

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.191/PUN/2024
निर्धारण वर्ष / Assessment Year: 2018-19

Sagar Subhash Wedhane, 75, MIDC, Bosch Limited, Satpur, Nashik- 422007. PAN : AAVPW1338A	Vs.	ITO, Nashik.
Appellant		Respondent

Assessee by : Smt. Abhilasha Sanjay Pawar
Revenue by : Shri Sourabh Nayak
Date of hearing : 12.06.2024
Date of pronouncement : 03.07.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 26.01.2024 passed by LD CIT(A)/NFAC for the assessment year 2018-19.

2. The appellant has raised the following grounds of appeal :-

"1. The learned CIT is not justified in levying penalty u/s 270A of Rs.1,61,548/- on the ground that the assessee has under-reporting in consequence of mis-reporting without appreciating that the said levy of penalty was not justified in law.

2. *The learned CIT failed to appreciate that before the CIT, the assessee had duly explained that under-reporting in consequence of mis-reporting 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 CIT 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.”*

3. The facts, in brief, are that the assessee is an individual and earning income from salary being employee of BOSCH LIMITED At Nasik. The original return of income u/s 139(1) for the year under consideration was filed on 10.07.2018 declaring total income of Rs.7,79,610/-. Later, on receipt of information that so many employees of Bosch Limited including the assessee, who got their returns filed by the same person namely Kishor Patil, made false/excess claims of deduction, the Assessing Officer issued notice u/s 148 of the IT Act calling for the assessee to file the correct return of income. In response to the said notice, the assessee filed the return of income on 30.04.2022 declaring taxable income at

Rs.11,09,050/-. Statutory notices u/s 142(1) and 143(2) of the IT Act were issued & served, in response to which the assessee furnished his submission & the assessment was completed u/s 147/143(3) of the IT Act on 21.03.2023 determining the total income of the assessee at Rs.11,14,480/-. Simultaneously penalty proceedings u/s 270A was also initiated because there was difference in assessed income & income shown in revised return. Assessee furnished reply to penalty notice but being unsatisfied the Assessing Officer vide order dated 22-08-2023 imposed penalty of Rs.1,61,548/- on the assessee u/s 270A(9)(a) of the IT Act being 200% of the differential tax for underreporting of income in consequence of misreporting.

4. In first appeal LD CIT(A)/NFAC, after considering the reply of the assessee, dismissed the appeal of the assessee & confirmed the levy of penalty.

5. Being aggrieved by the decision of ld. CIT(A)/NFAC, the assessee is in appeal before this Tribunal.

6. LD AR submitted before us that LD CIT(A)/NFAC was not justified in confirming the penalty u/s 270A(9)(a) of the IT Act. It

was further submitted that the assessee came to know from other employees in company that Mr. Kishor Patil with his expertise is able to legally calculate lower tax, resulting in refund of TDS deducted by employer. The assessee was unaware about the contents of the Income Tax Return filed by Kishor Patil & truly believed that the returns are filed legally as per the provisions of the Income Tax Act. The assessee being from technical background does not understand ABCD of Income Tax & therefore completely relied on the above named tax consultant, who without informing him & others, claimed excess deduction under chapter VIA of the IT Act & claimed refund. When the fact that this kind of fraud was made in the name of number of persons all of them made complaint to the Economic Offence Wing of Police, against the tax consultant Kishore Patil. The news regarding fraud committed by Kishore Patil also flashed in the daily news paper of Nashik. It was also submitted by the counsel of the assessee that there is no mistake of the assessee but it was the hidden interest of the tax consultant who triggered the gun by using shoulders of the assessee & many more for his own benefit.

It was further submitted that as soon as the fact of excess deduction claimed, came to the knowledge of the assessee he immediately furnished correct return in response to the notice u/s 148 of the IT Act & paid the due tax with interest. It was further submitted by the counsel of the assessee that in the assessment order only penalty u/s 270A was initiated & no sub section or clause was mentioned. When the notice dated 21.03.2023 for imposition of penalty was issued no particular sub section/ clause / limb was mentioned in the notice, instead only penalty u/s 270A was mentioned. Under the above facts & in the circumstances of the case it was submitted by the counsel of the assessee that in the absence of mention of particular limb of the relevant sub section of section 270A of the IT Act in the notice, the assessee was not in a position to reply for the same, because until and unless the assessee knows as to under which limb the penalty is going to be imposed, he is unable to file his specific reply regarding that particular limb which is attracted in his case as per the Assessing Officer. It was accordingly prayed to delete the penalty of Rs.1,61,548/- imposed

u/s 270A(9)(a) of the IT Act in the light of decision passed by a Co-ordinate Bench of this Tribunal on identical issue.

7. LD DR relied on the orders passed by subordinate authorities & requested to confirm the same.

8. We have heard LD counsels from both the sides & perused the material available on record. We find that the assessee is a salaried employee of BOSCH Limited & belongs to technical background. The return of most of the employees of Bosch Company, including that of the assessee was filled by a tax consultant namely Kishor Patil. It was he who cheated all the employees & claimed excess deduction in their returns without informing them for his own benefit. When his fraud came to light, all the affected employees have filed police complaint against him before the Economic Offence Wing of Nashik Police. Copy of the complaint etc was also furnished before the Assessing Officer. During reassessment proceedings u/s 147/148 of the IT Act the assessee furnished true & correct return by claiming appropriate deduction under chapter VI of the IT Act. The return of income was accepted by the Assessing Officer except difference of

Rs.5,430/- which arises due to disallowance of other charges paid to school but claimed as tuition fee. In the assessment order in the table of variations, only Rs.5,430/- was mentioned as variation in respect of the issue of false deductions claimed by the assessee during the year. However, in the assessment order the penalty u/s 270A was initiated for under reporting of income in consequence of misreporting. Thereafter a show cause notice for imposing penalty u/s 270A was issued on 21-03-2023, which reads as under :-

“Notice for penalty under section 274 read with section 270A of the Income-tax Act 1961

Ms/Mr/M/s,

Whereas in the course of proceedings for assessment year 2018-19, it appears that you have under-reported income which is in consequence of misreporting thereof as per details given in the assessment order.

2. You are required to show cause why an order imposing penalty u/s 270A of the Income-tax Act 1961 should not be passed.”

9. From perusal of above penalty notice it clearly appears that no sub-section or particular clause/ limb was mentioned on the PENALTY NOTICE which was issued u/s 270A of the IT Act & therefore it was not possible for the assessee to reply about the particular sub-section/ clause/ limb under which the penalty u/s

270A was initiated & later imposed. We find that section 270A reads as under :-

“270A.

(1)

(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 per cent of the amount of tax payable on 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*

(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.”*

10. Therefore, in our considered opinion the decision passed in the case of Shashikant Sukdeo Ambekar in ITA No.365 & 366/PUN/2023 dated 20-07-2023 by a Co-ordinate Bench of this Tribunal & relied on by ld. counsel of the assessee squarely applicable in the instant case also. In this case it was decided as under :-

“8. In the case under consideration, the AO has failed to identify the specific Clauses from Clause (a-f) of section 270A(9) of the Act. Therefore, respectfully following ITAT Pune and ITAT Mumbai

decisions the AO is directed to delete the penalty under section 270A of the Act. Accordingly, grounds of appeal raised by the assessee are allowed.”

11. Therefore, respectfully following the above decision passed by the Coordinate Bench of this Tribunal we delete the penalty of Rs.1,61,548/- imposed u/s 270A of the IT Act. Thus, the grounds of appeal raised by the assessee in the present appeal are allowed.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 03rd July, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd July, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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