

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH
HEARING THROUGH: PHYSICAL MODE
श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA No. 172/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

M/s Shree Ganesh Jewellers Limited Miller Ganj, G.T. Road, Ludhiana	बनाम	The Asst. CIT Circle V(1), Ludhiana
स्थायी लेखा सं. / PAN NO: AAEC50983M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri K.J. Shalley, Advocate
राजस्व की ओर से / Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख / Date of Hearing : 09/04/2024
उद्घोषणा की तारीख / Date of Pronouncement : 18/04/2024

आदेश / Order

PER VIKRAM SINGH YADAV, AM

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), NFAC Delhi dt. 31/01/2023 pertaining to Assessment Year 2017-18 wherein the assessee has challenged the sustenance of penalty amounting to Rs. 30,900/- under section 270A(2)(a) of the Act.

2. During the course of hearing, the Ld. AR taken us through the findings of the AO in the quantum proceeding wherein in Para 2 of the order passed under section 143(3) dt. 29/12/2019, the AO has made the addition of Rs. 2,00,000/- out of out of various expenses on an adhoc and estimated basis and the relevant findings of the AO read as under:

"2. The assessee company is engaged in the business of manufacturing and trading of gold and diamond / precious stones. The assessee company has shown income from Business and Profession and from capital gain. During the course of assessment proceedings it is found that the assessee has claimed some of the expenses in the profit and loss account under the head advertisement and publicity, car expenses, entertainment, general expenses, scooter expenses, travelling expenses and building repair and maintenance are not properly vouched. In view of the above, an amount of Rs.2,00,000/- is being disallowed out of aforesaid expenses and added to the income of the assessee."

2.1 Further our reference was drawn to the findings of the AO in the order passed under section 270A of the Act wherein the relevant findings are stated at para 4 to 6 of the order and the contents thereof read as under:

"4. As per section 270A(2)(a) of the I T Act, a person shall be considered to have under-reported his income, if the income assessed is greater than the income determined in the return processed under section 143(1)(a) of the IT Act. This clarifies that whenever there is an addition during the course of assessment, this shall result into case being treated as a case of under reporting income. The expression "penalty for concealment" mentioned in the reply of the assessee does not applicable to the nature of penalty initiated in this case, since penalty u/s 270A of the IT Act has been initiated in this case for under reporting of income which has been enacted with effect from 1st April, 2017. During the assessment proceedings, the assessee failed to furnish any documentary evidences viz. vouchers, etc. in order to substantiate its claim regarding expenses shown in the P&L A/c.

Reliance has been placed by the assessee on several case laws in its reply dated 27/07/2021. The judgement pronounced in the case laws referred by the assessee are related to the provision of penalty u/s 271(1)(c) of the IT Act for concealment of Income. In this case penalty has been initiated u/s 270A of the IT Act for under-reporting of income which is different to the provision of penalty u/s 271(1)(c) of the IT Act. Hence, the contention of the assessee has been not found acceptable.

5. In view of above facts and discussion, it has been observed that it is a fit case for imposition of penalty u/s 270A(2)(a) of the Income Tax Act, 1961 for under- reporting of income, for amount of Rs. 2,00,000/-. Tax sought to be evaded has been calculated as given below :-

Tax(including Cess) sought to

be evaded = 30.90% of Rs. 2,00,000/- = Rs. 61,800/-

50% of Tax sought to be evaded = Rs. 30,900/-

6. Therefore, a penalty of Rs. 30,900/-, which is 50% of tax sought to be evaded, is hereby imposed upon the assessee u/s 270A(2)(a) of the I.T. Act, 1961 on account of under reporting of income."

2.2 It was submitted by the Id AR that the findings of the AO that during the assessment proceedings, the assessee failed to furnish any documentary evidence i.e; vouchers etc, in order to substantiate its claim regarding expenses shown in the P&L Account is factually incorrect and our reference was drawn to the assessee's paper book wherein at pages 22-589, the assessee has submitted the necessary documentary evidence in support of various expenses claimed in the P&L Account and it was submitted that the same were submitted before the AO as well. It was accordingly submitted that the addition has been made purely on an estimated basis and without any concrete evidence of under reporting of the income and in this regard, our reference was drawn to the provisions of Section 270A(6)and the same read as under:

(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 Joint Commissioner (Appeals) 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 Joint Commissioner (Appeals) 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.

2.3 Further reliance was placed on the Coordinate Bench decision in case of VDB Infra and Realty Private Limited Vs. ITO (*in ITA No. 1017/Bang/2023 dt. 18/01/2024*) and M/s Pallava Textiles Private Limited Vs. The ITO (*in ITA No. 862/Chny/2022 dt. 10/03/2023*).

3. Per contra, the Ld. DR has relied on the order of the lower authorities and our reference was drawn to the provisions of Section 270A(2) wherein it has been stated that a person shall be considered to have under reported his income if the income assessed is greater than the income determined in the return processed under section 143(1)(A) of the Act. It was accordingly submitted that as per the said provision, in the instant case, given the fact that the AO has assessed the income at a figure higher than the returned income by the figure of Rs. 2.00 Lacs, to that extent, it is clearly a case of under reporting of the income and which is liable for levy of penalty under section 270A of the Act.

3.1 It was further submitted that the decision relied on by the Ld. AR in case of VDB Infra and Realty Private Limited (*supra*) is in the context of miss-reporting of income and levy of penalty under section 270A(9) of the Act and therefore the same stands distinguishable and not applicable in the facts of the present case. It was accordingly

submitted that the order so passed by the AO and sustained by the Ld. CIT(A) be confirmed and the appeal of the assessee be dismissed.

4. Heard the rival contentions and perused the material available on record. It is a settled legal proposition that the penalty provisions needs to be strictly construed and only where the conditions specified are fulfilled and the charge is crystallized, the penalty can be levied. In the instant case, the AO has invoked the provisions of Section 270A of the Act and has levied the charge of under-reporting of the income on the assessee. As per the provisions of Section 270A(2), it has been *interalia* provided that a person shall be considered to have under reported his income if the income assessed is greater than the income determined in the return processed under section 143(1)(a) of the Act. The said provisions have to be read along with the provisions of section 270A(6) which *interalia* in terms of 270A(6)(b), provides that the under-reported income shall not include 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 but the method employed is such that the income cannot properly be deduced therefrom. In other words, where the accounts are correct and complete to the satisfaction of the Assessing officer and at the same time, certain addition has been made basis estimation for the reason that the method employed is such that income cannot properly be deduced therefrom, the same cannot be a basis for levying the charge of under-reporting of income. The emphasis is therefore clearly on the correct and complete accounts so furnished by the assessee and only in a situation where there is an adverse finding recorded by the AO regarding incorrect and incomplete accounts so furnished, the same can form the basis for levy of penalty for under-reporting of income. In the instant case, there is no adverse finding recording by the Assessing officer that the accounts so furnished and information so contained therein are incorrect and incomplete. The AO has merely referred to non-furnishing of supporting documentation in form of vouchers which also the Id AR has demonstrated that the same is not factually correct and all necessary documentation has been furnished during the course of assessment proceedings. Therefore, merely the fact that the addition has been made on an estimate basis and that too considering the various expenses heads and not specific to a particular expense head or pointing out any

specific expenditure incurred during the year, the same cannot solely form the basis for levy of charge of under-reporting of income on the assessee.

5. In light of the aforesaid discussions and in the entirety of facts and circumstances of the case, the levy of penalty u/s 270A(2)(a) cannot be sustained and is hereby directed to be deleted.

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

(Order pronounced in the open Court on 18/04/2024)

Sd/-

**विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य / ACCOUNTANT MEMBER**

AG

Date: 18/04/2024

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar