the case, I am satisfied that this is a fit case for levy of penalty u/s 270A for under reporting of income in consequence of misreporting as the assessee has under reported the income in the return of income to the tune of Rs.30,000/-. The under reported income of Rs.30,000/- would not have been brought to tax, had the search operation not conducted in the case and had the case not selected for assessment.

9. The penalty referred in subsection (9) of section 270A, where under-reported income is in consequence of any mis-reporting thereof by any person, the penalty shall be equal to two hundred per cent of the amount of tax payable on under-reported income.

10. The amount considered for levy of penalty u/s 270A(9) is Rs. Rs.30,000/- and tax payable on the same works out to be Rs.10,382/-. Hence, Penalty leviable u/s 270A at the rate of two hundred per cent on

tax payable is Rs.20,764/- (Rupees Twenty Thousand Seven Hundred and Sixty Four only)."

5. It is very clear from the above that the learned Assessing Officer did not spell out the specific instance covered by 270A(9) of the Act in the case of the assessee. On the aspect of impact of non mentioning of the assessee's lapse falling in Ken of instances given in clause (a) to (f) of sub-section 9 of section 270 of the Act, in the case of Saltwater Studio LLP (supra), the Co-ordinate Bench of the Tribunal observed that,-

"13. The AO has levied the higher penalty of 200% of tax payable of mis-reporting income. Then in such a scenario, the AO has to bring the action/omission on the part of the assessee in the ken of sub-section (9) of section 270A of the Act which are given (supra), viz (a) to (f) of section 270A(9) of the Act. However, a reading of the reasons given by the AO to levy penalty for misreporting (supra) it is discerned that he has failed to spell out as to how the assessee's case/additions falls within the ken of instances given in clause (a) to (f) of sub-section (9) of section 270A of the Act. Since AO failed to bring the addition/disallowance he made in quantum assessment, under the ken of (a) to (f) of the sub-section(9) of section 270A of the Act, the penalty levied for misreporting @ 200% cannot be sustained because it is trite law that penalty provisions have to be strictly interpreted. And therefore, taking into consideration, the facts and circumstances of the case, we find that the levy of penalty by the AO u/s 270A of the Act suffers from the vice of non-application of mind as well as violates principles of natural justice. And therefore, the penalty levied on addition of sustained quantum addition of Rs.67,970/- cannot survive. And therefore, it is directed to be deleted."

6. Respectfully following the view taken by the Co-ordinate Bench of the Tribunal, we hold that for non-specifying the instances given in clause (a) to (f) of sub-section 9 of section 270 of the Act, we hold that the penalty

order suffers the violation of principles of natural justice and accordingly quash the same.

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

Order pronounced in the open court on this the 29th day of February, 2024.

Sd/-

(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 29/02/2024

Copy forwarded to:

1. Suresh Productions, 8-2-293/82/JIII/6, Ramanaidu Studio, Jubilee Hills, Film Nagar, Hyderabad.
2. Deputy Commissioner of Income Tax, Central Circle-1(2), Hyderabad.
3. The Pr.CIT(Central), Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR
ITAT, HYDERABAD