

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA Nos. 832/Bang/2023 &
143/Bang/2024**

Assessment Year : 2020-21

Shri Chiguruvada DileepKumar, Flat : 204 163/3/75, Nellurahalli Road, Siddapura Village, Bangalore – 560 066. PAN: AMQPD6817Q	Vs.	The Deputy Commissioner of Income Tax, Circle – 3(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravi Shankar .S.V, Advocate
Revenue by	:	Shri V. Parithivel, JCIT (DR)

Date of Hearing	:	03-04-2024
Date of Pronouncement	:	27-05-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order passed by NFAC dated 30.08.2023 for A.Y. 2020-21 on following grounds of appeal:

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal (See note below)</i>
1.	<i>The orders of the honorable National Faceless Appeal centre in so far as they are against the appellant, are opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.</i>	
2.	<i>The appellant denies itself for levy of penalty of Rs. 15,95,172/- for the year under consideration.</i>	
3.	<i>At the outset, the Appellant submits that the order passed by the learned Assessing Officer is against the provisions of the law, rulings/judgements given by the honourable judicial authorities in various cases, in so far as rejecting the contention of the appellant and levy of penalty is not in accordance with the provisions of the Income Tax Act, 1961 as interpreted by the Judicial authorities.</i>	
4.	<i>The Appellant submits that the impugned order has been passed without considering the contentions/submissions of the appellant. The Appellant submits that the impugned order passed by the Learned authorities in so far as levy of penalty is concerned, is contrary to the law and facts, arbitrary and deserves to be deleted.</i>	15,95,172
5.	<i>The learned respondent erred in invoking Section 270A, and levying penalty.</i>	
6.	<i>For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed</i>	
7.	<i>The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.</i>	
8.	<i>In view of the above and other grounds that may be urged at the time of the hearing, the assessee prays that the objections be considered in the interest of equity and Justice</i>	
<i>Total tax effect (see note below)</i>		15,95,712

2. We note that assessee has efiled the present appeal being *ITA No. 832/Bang/2023* which is within the period of limitation. Subsequently, assessee has manually filed the appeal against the same impugned order in *ITA No. 143/Bang/2024* on 25.01.2024 which is a belated appeal. The appeal filed belatedly against the same impugned order deserves to be held as infructuous as two appeals cannot lie against the same impugned order. We therefore dismiss the subsequent appeal filed belatedly in *ITA No. 143/Bang/2024*.

Accordingly, the appeal filed by assessee in ITA No. 143/Bang/2024 is dismissed as infructuous.

3. Brief facts of the case are as under:

3.1 Assessee is an individual and filed return of income for A.Y. 2020-21 on 06.01.2021 declaring total income of Rs.37,34,200/-. The assessee in the original return claimed exemption u/s. 10(13A) under the head salary income and income from other sources. The return was processed on 18.03.2021 determining refund in the hands of the assessee, which was paid to the assessee. Later, on 20.03.2021, a revised return was filed declaring total income of Rs.34,34,200/- and the exemption claimed u/s. 10(13A) of the act got reduced. The assessee declared loss under the head income from house property. Subsequently, the case was selected for a complete scrutiny for verification of the refund that disclosure of substantially lower receipts in the return vis-à-vis 26AS. On deduction from total

income under Chapter VIA, substantial difference in the total taxable income was also to be verified.

3.2 During the course of the assessment proceedings, various information were called for to examine the issues. The deduction claimed by assessee u/s. 80C, 80E and 10(13A) were examined in detail by the Ld.AO. The Ld.AO after verification, disallowed the claim of deduction u/s. 80E and 10(13A) as assessee did not give any supporting evidence.

3.3 The Ld.AO initiated the penalty proceedings for under reporting of income in consequence of misreporting u/s. 270A(9). The assessment order was passed on 17.09.2022 by making total additions in the hands of the assessee as under:

Nature of Additions made	Amount (INR)
Disallowance of deductions claimed u/s. 80E	29,53,200/-
Disallowance of exemption claimed u/s. 10(13A)	2,28,166/-
Total Additions	31,81,366/-

The assessee accepted the additions made and the payment was paid immediately.

3.4 Subsequently, a show cause notice u/s. 274 r.w.s. 270A dated 17.09.2022 was issued to levy penalty u/s. 270A of the act. In response, the assessee filed reply dated 11.10.2022 and 07.02.2023. The reply filed by the assessee was considered by

the Ld.AO. The Ld.AO noted that assessee filed original return of income for AY under consideration claiming refund of Rs.11,19,880/-.

3.5 The refund of Rs.10,91,670/- was credited to the assessee and subsequently on the revised return filed by the assessee, a scrutiny notice u/s. 143(2) was issued on 29.06.2021. The assessee has completed during the assessment proceedings that the revised return was filed by mistake and the original return dated 06.01.2021 was treated to be a final. It is submitted that some other CA has filed the return with incorrect details and that invoking the provisions of section 270A of the act is bad in law.

3.6 The Ld.AO observed that addition was made in the assessment order by disallowing the deduction u/s. 80E and the claim u/s. 10(13A) of the act. The Ld.AR submitted that during the course of the assessment proceedings, assessee has admitted that no education loan was taken and therefore no deduction could have been claimed u/s. 80E of the act.

3.7 It was also submitted that against the HRA claimed, assessee had filed the rental agreement with nestaway and assessee had submitted the bank statements substantiating the debit of rent paid. The Ld.AO however passed the draft assessment order on 28.02.2022 proposing the disallowance of deduction u/s. 80E and disallowance of exemption claimed u/s. 10(13A) of the act

totalling to Rs.69,15,566/-. Thereafter on 17.09.2022, the final assessment order was passed by making the said addition in the hands of the assessee. The Ld.AO had initiated penalty for under reporting of income in consequence of misreporting for the disallowance of deduction claimed u/s. 80E of the act as well as disallowance of exemption claimed u/s. 10(13A) of the act. It is submitted that the assessee immediately paid the demand as per notice u/s. 156 amounting to Rs.12,92,361/-. The outstanding demand was paid vide challans dated 28.09.2022 and 30.09.2022. Thereafter on 10.10.2022, assessee filed form 68 being an application u/s. 270AA(2) of the act seeking immunity against the penalty proceedings. The Ld.AO however still initiated the penalty proceedings on 17.09.2022. The penalty order was passed on 15.03.2023 wherein the Ld.AO rejected the immunity from penalty proceedings by observing as under:

“12. With regard to immunity from penalty proceedings u/s section 270AA, in page 6 of the assessment order u/s 143(3), in para 9.1 and 9.2 it has been clearly and specifically mentioned that penalty proceedings in the given case has been initiated under the circumstances referred to in subsection (9) of the Section 270A of the Income Tax Act, 1961. Therefore, as per the provisions of Section 270AA(3) of the income Tax Act, 1961, the assessee is also not eligible for immunity from imposing of penalty initiated u/s. 270A of the Income Tax Act, 1961 for underreporting of income which is in consequences of misreporting of income. For sake of clarity, the provisions of Section 270AA(3) of the Income Tax Act, 1961 is reproduced as under; "Section - 270AA(3) The Assessing Officer shall, subject to fulfilment of the conditions specified in sub-section (1) and after the expiry of the period filing the appeals as specified in clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings

under section 276C or section 276CC. where the proceedings for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A." . Also as per CBDT Notification No 3/2022, dated 16.07.22, filing of Form 68 is mandatorily to be done electronically through e-filing portal. In the given case assessee has sent an email seeking immunity and no form 68 application was e-filed. Moreover as discussed in para above, as the provisions of immunity itself not applicable in the assessee's case even if assessee were to have e-filed form 68, the same would have been rejected as per provisions of section 270AA(3) of the Income Tax Act .

13. In view of the above, it is held that this is a fit case for levy of penalty u/s. 270A of the Income Tax Act, 1961 for underreporting of income, which is in consequences of misreporting of income. There is underreporting which is in consequences of misreporting of income of Rs 31,81,366/-. Hence, the assessee is liable to pay penalty of two hundred percent of the amount of tax payable on the underreported income, which is in consequence of misreporting of income. The income tax payable on underreported income works out to Rs 7,97,586/- and the two hundred percent penalty for the same works out to Rs. 15,95,172/-.

I hereby levy penalty of Rs. 15,95,172/- i.e. two hundred percent of the tax payable on the underreported of income in consequence of misreporting of income.

This penalty order has been passed with prior approval of the Addl. Commissioner of Income Tax, Range-3(3), Bengaluru received in order with DIN & Document No. ITBA/PNL/S/992/2022-23/1050563178(1)

Dated: 09/03/2023.

Demand notice is issued accordingly."

3.8 Against this penalty order, the assessee preferred appeal before the Ld.CIT(A).

3.9 The Ld.CIT(A) was of the view that as the penalty proceedings were initiated u/s. 270(9) of the act for misreporting of income

assessee could not seek immunity u/s. 270AA. He thus upheld the order of the Ld.AO by observing as under:

“5.3.4. With regard to immunity from penalty proceedings u/s section 270AA, in page 6 of the assessment order u/s 143(3), in para 9.1 and 9.2 it has been clearly and specifically mentioned that penalty proceedings in the given case has been initiated under the circumstances referred to in subsection (9) of the Section 270A of the Income Tax Act, 1961. Therefore, as per the provisions of Section 270AA(3) of the income Tax Act, 1961, the assessee is also not eligible for immunity from imposing of penalty initiated u/s. 270A of the Income Tax Act, 1961 for underreporting of income which is in consequences of misreporting of income. For sake of clarity, the provisions of Section 270AA(3) of the Income Tax Act, 1961 is reproduced as under; "Section - 270AA(3) The Assessing Officer shall, subject to fulfilment of the conditions specified in sub-section (1) and after the expiry of the period filing the appeals as specified in clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, where the proceedings for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A.” Also as per CBDT Notification No 3/2022, dated 16.07.22, filing of Form 68 is mandatorily to be done electronically through e-filing portal. In the given case assessee has sent an email seeking immunity and no form 68 application was efiled. Moreover as discussed in para above, as the provisions of immunity itself not applicable in the assessee's case even if assessee were to have e-filed form68, the same would have been rejected as per provisions of section 270AA(3) of the Income Tax Act.

3.10 Aggrieved by the order of the Ld.CIT(A), assessee filed appeal before this *Tribunal*.

4. Before us, the Ld.AR submitted that the original return filed by the assessee on 06.01.2021 was processed on 18.03.2021

determining refund of Rs.10,91,670/- which was received by the assessee. He submitted that assessee was provided stock options by his employer every year. The stocks vest on a specific date and the employer deducts tax on the same. But FY 2019-20 was black-out period, wherein there was restriction imposed by the employer, internal employees can't sell the shares and to wait for 3 months. By the time black-out period is over, stock valuer reduces to a great extent by 30%, and employee's tend to loose amount. Taxes was deducted by employer on notional gains of stock options, whereas employee's incur loss when the stock was sold. Hence, assessee approached a tax consultant and requested the to claim said losses. However, the tax consultant instead of providing the insight on provisions of claiming loss on stock options, misguided the appellant and claimed the deduction U/s 80E of the Income Tax Act,1961 and filed the return of income with a refund claim.

5. The Ld.AR submitted that the assessee had no intention to claim refunds nor any intention to default tax payments as the total taxes were duly deducted from salary income. However, due to lack of knowledge on the law and overlooking the income tax returns with wrong claim was filed. Subsequently, said returns were processed at CPC and refund was determined, the appellant came to know about the refund claim made by his tax consultant and hence requested to revise the returns and pay the applicable taxes. However, he revised the returns filed by the tax consultant

was still resulting the refund which was not accepted by the assessee and didn't e-verify the returns till date.

6. The Ld.AR submitted that the assessee also tried various options on his own, contacted helpline to get guidance on filing revised returns without wrong claim of deductions and pay the applicable taxes. However, the appellant did not succeed in his honest attempt in revising the returns. Subsequently, the case was selected for complete scrutiny to verify the return of income with the below queries:

- Total Taxable Income of an employee
- Reasons for Refund claim
- Deduction from Total Income under Chapter VI-A

7. The Ld.AR submitted that during the assessment proceedings, the appellant had duly accepted that there was an inadvertent error while filing returns of income for the said assessment year relating to section U/s 80E deduction.

8. Assessment proceedings was completed as under Faceless Assessment Scheme and the assessment u/s 143(3) was completed vide order dated 17.9.2022 with DIN ITBA/AST/S/143(3)/2022-23/1045579614(1).Details of the additions made to the retuned income are tabulated hereunder for your ready reference.

Nature of Additions made	Amount (INR)
Disallowance of deductions claimed U/s 80E	29,53,200/-
Disallowance of exemption claimed U/s 10(13A)	2,28,166/-
Total Additions	31,81,366/-

9. It is submitted that the Ld.AO completed the assessment with a demand of Rs. 12,92,361/- it is to make humble request before your good office your honor the appellant has accepted the additions and made the tax payments. Details of the tax paid are as under:

Sl. No.	Date of payment	BSR code	Challan Sl. No.	Amount
1	28-Sep-2022	0180005	03913	1,02,860
2	30-09-2022	6930001	00110	10,91,670
3	30-09-2022	6930001	00134	97,831
Total				12,92,361

10. Subsequently show cause notice u/s. 274 r.w.s 270A dated 17th Sept. 2022 was issued to levy penalty u/s. 270A. The assessee submitted response against the penalty notice and filed Form 68 manually and through email to the learned jurisdictional authorities with a request to grant immunity from penalty proceedings which was denied.

11. Levy of Penalty:

11.1 The Ld.AR submitted that

- i. The appellant accepted the additions made while passing the order
- ii. Said taxes were duly remitted without making any dispute
- iii. Made humble request before the learned assessing authorities as well as learned appellant authorities to grant immunity from levy penalty
- iv. It is submitted that, the said claim made inadvertently while filing return on income and there was no mensrea while making claim

11.2 The Ld.AR submitted that in the assessment order, penalty has been initiated for underreporting of income in consequence of misreporting, however the section mentioned there is section 270(9) instead of section 270(8). The Ld.AR submitted that u/s. 270AA, sub-clause (8) deals with a situation where there arises underreporting of income in consequence of misreporting. The Ld.AR also emphasised that wrong claim of section 80E was not at the behest of the assessee but a mistake that was committed by the tax professional who had filed returns of assessee. The Ld.AR submitted that assessee upon realising the wrong claim had surrendered the taxes with interest thereon, thus there cannot be any malafide attributable to the assessee.

11.3 The Ld.AR submitted that even form 68 was filed manually and also sent through email to the jurisdictional AO requesting to grant immunity from penalty proceedings after satisfying the relevant conditions. However, the authorities below rejected the

submissions of the assessee by stating that assessee being an educated person is accepted to be vigilant. The Ld.AR thus prayed that the penalty may be deleted as the assessee did not have any intention to default the tax payment by making the wrong claim of deduction. It is submitted that the error committed by the tax consultant went unnoticed by the assessee. On the contrary, the Ld.DR relied on the orders passed by the authorities below. The Ld.DR vide written submissions submitted as under:

आयकर अपीलिय प्राधिकरण
Income Tax Appellate Tribunal
बैंगलूर
Bangalore
No. 1394 Date: 19/02/24

Rev
19/02/24

'C' Bench

माननीय आयकर अपीलीय प्राधिकरण 'सी' बेंच, बैंगलूर के समक्ष

Before The Hon'ble Income - tax Appellate Tribunal, 'C' Bench, Bangalore.

REVENUE'S WRITTEN SUBMISSION

In the case of
CHIGURUVADA DILEEP KUMAR

IN

ITA 832/B/2023

A.Y. 2020-21

Date of Hearing: 21.02.2024.

यह आपके सम्मान में प्रस्तुत है। *May it please Your Honours:*

1. The assessee has filed original return of income for AY 2020-21 on 06/01/2021 declaring total income of Rs. 37,34,200/-. Subsequently, assessee filed revised return of income on 20.03.2021 declaring total income of Rs. 34,34,200/-. In the complete scrutiny assessment proceedings the Assessing Officer passed an order under 143(3) r.w.s 144B computing a total income of Rs.69,15,566 as against returned income of Rs.37,34,200/- whereby deduction u/s 80E of Rs. 29,53,200/- and exemption u/s 10(13A) of Rs. 2,28,166/- claimed was disallowed. While completing the scrutiny, penalty proceeding for under reporting of income in consequence of misreporting by way of misreporting/suppression of facts u/s 270A (9) (a) was initiated.

2. Subsequently, order u/s 270A was passed on 15/03/2023 imposing a penalty of Rs. 15,95,172/-. With respect to penalty u/s 270A(9), it is humbly submitted that the assessing officer had categorically mentioned that the assessee had under reported his income by way of misinterpretation or suppression of facts which is covered under subsection 9 (a) of section 270A thereby covering both limbs for imposing penalty. For the sake of clarity the same in the penalty order is reproduced:-

"5.Hence, it is seen that the assessee has underreported his income, which is in consequences of misreporting of income and misrepresentation/ suppression of the facts. Accordingly, penalty proceedings u/s 270A of the Income Tax Act,1961 for underreporting of income, which is in consequences of misreporting of income has been initiated and a show cause notice u/s 274 r.w.s 270A was issued to the assessee vide notice dated 17.09.2022 with DIN : ITBA/PNL/S/270A/2022-23/1045580992(1) by faceless penalty assessment unit."

Para 5

"11. In view of the above, it is concluded that the assessee has underreported his income, which is by misrepresentation of the facts by claiming false deductions and exemptions. The relevant provision of Section 270A(8) of the Income Tax Act, 1961 are reproduced below "(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in-sub-section (1) shall be equal to two hundred percent of the amount of tax payable on under-reported income." Hence, the assessee is liable to pay penalty of two hundred percent of the amount of tax payable on the underreported income, which is in consequences of misreporting of income."

Para 11

3. It is submitted that the Assessing officer has stated two limbs u/s 270A while issuing a show cause notice dated 17/09/2022 and order u/s 270A dated 15/03/2023 that the assessee has underreported his income, which is consequence of misreporting of income and this misreporting of income by misrepresentation/ suppression of facts as per section 270A(9)(a).

4. It is submitted with respect to *mens rea* or guilty mind of the assessee, the assessing officer had issued notice u/s 142(1) dated

11/01/2022 asking explanation for educational loan and house rent allowance and the assessee had replied in his reply dated 20/01/222 that no educational loan was taken but it was paid from the savings to do international MBA programme. The relevant portion of assessee submission is reproduced here:-

"Dear Sir, Please find the documents attached..."

4. No education Loan taken, Paid from my savings to do international MBA, Ongoing Regards Dileep Kumar"

But later the assessee in his reply dated 01/03/2022 has retracted that the deduction claim u/s 80E was because of guidance/ instruction from his Chartered Accountant.

5. The assessee's contention of not having *mens rea* might have been accepted if in the first instance itself he had replied that claiming 80E deduction was a genuine mistake. But it is other way and clear from his reply to first notice that he had not taken educational loan for pursuing his MBA and expenses are covered from his savings thereby evidencing he want to misreport his income with guilty mind to claim higher deduction. Hence subsequent assessee's statement of "claiming 80E was CAs mistake" is a well-planned afterthought. **Thus from the original submission by the assessee, it is evident that he had guilty mind to under report his income by claiming false deduction with knowledge and intention to misrepresent his total income thereby gaining unjust enrichment.**

6. It is submitted that for house rent allowance, the assessee in his written submission dated 01/03/2022 had submitted that he had paid rent to Nest Away on 6th/7th of every month and while the assessing officer asked evidence for these **transactions and computation** of HRA u/s 10(13A), the assessee did not produce computation as well as full and complete documentary evidence. It is evident that the assessee with knowledge and

intention to under report his income by way of misrepresentation of facts claimed incorrect exemption u/s 10(13A).

7. It is submitted that the assessee is well aware and known that he is not entitled to deduction u/s 80E since he was pursuing MBA from his own saving expenses thereby having sufficient knowledge and intention to underreport his income by misrepresentation of facts. Likewise he had sufficient knowledge of misrepresentation of House rent allowances while claiming 10(13A) exemption, since he is well aware that he is not entitled to the said exemption amount based on noncompliance to conditions provided u/s 10(13A) thereby evidencing mala fide intention or mens rea. Hence it is requested that the penalty order dated 15/03/2023 maybe upheld.



(V. Parthivel)
Joint Commissioner of Income Tax
ITAT-3, Bangalore

Copy to: The AR of the appellant.

11.4 The Ld.DR in support also relied on the decision of *Hon'ble Kerala High Court* in case of *IBS Software (P.) Ltd. vs. UOI* reported in *(2024) 158 taxmann.com 209*.

We have perused the submissions advanced by both sides in the light of records placed before us.

12. Section 270A of the act, specifies penalty for underreporting and misreporting. Sub-section of section 270A of the act

categorises the case of misreporting of income that reads as under:

“270A. Penalty for under reporting and misreporting of 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

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.”

12.1 It is further noted that, section 270AA deals with immunity from imposition of penalty etc. u/s. 270A, except for penalty initiated under sub-section 9 of section 270A. On perusal of the assessment orders, we note that the Ld.AO initiated penalty proceedings for, ‘underreporting of income in consequence of misreporting’ without specifying which limb of sub-section 9 stands satisfied in present facts of the case. It is noted that there is no whisper as to which limb of section 270A(9) is attracted, and how any of the particular ingredient under sub-section 9(a-f) is satisfied.

Further, it is noted that, the assessee filed application seeking immunity in Form 68 before the Ld.AO within the prescribed period manually, as well as electronically, which has not been considered. Even before the Ld.CIT(A), the application seeking immunity against penalty u/s. 270A was filed by the assessee,

which has not been considered and rejected at the face of it. Admittedly, assessee has not filed any appeal against the quantum and has accepted the addition made by the Ld.AO.

12.2 We note that in the assessment order, the assessee submitted the bonafides of wrong claims that was made by the tax consultant, who filed assessee's return for the year under consideration. The assessee categorically mentioned that, even in the return that was filed subsequently, the assessee denied to e-verify as there were errors that continued. The assessee also submitted that, he has been paying rent which can be established from the bank statements, and it was only in the absence of the documents in support that the deduction u/s. 10(13A) was disallowed. It is the submission of the assessee that, these being a debatable issues, penalty is not leviable.

12.2.1 Insofar as the wrong 80E claim is concerned, the assessee accepted the addition as it was due to sheer negligence of the authorised representative who filed the return of income and that the assessee had no knowledge of the claim having made in the form of education loan.

12.3 Under such circumstances, the application for immunity against the provisions of section 270A should have been considered by the authorities below. The Ld.CIT(A) during the appellate proceedings has concurrent jurisdiction, as that of AO

and should have used the discretionary power envisaged under the act, to accept the application and to consider the same in the light of the law.

12.4 The facts of the decision relied by the Ld.DR are distinguishable as in that case, the authorities below had accepted the application of immunity and has analysed the same in the light of evidences filed. Whereas in the present case, the application seeking immunity has been dismissed at the threshold without even considering the facts of the case and without even mentioning under which limb of sub-section (9) of section 270A as the penalty being initiated.

12.5 We refer to the decision of *Hon'ble Delhi High Court* in case of *Prem Brothers Infrastructure LLP vs. NFAC* reported in (2022) 142 taxmann.com 38, wherein the penalty was levied by the assessing authority similar as that of present assessee by alleging misreporting of income. It is also noted that in the present facts of the case, the assessee furnished all the details pertaining to the rent paid to the authorities below. In respect of the addition accepted by the assessee u/s. 80E, the Ld.CIT(A) has reproduced the submissions of the assessee that reads as under:

“5.3.1. The appellant was provided with stock options every year by his employer. The stocks vests on a specific date and the employer deducts tax on the said vesting. But the F.Y 2019-20 was black-out period, wherein there was a restriction imposed by the employer, stating that the internal employees can't sell the shares for 3 months' time. By the time the black-out period was over, stock value

reduces to a great extent by 30%, and employees tend to loose the money. However, taxes were deducted by employer on notional gains of stock options, whereas employees has to incur losses when the stocks were actually sold. Hence, the appellant approached a tax consultant to seek guidance on the tax treatment on the said losses incurred during the year. However, the tax consultant, instead of providing the insight on provisions of claiming loss on stock options, misguided the appellant and claimed the deduction U/s. 80E and filed income tax returns with the above refund claim. This claim of refund was not brought to the knowledge of the appellant while filing the return of Income.

5.3.2 The appellant further submitted that, the appellant had no intention to claim refund nor any intention to default tax payments. But due to lack of knowledge about Income tax provisions/rules and overlooking and relying on the tax consultant the income tax return was filed with wrong claim. Later when the return of Income was processed and refund was determined, the appellant came to know about the claim made by tax consultant and hence requested to revise the returns and pay the applicable taxes on the wrong claim. However, the revised return filed by the tax consultant still has more flaws and tax consultant mentioned that he doesn't have the knowledge on taxability of stock options. Hence, appellant didn't e-verify or accept the revised returns filed for the said assessment year. Further, it is to bring to your kind notice that the appellant tried various options on his own, contacted helpline to file revised returns in order to remove wrong claim of deductions and pay the applicable taxes. However, the appellant did not hear from the helpline and left the same as it is. During the assessment proceedings appellant duly accepted that deduction U/s 80E was wrongly claimed by his tax consultant while filing of returns and also accepted to pay the tax demands that he is liable on the wrong claim made in ITR.”

From the above, the bonafide of the assessee is established and the Ld.CIT(A) should have considered the application seeking immunity.

12.6 *Hon'ble Delhi High Court* in the case of *Schneider Electric South East Asia (HQ) PTE Ltd. Vs. ACIT, International Taxation Circle 3(1)(2), New Delhi and Ors. W.P.(C) No. 5111/2022* vide judgment dated 28.03.2022 observed as under:-

"6. Having perused the impugned order dated 9th March, 2022, this Court is of the view that the Respondents' action of denying the benefit of immunity on the ground that the penalty was initiated under Section 270A of the Act for misreporting of income is not only erroneous but also arbitrary and bereft of any reason as in the penalty notice the Respondents have failed to specify the limb - "underreporting" or "misreporting" of income, under which the penalty proceedings had been initiated.

7. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the assessment order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary.

8. This Court is of the opinion that the entire edifice of the assessment order framed by Respondent No.1 was actually voluntary computation of income filed by the Petitioner to buy peace and avoid litigation, which fact has been duly noted and accepted in the assessment order as well and consequently, there is no question of any misreporting.

9. This Court is further of the view that the impugned action of Respondent No.1 is contrary to the avowed Legislative intent of Section 270AA of the Act to encourage/incentivize a taxpayer to (i) fast-track settlement of issue, (ii) recover tax demand; and (iii) reduce protracted litigation.

10. Consequently, the impugned order dated 09th March, 2022 passed by Respondent No.1 under Section 270AA (4) of the Act is set aside and Respondent No.1 is directed to

grant immunity under Section 270AA of the Act to the Petitioner.”

12.7 We are conscious of the fact that there can be cases where underreporting of income may result in misreporting of income. However, in facts of the present case, the underreporting has not been established in respect of deduction u/s. 10(13A), the assessee had furnished all the details in respect of rental paid. In respect of the wrong claim u/s. 80E, the assessee admitted the addition voluntarily which is evident from the submissions reproduced hereinabove in para 12.4. The assessee took necessary steps to correct the claim before the assessment which was unsuccessful. All these circumstances have not been considered by the Ld.CIT(A)/AO.

12.8 Based on the above discussions, we are of the opinion that there is no whisper as to which limb of section 270A of the act is directed and how any of the ingredients of sub-section (9) to section 270A stands satisfied in the present facts of the case. There is no basis to invoke sub-section (9) to section 270A and in the absence of any such particulars in the assessment order dated 17.09.2022, a mere reference of the phrase “underreporting of income in consequence of misreporting”, cannot be a reason to deny immunity from imposition of penalty and prosecution.

We therefore quash and set aside the penalty order dated 15.03.2023 and direct the Ld.AO to consider the application

seeking immunity filed by the assessee u/s. 270AA of the act and to pass necessary orders in accordance with law.

Accordingly, the appeal filed by the assessee in ITA No. 832/Bang/2023 stands partly allowed for statistical purposes.

In the result, the appeal filed by assessee in ITA No. 832/Bang/2023 stands partly allowed for statistical purposes and appeal in ITA No. 143/Bang/2024 stands dismissed.

Order pronounced in the open court on 27th May, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 27th May, 2024.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore