

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "D" Bench, Mumbai.

Before Shri Satbeer Singh Godara (JM) & Shri Girish Agrawal (AM)

I.T.A. No. 4265/Mum/2023 (A.Y. 2017-18)

Dharmdas Sons Fruits Pvt. Ltd. 11/1, Mount Blanc A.K. Marg, Kemp's Corner Mumbai-400 037.  PAN : AAACD5681R (Appellant)	Vs.	National Faceless Appeal Centre Delhi  (Respondent)
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Assessee by	Ms. Prajakta Arote
Department by	Smt. Mahita Nair
Date of Hearing	01.07.2024
Date of Pronouncement	10.07.2024

ORDER

Per Satbeer Singh Godara (JM) :-

This assessee's appeal for A.Y. 2017-18, arises against the order of National Faceless Appeal Centre "NFAC", Delhi's Din and order No. ITBA/NACF/S/250/2023-24/1056721557(1) dated 03.10.2023 in proceedings under section 270A of the Income Tax Act in short "the Act".

Heard both the parties at length. Case file perused.

2. Coming to the first and foremost issue of validity of impugned section 270A penalty proceedings itself, it emerges at the outset with the able assistance coming from both the parties that the Assessing Officer's show-cause notice dated 19.12.2019 had termed it as an instance of "under-reporting/mis-reporting of income" than specifying the corresponding limb therein. The Revenue vehemently argued that such a mere procedural aspect does not vitiate proceedings itself in absence of having caused any prejudice in light of Veena Estates Pvt. Ltd. Vs. CIT (2024) 158 taxmann.com 341 (Bom).

3. We observe in this factual backdrop this tribunal's recent coordinate bench's order in ITA No. 98/Pune/2024 in Deepak Bhika Suryawanshi Vs. ITO dated 19.6.2024 has declined the Revenue's very contentions as under :-

"3. Learned DR vehemently argued that the instant issue is no more res-integra in light of the hon'ble jurisdictional high court recent decision in M/s. Veena Estate Pvt. Ltd. Vs. CIT (2024) 158 taxmann.com 341 (Bombay) rejecting a similar plea in section 260A proceedings. Mr. Murkunde further sought to buttress the point that the learned lower authorities have duly considered the assessee's explanation(s) in the penalty order as well as in the impugned lower appellate discussion and therefore, it could not be taken as a case wherein any prejudice would be held to have been caused to him.

4. We have given our thoughtful consideration to the assessee's forgoing legal issue raised in the instant appeal that the impugned penalty proceedings stand vitiated on account of the Assessing Officer's failure to pinpoint the relevant clauses (a) to (f) to sub-section (9); while initiating the proceedings herein u/s. 270A(8) of the Act, thereby alleging under reporting of income as a sequence of misreporting. Faced with this situation, we find no merit in Revenue's arguments placing reliance on M/s. Veena Estate Pvt. Ltd. (supra) once the issue before their lordships was that of the concerned appellant seeking to frame an additional substantial question of law in section 260A proceedings whereas the law regarding the tribunal's jurisdiction to entertain such a pure question of law, not requiring any further detailed investigation on facts, is already settled in NTPC Ltd. Vs. CIT (1998) 229 ITR 383 (SC). That being the case, we are of the considered view that going by the foregoing judicial precedent, this tribunal is very much entitled to entertain and decide such a pure legal plea for the first time in section 254(1) proceedings. We accordingly reject the Revenue's instant technical arguments to conclude in light of section 270A (8) & (9) r.w. clauses (a to f) that the learned Assessing Officer's failure to pinpoint the corresponding default of assessee's part indeed vitiates the entire proceedings as per (2022) 443 ITR 186 (Del) Schneider Electric South Asia Ltd. Vs. ACIT (in the new scheme) and Md. Farhan Vs. ACIT (2021) 434 ITR 1 (Bom.) in section 271(1)(c) old penal provision. We order accordingly. The impugned penalty of Rs.98,324/- stands deleted in very terms."

4. We wish to make it clear that the learned Assessing Officer's above referred penalty show-cause notice had not complied with the legal requirement of pinpointing the specific limb under section "270A(8) & (9)(a to f)" of the Act. We accordingly treat it is a fit case to delete the impugned penalty amounting to Rs. 2,09,016/- levied in both the lower proceedings in very terms. Ordered accordingly.

6. This assessee's appeal is allowed.

Order pronounced in the open court on 10<sup>th</sup> July, 2024.

Sd/-  
(Girish Agrawal)  
Accountant Member

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Mumbai : 10.07.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS