

।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.1323 & 1324/PUN/2023
निर्धारण वर्ष / Assessment Year : 2017-18 & 2018-19

Shri Popat Karbhari Bhalerao, Yeshdei Niwas, Maratha Nagar, Near Rajrajeshwari Mangal Karyalay, Jailroad, Nashik Road, Nashik-422101. PAN: AAQPB3523N	V s	The Income Tax Officer, Ward-2(1), Nashik.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Sanket Joshi – AR
Revenue by	Shri Sourabh Nayak – Addl.CIT(DR)
Date of hearing	19/03/2024
Date of pronouncement	26/03/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Id.CIT(A)[NFAC] for A.Y.2017-18 dated 02.09.2022 under section 250 of the Income Tax Act, 1961, emanating from penalty order under section 270A of the Act, dated 30.12.2021. The assessee raised the following grounds of appeal :

“1. The learned CIT-(A) erred in confirming the penalty u/s 270A of Rs.2,60,874 levied by the A.O without appreciating that the said levy of penalty was not justified on facts and in law.

2. The assessee submits that in the reassessment order, the A.O has initiated penalty u/s 270A on a vague charge of ‘furnishing inaccurate particulars of income’ also in the notice u/s 274 r.w.s 270A, the exact limb of section 270A(9) which has been allegedly violated by the assessee has not been specified and hence, the penalty order passed u/s 270A in consequence of such illegal notice may be declared as null and void in law.

3. The learned CIT-(A) failed to appreciate that the underreporting of income in this case was attributable to wrong actions of the tax consultant who had misguided large number of salaried taxpayers like the assessee by filing incorrect ITRs and this fact was also substantiated by police complaints filed against the said tax consultant subsequently and therefore, the levy of penalty u/s 270A was also not justified on merits.

4. The appellant craves leave to add/ alter/ amend any of the grounds of appeal.”

Submission of Id.AR :

2. The Id.Authorised Representative(Id.AR) for the assessee invited our attention to penalty order dated 30.12.2021 passed under section 270A of the Act. The Id.AR explained that the Assessing Officer(AO) has levied penalty under section 270A(9)(e) of the Act. The Id.AR explained that the sub-clause (e)

is for failure to record any receipt in books of accounts. However, in the case of assessee, in the assessment order, the AO has disallowed assessee's claim of Chapter-VIA deduction and has disallowed deduction claimed under section 24. Therefore, penalty has been levied under wrong section and hence it is not maintainable.

Submission of Id.DR :

3. The Id.Departmental Representative(Id.DR) for the Revenue relied on the order of the AO & Id.CIT(A).

Findings & Analysis :

4. We have heard both the parties and perused the records. In this case, in the assessment order dated 04.09.2021 passed under section 147 r.w.s 144 of the Act the AO has disallowed the assessee's claim of deduction under section 24 of Rs.2,00,000/- and Chapter-VIA deduction of Rs.3,52,000/- as false claims. No other addition is made in the assessment order. However, in the penalty order, the AO has invoked section 270A(9)(e) of the Act for levying penalty. The Section 270A(9)(e) is reproduced here 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.*

.....
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”*

4.1 Thus, Sub-section 9(e) is for failure to record any receipt in books of accounts. However, in the case of the assessee, there is no such failure to record any receipt in the books of assessee. The addition is on account of disallowance of certain deductions claimed under Chapter-VIA and Section 24 of the Act. Therefore, AO has levied penalty under incorrect section. Therefore, the penalty is not-maintainable. Hence, we direct the AO to delete the penalty of Rs.2,60,874/- levied under section 270A(9)(e) of the Act. Accordingly, appeal of the assessee is allowed.

ITA No.1324/PUN/2023 :

5. In the case of the assessee for A.Y.2018-19 AO has levied penalty of Rs.4,10,974/- under section 270A(9)(e) of the Act. However, the addition is made on account of disallowance of Chapter-VIA deduction and deduction under section 24 of the Act.

6. Since we have already discussed the issue at length and the facts of ITA No.1323/PUN/2023 are similar to the facts of ITA No.1324/PUN/2023, therefore, our decision in ITA No.1323/PUN/2023 shall apply *mutatis mutandis* to this appeal also, accordingly, grounds of appeal raised by the assessee in ITA No.1323/PUN/2023 are allowed.

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

8. To sum up, both appeals of the assessee i.e.ITA No.1323 & 1324/PUN/2023 are allowed.

Order pronounced in the open Court on 26th March, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 26th Mar, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.