

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.647/PUN/2024
निर्धारण वर्ष / Assessment Year : 2018-19

Ravindra Bhagwan Potdar, Plot No.49, Ravikiran Bungalow Bajrang Society, Indiranagar, Nashik-422009. PAN : AAYPP2231L	Vs.	ITO, Ward-3(1), Nashik.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Akhilesh Srivastava
Date of hearing : 03.07.2024
Date of pronouncement : 05.07.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 09.02.2024 passed by Ld CIT(A)/NFAC for the assessment year 2018-19.

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

- "1. On the facts and the circumstances of the case and in law, The Learned Assessing Officer erred in passing an order u/s 270A and thereby levying a penalty of Rs. 1,99,480/- by invoking provision of section 270A (9), being 200% penalty for under reporting of income in consequence to misreporting. Without appreciating the facts of the case therefore penalty deserves to be deleted.*
- 2. On the facts and the circumstances of the case and in law, The action of Learned Assessing Officer in levying the penalty u/s*

270A (9) for the charge of mis-reporting, is incorrect, especially in view of the fact that, in the quantum order passed u/s 147 dated 31/01/2023 he has initiated penalty for the default of under reporting of income therefore levy of penalty u/s 270A(9) is not valid.

3. *On the facts and the circumstances of the case and in law, The Learned Assessing Officer erred in levying the penalty of Rs.1,99,480. Without specifying the correct limb of section 270A(9) either in assessment order, notice or in the penalty order therefore the proceeding is liable to struck down in consequential order needs to be quashed.*

Your appellant craves for to add, alter, amend, modify, delete all above or any grounds of appeal before or during the course of hearing in the interest of natural justice.”

3. The facts, in brief, are that the assessee is an individual employed with State Bank of India filed his original return of income on 27.08.2018 declaring total income of Rs.7,29,500/- after claiming deduction of Rs.4,41,660/- under Chapter VI-A of the IT Act. A notice u/s 148 was issued for the reason that the assessee had claimed fraudulent refund of Rs.1,16,730/- by claiming excess deduction under chapter VIA of the IT Act without making actual payment for which deduction was claimed. In compliance to the notice u/s 148, the assessee filed his revised return of income declaring total income at Rs.11,42,450/-. Notices u/s 143(2) and 142(1) were also issued. After considering the submission of the assessee, the assessment was completed vide order dated 31.01.2023 passed u/s 147 r.w.s. 144B of the IT Act accepting the revised return income. Simultaneously, the Assessing Officer also

initiated penalty proceedings by issuing notice u/s 274 r.w.s. 270A of the IT Act on 31.01.2023 for under-reporting of income on the basis of difference in the income of original return and in the revised return filed in response to notice issued u/s 148 of the IT Act. In response to notice u/s 270A, the assessee furnished his reply but the Assessing Officer being unsatisfied, imposed the penalty of Rs.1,99,480/- u/s 270A of the IT Act, for under-reporting of income in consequence of misreporting.

4. In the first appeal, the ld. CIT(A)/NFAC after considering the reply of the assessee dismissed the appeal of the assessee and consequentially confirmed the penalty of Rs.1,99,480/- imposed u/s 270A of the IT Act.

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

6. When the present appeal was called for hearing, None appeared on behalf of the assessee, neither any application for adjournment was filed. Therefore, we proceed to decide the appeal on the basis of material available on record & after hearing LD DR.

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

8. We have heard the ld. DR and perused the material available on record. We find that the assessee is a salaried employee working in the State Bank of India came to know from other employees in the bank, that Mr. Vijay Sawant (a tax consultant) 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 Mr. Vijay Sawant & truly believed that the returns are filed legally as per the provisions of Income Tax Act, 1961. Therefore, the assessee completely relied on the above-named tax consultant, who without informing him & others, claimed excess deduction under chapter VI-A of the IT Act & claimed refund. But, after some time a news came in the newspaper that a survey was conducted at the premises of the above tax consultant and it was found that number of returns furnished by the said tax consultant claiming false deductions resulting in refunds. After hearing this news, the assessee contacted another tax consultant who disclosed the fact that excess deductions were claimed by erstwhile tax consultant and it was therefore advised to deposit the correct income tax along-with interest. However, the time of filing revised return was expired but the assessee immediately acted on his advice and calculated the correct income

tax due and deposited the same along-with interest by challans dated 29.08.2019. It was further found by the bench that a notice u/s 148 of the IT Act was issued on 30.03.2022 and in compliance to this notice, the assessee furnished his return by disclosing correct income and attached the challan already deposited by him on 29-08-2019. The Assessing Officer completed the assessment on the income returned by the assessee & adjusted the income tax which was already deposited by the assessee even prior to the issue of notice u/s 148 of the IT Act, however the AO initiated penalty proceedings u/s 270A for under-reporting of income. It was further found that in the assessment order only penalty u/s 270A for under reporting of income was initiated & no sub-section or clause was mentioned. Even the notice dated 31.01.2023 for imposition of penalty u/s 270A was issued for under reporting of income & no particular sub-section/ clause / limb was mentioned in the notice. But in the order dated 20-07-2023 imposing penalty, the penalty u/s 270A was imposed for under reporting of income in consequence of misreporting, i.e. 200% of the tax on the differential income. The show cause notice for imposing penalty u/s 270A was issued on 31.01.2023, 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 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. Under the above facts & in the circumstances of the case, we find 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 is also observed that originally the penalty for underreporting of income was initiated in the assessment order & even in the show cause notice penalty for underreporting of income was informed, but the penalty u/s 270A for under reporting in consequence of misreporting was 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. We further finds that even in the order imposing penalty no sub-section clause or limb was mentioned under which penalty was imposed. Under the above facts & in the circumstances of the case, we are convinced that this is not a fit case for imposing penalty u/s 270A of the IT Act because the assessee on his own deposited the due income tax with interest well in advance i.e. 3 years ago from the date of issue of notice u/s 148 of the IT Act. Even on legal ground also the penalty is not sustainable because it was initiated for under reporting but imposed for under reporting in consequence of mis-reporting. Therefore, we find that decision passed by a coordinate bench of this Tribunal in the case of Shashikant Sukdeo Ambekar in ITA No.365 & 366/PUN/2023 dated 20-07-2023 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 a Coordinate Bench of this Tribunal we delete the penalty of Rs.1,99,480/- imposed u/s 270A of the IT Act. Thus, the grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open Court on 05th day of July, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th 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.