

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA 4476/Mum/2023
(Assessment year : 2017-18)

Shri Lalit Rahul Mehta 1214, SMR VINAY ENDEAVOUR, HOODI CIRCLE ITPL ROAD, BANGALORE-560 066 PAN : AJJPM2561N	vs	ITO WARD 1(1) THANE
APPELLANT		RESPONDENT

Assessee by : Shri Tanmay Phadke
Respondent by : Shri Manoj Kumar Sinha (SR.DR)
Date of hearing : 29/04/2024
Date of pronouncement : 30/04/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is filed against the order of the National Faceless Appeal Centre, Delhi (NFAC) [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment Year 2017-18 dated 22/11/2023. The impugned order was emanated from the order of the Ld.Income-tax Officer, Ward-18 (2)(3), Mumbai (in short, 'the A.O.')

passed under section 270A of the Act date of order 30/08/2022.

2. The assessee has taken the following grounds of appeal:-

- “1. *On the facts and in the circumstances and as per the law, the National Faceless Appeal Centre / Commissioner of Income Tax (Appeals) [“the learned Commissioner (Appeals)] erred in reaching the conclusion that the appellant did not comply with the provisions of Section 249(4) of the Income Tax Act, 1961 and thereafter dismissing the appeal in limine. Thus, the order dated 22.11.2023 being incorrectly passed by the learned Commissioner (Appeals) may be quashed.*
2. *Without prejudice to the above, On the facts and in the circumstances of the case and as per the law, the penalty of Rs.27,48,520/- as levied by the learned Respondent under Section 270A of the Income Tax Act 1961, being incorrect and untenable in law may be deleted.”*

3. The brief fact of the is that the assessment was framed under section 147 read with section 144B of the Act. The demand was raised amounting to Rs.1,07,658/-. The assessee paid the entire demand with interest amounting to Rs.12,11,200/- on dated 02/03/2022. The proceedings under section 270A was initiated by the Ld.Assessing Officer for difference in assessed tax and tax declared under section 139 of the Act. The difference amount was duly taken as penalty under section 270A and 200% penalty was levied under section 270A(8) read with section 270A(10) amounting to Rs.27,48,520/-. Being aggrieved, the assessee filed an appeal before the CIT(A). The Ld.CIT(A) has passed an order exparte and due to a technical defect in Form No.35 in column No.9 for assessee not offered ‘yes’ comments. In this column 9, the entire appeal related to penalty under section 270A was rejected. Aggrieved, the assessee filed an appeal before the Bench.

4. The Ld.AR filed a written submission which is kept on the record. The Ld.AR first invited our attention in appeal order page 3. The relevant paragraph is reproduced as under:-

"3.5. Though the appellant has not offered 'YES' comments at si. No. 9 of Form-35, it was asked vide DIN & letter no. ITBA/NFAC/F/APLJ/2023-24/1057795938(1) dated 08.11.2023 to intimate whether it has made payment of tax -which includes element of advance tax also- in compliance to notice of demand u/s 156 of the Act and date of compliance was fixed for 16.11.2023 but the appellant failed to contradict the information given at si. no. 9 of Form-35 and to prove that it has made payment of amount equal to the advance tax which was due on its income. It is, therefore, clear that information, given at sl. no. 9 of Form-35 is correct and the appellant has not made payment of amount equal to the advance tax which was due on its income.

4. Since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed."

4. The Ld.AR also placed that the demand under section 156, the tax was duly paid and copy of the challan is enclosed in APB 9 for payment of Rs.1,11,200/- on 02/03/2022. The Ld.AR further placed that there is no question about the advance-tax for the assessee and the penalty which is levied by the Ld.Assessing Officer was not adjudicated by the Ld.CIT(A) during the appeal proceedings. So entire appeal should be restored further before the Ld.CIT(A).

5. The Ld.DR argued and fully relied on the order of Revenue Authorities.

6. We heard the rival submissions and considered the documents available on the record. The assessee filed the appeal against the penalty order under section 270A of the Act in Form No.35. The technical mistake was made by the assessee and mentioned 'yes' in column No.9, though it was not applicable. The Ld.CIT(A)asked whether the payment of tax was made under section 156 or the advance-tax was paid. But was fixed on 16/11/2023. But the assessee failed to reply the notice of Ld.CIT(A). On that basis, the appeal was rejected. But, on perusal of the document we find that the amount is already paid by the assessee and the challan was duly annexed including the form 26AS (APB 7 to 8). We find that the assessee was not in default for payment of demanded tax under section 156. But there is a communication gap in between Ld.CIT(A) and the assessee and the assessee has not replied during the appeal proceedings. In our considered view, we set aside the appeal order before the Ld.CIT(A) for further adjudication denovo in appeal petition. We are not making any comment on the merit as the

appeal proceedings should not be affected. Needless to say, the assessee should get the reasonable opportunity of hearing and assessee is directed to submit all documents before the Ld.CIT(A) related to his claim.

7. In the result, the appeal of the assessee bearing **ITA No.4476/Mum/2023** is allowed for statistical purpose

Order pronounced in the open court on 30th day of April, 2024.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 30/04/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai