

**आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE**

**BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.559/PUN/2024  
निर्धारण वर्ष / Assessment Year : 2017-18**

Asstt. Commissioner of Income Tax, Exemption, Circle Pune	<b>Vs.</b>	Kedari Redekar Shikshan Sanstha, MIDC Shendri Mal, Gadhinglaj, Taluka-Gadhinglaj, Maharashtra-416502  PAN : AAATK6888Q
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

Assessee by :	Shri Nikhil S. Pathak
Department by :	Shri Pawan Bharati
Date of hearing :	19-06-2024
Date of Pronouncement :	05-07-2024

**आदेश / ORDER**

**PER ASTHA CHANDRA, JM :**

The appeal filed by the Revenue is directed against the order dated 16.01.2024 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [**"CIT(A)"**] whereby he deleted the penalty of Rs.1,01,30,508/- imposed by the Ld. Assessing Officer (**"AO"**) u/s 270A of the Income Tax Act, 1961 (**the "Act"**) pertaining to Assessment Year (**"AY"**) 2017-18.

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

- “01. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the penalty imposed under section 270A of the Income Tax Act, 1961, without considering the intentional misrepresentation of expenditure in the profit and loss account by the assessee.
02. The Ld. CIT(A) failed to recognize the deliberate misreporting of facts and figures by the assessee, which resulted in under-reporting of income and attempted tax evasion.
03. Despite the absence of an explanation from the assessee regarding whether the misreporting was a mistake, oversight, or intentional misrepresentation, the Ld. CIT(A) erroneously deleted the penalty without proper justification.

04. *The Ld. CIT(A) disregarded the applicability of Section 270A(9) of the Act, which outlines scenarios of underreporting due to misreporting and allows for the imposition of a higher penalty.*
05. *The Ld. CIT(A) has erred in not appreciating the language used in section 270A(9)(a), where the AO was merely required to figure out the limb and the AO has categorically brought the same in the penalty order.*
06. *Ld. CIT(A) has erred in not appreciating the language used in section 270A, where it is for the assessee to make a case of bona fide belief and not for the AO to make any case of deliberate or intentional violation.*
07. *Ld. CIT(A) has erred in not appreciating that by failing to elucidate the circumstances that led to the misrepresentation of facts in the ITR whereby at one hand the receipts were not included as Income and on the other hand the expenses were claimed as application, therefore, the selective approach of the assessee has sparks of mala-fides.”*

3. Briefly stated the assessee is a trust engaged in the educational activity. It filed its return for AY 2017-18 on 03.01.2018 declaring total income of Rs.Nil. The case was selected for complete scrutiny through CASS. The assessee was registered u/s 12A of the Act and qualified for exemption u/s 80G of the Act.

3.1 During the assessment proceedings, the Ld. AO noticed that the assessee had claimed capital expenditure of Rs.2,40,02,040/-. On query by the Ld. AO, the assessee submitted revised computation of income in which claim of capital expenditure was revised to Rs.97,47,772/-. The Ld. AO sought explanation which was furnished. It transpired that erroneously the assessee claimed capital expenditure of Rs.2,40,02,040/- as application of money, though loan amount of Rs.1,42,54,268/- financed by the bank for building construction was disbursed during the next AY 2018-19. Hence, the capital expenditure of Rs.97,47,772/- (Rs.2,40,02,040/- - Rs.1,42,54,268/-) only was claimed as application of money in the revised return. According to the Ld. AO the said capital expenditure of Rs.1,42,54,268/- which was applied out of borrowed funds was not permissible. He, therefore, disallowed Rs.1,42,54,268/- and added to the income of the assessee and initiated penalty proceedings u/s 270A of the Act for misrepresentation of facts in the assessment order dated 28.12.2019.

4. During the penalty proceedings, the assessee e-filed replies to the show cause notice(s). But as per the Ld. AO the assessee did not furnish any explanation on the merits of the issue and also failed to put forth any reasonable cause for non-levy of penalty u/s 270A of the Act. Accordingly, he imposed penalty of Rs.1,01,30,508/- @ 200% of the tax payable on the amount of Rs.1,42,54,268/- observing inter alia that had the case not been selected for scrutiny, the assessee would have succeeded in evading taxes on the said income and that the assessee misreported the said income within the meaning of section 270A(8) of the Act.

5. Aggrieved, the assessee filed appeal before the Ld. CIT(A) challenging the levy of the impugned penalty on the ground that the Ld. AO erred in computing the penalty as per the provisions of section 270A(8) r.w.s. 270A(10)(c) of the Act and worked out the penalty without applying the provisions of section 270A as the tax payable on under-reported income is Nil as per the provisions of section 270A(1)(c) of the Act. Therefore, the penalty will also be Nil as per the provisions of section 270A(8) of the Act. The Ld. CIT(A) deleted the impugned penalty by observing and recording the following findings :

*“4.3 I have gone through the assessment order and record available. The assessee filed its return of income for A.Y. 2017-18 on 03-01-2018, declaring total income of Rs. Nil. The case was selected for complete scrutiny through CASS. Notice u/s 143(2) dated 11-08-2018 was issued and served on the assessee. Assessment was completed u/s. 143(3) on 28.12.2019. Excess claim of capital expenditure of Rs.1,42,54,268/- on assets was disallowed and added back to the income. Satisfaction was recorded -that the assessee misrepresented the income. Penalty proceedings u/s. 270A r.w.s 274 initiated through notice on 27.12.2019. During assessment proceedings, it was noticed that the assessee initially claimed capital expenditure of Rs. 2,40,02,0401-. The assessee later revised the claim to Rs.97,47,772/-, attributing the initial error to wrongly including loan amount financed by the bank. Show cause notices were issued on 17.05.2021 and 08.06.2021. The assessee's replies during the penalty proceedings did not provide any explanation on the merits of the issue or reasonable cause for non-levy of penalty u/s. 270A. The AO concluded that the assessee indulged in under-reporting income due to misreporting by claiming wrong capital expenditure. The penalty under Section 270A is levied at 200% of the tax payable on the under-reported income. Tax payable on the under-reported income of Rs.1,42,54,268/- is Rs.50,65,254/-. The calculated penalty is Rs.1,01,30,508/- (200% of the tax payable). This penalty order is based on the finding that the assessee misreported its income by claiming incorrect capital expenditure, resulting in the initiation of penalty proceedings under Section 270A of the Income Tax Act, 1961.*

*4.4 In the instant case, it refers to reporting or recording expenses in the profit and loss account that may not be lawful or accurate. The appellant has also not explained before the AO that whether It was a mistake, oversight, or intentional misrepresentation. This financial statement of Profit and Loss Account, summarizes the revenues, costs, and expenses incurred by a*

*business during a specific period. It helps determine the net profit or loss for that period. When there is a deliberate or intentional inclusion of incorrect expenditure in the profit and loss account, it is considered as intentionally misreporting income. In other words, it implies an attempt to manipulate financial records to present a more favorable financial picture. It could mean that during assessment and penalty proceedings, if it was found that certain expenditures were intentionally misrepresented in the profit and loss account, then the same could be considered a serious violation of accounting principles and regulations.*

*4.5 Section 270A(9) delineates six different scenarios that can qualify as underreporting due to misreporting. It is important to note that the provisions of Section 270A(9) are applicable only in cases where there is intent or knowledge, as evident from the instant case of income misreporting. Nowhere in the assessment order has the Assessing Officer specified the specific case under the aforementioned six scenarios the appellant's case falls under, which would warrant the imposition of a higher penalty of 200%. In such circumstances of the penalty imposition order, the penalty imposed by AO of Rs.10130508/- is deleted.”*

6. The Revenue is dissatisfied and is before the Tribunal and all the grounds relate thereto.

7. The crux of the Revenue's grievance as argued by the Ld. DR is that there was intentional misrepresentation of expenditure in profit and loss account resulting in under-reporting of income and attempted tax evasion. Section 270A(9) outlines the scenario of under-reporting due to misreporting which has not been considered by the Ld. CIT(A). Failure on the part of the assessee to elucidate the circumstances that led to the misrepresentation of facts in the ITR has not been appreciated by the Ld. CIT(A).

8. The Ld. AR submitted that during the assessment proceedings the Ld. AO made query as to the requirement of application of money upto 85% on objects of the trust. The assessee explained that the assessee has spent more than 85% on objects of the trust. The revision was made only in respect of amount applied under capital account (excluding application from borrowed funds) from Rs.2,40,02,040/- to Rs.97,47,772/-. This, however, did not alter the position of the requirement of spending more than 85% on the object of the trust. Therefore, the income returned by the trust remained the same after the revision as well.

8.1 The Ld. AR submitted that the explanation offered by the assessee for filing revised computation of income has been accepted by the Ld. AO in the assessment order which itself proves the bonafide of the assessee.

8.2 The Ld. AR emphasized that section 270A talks about the under-reported income. However, in the assessee's case under-reporting is Nil which is evident from the fact that the assessed income is Nil which is the same as returned income of the assessee. He, therefore, contended that the basic conditions enumerated in clauses (a) to (g) of section 270A(2) are not satisfied.

8.3 The Ld. AR further submitted that the Ld. AO failed to record any satisfaction while levying penalty in respect of allegation of misrepresentation of fact at the time of completion of assessment. There is distinction between mistake and misrepresentation. Mistake is inadvertent and is only an error committed while misrepresentation is often willful or intentional done with the intention of gaining wrongfully. The Ld. AR argued that revision in computation of income was made only to correct bonafide mistake which did not have any tax implication so as to cause misrepresentation.

8.4 The Ld. AR relied upon the decision of the Co-ordinate Bench in the case of Mahavir Realities Vs. ACIT in ITA No. 135/PUN/2024 rendered on 24.04.2024.

9. We have carefully considered the rival submissions and perused the records. The assessee is a charitable trust registered u/s 12A of the Act and engaged in educational activities whose income is exempt from tax. It is manifest from para 4 of the assessment order that on perusal of Schedule EC of the ITR, the Ld. AO noticed that the assessee had claimed capital expenditure of Rs.2,40,02,040/-. Vide notice u/s 142(1) of the Act he required the assessee to furnish headwise and naturewise bifurcation of said capital expenditure. It was in reply thereof that the assessee submitted revised computation showing capital expenditure of Rs.97,47,772/- for which explanation was submitted. On consideration of such explanation, the Ld. AO observed in para 4.5 of the assessment order that the assessee has obtained fresh loans of Rs.1,42,54,268/- from bank during AY 2018-19. Accordingly, since the assessee has pleaded that fresh

loan has been obtained for capital expenditure on assets which has been claimed as capital expenditure in the ITR and now assessee submits request to reduce its claim of capital expenditure for the assets on which loan has been taken in next years. According to the Ld. AO, the plea of the assessee is found acceptable. Not only this the Ld. AO went on to observe further that in this way, the assessee had saved itself from the double deduction on same capital assets on which loan is availed in coming years whose repayment may have been claimed by the assessee in subsequent AYs. It was in the above backdrop of the factual matrix that the Ld. AO disallowed the excess claim of capital expenditure of Rs.1,42,54,268/-. In our considered view there is no intentional misrepresentation of expenditure as alleged. By no stretch of imagination it can be said to be a case of attempted tax evasion as even after revision of computation, the taxable income remained Nil which is same as returned income of the assessee. In the assessment order there is no whisper that there is under-reporting on total income as a consequence to misreporting as envisaged u/s 270A(8) and (9) of the Act.

10. None-the-less the notice dated 27.12.2019 u/s 274 r.w.s. 270A of the Act states : “it appears to me under-reporting/misreporting of income”. Obviously, the initiation of penalty itself is based on suspicion and surmise. Nowhere it has been pinpointed – either in the penalty notice or in the impugned order of penalty as to under which stipulated specific clauses (a) to (f) to sub-section (9) r.w. sub-section (8) of section 270A of the Act, the assessee has committed default attracting “under-reporting” as a consequence of “mis-reporting”. In such a scenario the Co-ordinate Bench of the Tribunal in the case of Mahavir Realties (supra) held that not only Hon’ble Bombay High Court’s Full Bench landmark decision in Mohd. Farhan A. Shaikh Vs. ACIT (2021) 434 ITR 1 (Bom.) applies wherein it is held that such a failure on the Assessing Officer’s part indeed vitiates the entire penal proceedings (in old scheme), but also the very principle applies qua this new scheme of section 270A applicable w.e.f. 01.04.2017 for AY 2017-18 onwards as per Schneider Electric South East Asia (HQ) Ltd. Vs. ACIT (2022) 443 ITR 186 (Delhi).

11. We are inclined to agree with the submissions of the Ld. AR that a revision in computation of income was made with a view to correct bonafide mistake which did not have any tax implication so as to cause

misrepresentation resulting in misreporting. Misrepresentation is often willful or intentional done with the intention of gaining wrongfully. Nothing of the sort has been done by the assessee. It only corrected an inadvertent mistake.

12. For the reason set out above, we endorse the finding of Ld. CIT(A) that on the facts and in the circumstances of the case of the assessee, the impugned penalty is not exigible. Consequently, we reject the appeal of the Revenue being devoid of any merit and substance.

13. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 05<sup>th</sup> July, 2024.**

Sd/-  
(Rama Kanta Panda)  
**VICE PRESIDENT**

Sd/-  
(Astha Chandra)  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 05<sup>th</sup> July, 2024.  
रवि

**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, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune