

।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 No.918/PUN/2023
निर्धारण वर्ष / Assessment Year : 2018-19

Sharad Bhaskarrao Gaikwad, T No.1, Vanai Apartment, Gangapur Road, Behind Kulswamini Apartment, Nashik – 422005. PAN: ADSPG2339R	V S	The Income Tax Officer, Nashik.
Appellant / Assessee		Respondent / Revenue

Assessee by	Miss Abhilasha Sanjay Pawar – AR
Revenue by	Shri Sourabho Nayak – Addl.CIT
Date of hearing	14/02/2024
Date of pronouncement	06/05/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order under section 250 of the Income Tax Act, 1961 of Id.Commissioner of Income Tax(Appeals)[NFAC] dated 02.05.2023 for A.Y.2018-19 emanating from penalty order under section 270A of the Act, dated 22.02.2022. The assessee has raised following grounds of appeal :

“1. The learned A.O. is not justified in levying penalty u/s 270A of Rs.78,146/- on the ground that the assessee has furnished inaccurate particulars of Income without appreciating that the said levy of penalty was not justified in law.

2. The learned A.O. failed to appreciate that before the A.O., the assessee had duly explained that reporting of income in his case was attributable to wrong action of tax consultant and all the material facts relating thereto along with substantiating evidences in form of complaint filed against Tax Consultant before Economic Wing of Police Department etc. were also furnished by the assessee and therefore, the levy of penalty u/s 270A without rebutting the explanation offered by the assessee was not justified in view of provisions of the said Act.

3. The learned A.O. ought to have appreciated that the bona fides of the explanation offered by assessee were established from the fact that the assessee, being salaried employee from technical background, was totally dependent upon the tax consultant for filing income tax return and no such incorrect claim was ever made by the assessee either in past years or in subsequent years and therefore, the levy of penalty u/s 270A was not justified in view of the explanation offered by the assessee.”

Brief facts of the case :

2. Assessee is an employee of BOSCH Ltd, Nashik. Assessee had filed Return of Income on 27.06.2018 declaring Net Total Income of Rs.4,90,780/-. In the said Return, assessee had claimed deduction u/s. VIA of Act of Rs.3,10,000/-.

2.1 A survey was conducted u/s.133A of the Act in the case of Kishore Patil who was an Income Tax Practitioner(ITP). It was observed during the survey that Mr.Kishore Patil has filed Return of Income of many salaried persons claiming bogus Chapter-VIA deductions and also under reporting income. Assessee is one of the persons among them whose Return has been filed by Mr.Kishore Patil(ITP).

2.2 The Assessing Officer(AO) received information from the Investigation Wing of the Income Tax Department. The AO issued notice u/s.148 of the Act. In response to notice u/s.148, assessee filed Revised Return of Income showing Net Total Income of Rs.8,26,919/- and Chapter VIA deduction of Rs.1,56,277/-.

	Original Return	Revised Return
Net Total Income	Rs.4,90,780/-	Rs.8,26,919/-
Chapter VI Deduction Claimed	Rs.3,10,000/-	Rs.1,56,277/-

2.3 Thus, during the assessment proceedings, AO noted that in the revised return of income, assessee had claimed less deduction u/s.Chapter VIA as compared to his earlier Return

of Income. AO initiated penalty proceedings u/s.270A(9) of the Act. The AO passed assessment order on 22.02.2022 levying a penalty u/s.270A of the Act at 200% totaling to Rs.1,38,220/-.

Submission of Id.AR :

3. Ld.Authorised Representative(ld.AR) for the assessee submitted that assessee was misguided by the ITP i.e.Mr.Kishore Patil. The ITP had filed the Return of Income making wrong claims. Assessee and other employees had lodged police complaint against Mr.Kishore Patil. In the revised return of income filed in response to notice u/s.148 of the Act, Assessee had declared correct income and accordingly there is no addition in the assessment order. The assessment order dated 12.03.2021 had accepted Income shown by assessee in the Revised Return of Income. The ld.AR also pleaded that the AO has not specified in the penalty order the sub-section of section of 270A of the Act under which penalty has been levied. AO has not specified the limb of Section 270A. In the penalty order, AO has not even discussed how it was mis-reporting.

Submission of Id.DR :

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

Findings & Analysis :

5. We have heard both the parties and perused the records. The penalty order u/s.270A is a cryptic order. The relevant paragraph 4 and 5 of the penalty order is reproduced here as under :

“4. The assessee tried to establish that he has no malafide intension to conceal any income earned by him, but it was due to the fault of person who prepared and filled the Income Tax Return for him. Since, the Return of Income of the assessee was not filled by any registered Tax Return Preparer (TRP), the onus of concealment/mistake lies with the assessee itself. Hence, assessee’s plea could not be accepted.

5. *Applicability of provisions of sec. 270A of the I.T. Act 1961 in the present case:*

For specificity purposes, the provisions of section 270A of the IT Act are reproduced as under:

“ Penalty for under reporting and misreporting of income.—

(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.

(2) A person shall be considered to have under-reported his income, if—

- (a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;*
- (b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;*
- (c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;*
- (d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is*

greater than the deemed total income determined in the return processed under clause (a) of subsection (1) of section 143;

- (e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;*
- (f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such, reassessment;*
- (g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.*

(3) The amount of under-reported income shall be,—

(i) in a case where income has been assessed for the first time,—

(a) if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of subsection (1) of section 143;

(b) in a case where no return has been furnished,—

- (A) the amount of income assessed, in the case of a company, firm or local authority; and*
- (B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);*

in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order:

On the facts stated above, I am of the considered opinion that a total amount of Rs.3,36,130/- has been under-reported of income in consequence of misreporting by the assessee which lead to evasion of tax, which is being calculated as under:

Tax + EC on amount including under reported income of Rs. 3,36,130/- : Rs.81,510/-

Tax + EC on amount excluding under reported income of Rs. 4,90,780/- : Rs.12,400/-

Tax Sought to be evaded : Rs.69,110/-

As such I think it fit to impose penalty u/s. 270A of the I.T. Act, 1961 @ of 200% of the tax sought to be evaded due to under-reporting of income in consequence of misreporting as mentioned above. Therefore, penalty of Rs.1,38,220/- under section 270A/274 of the I.T.Act, 1961 is imposed upon the assessee.”

6. Thus, one can observe from the penalty order that AO has merely reproduced the section 270A of the Act that too without reproducing the relevant sub-sections 6, 7 and 9 of Section 270A of the Act. In the penalty order, the AO has not discussed how it was a case of mis-reporting. AO has not brought on record how assessee has mis-reported the income, whether it was suppression of facts or claim of expenditure not substantiated by any evidence or false entry in books of accounts. The penalty proceedings are independent proceedings of assessment proceedings. In the penalty proceedings, the AO has to satisfy himself that assessee had mis-reported the income. In this case, the AO has passed a “non-speaking” penalty order. There are sub-clauses “a” to “f” of section 270A(9) of the Act. All these sub-clauses are independent of each other. In this case, though AO has levied 200% penalty, but AO has not specified in the penalty order that AO is levying penalty u/s.270A(9) of the Act. The AO has also not identified in the penalty order the sub-clauses of section 270A(9) which are applicable to assessee. In these facts and circumstances of the case, we are satisfied that the penalty is not maintainable, accordingly, we direct AO to delete the penalty order u/s.270A of the Act dated 22.02.2022 for A.Y.2018-19.

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

Order pronounced in the open Court on 6th May, 2024.

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

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

पुणे / Pune; दिनांक / Dated : 6th May, 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, आयकर अपीलीय अधिकरण, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.