

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI ABY T. VARKEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकरअपील सं./ ITA No.1176/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2019-20)

Smt. Evangeline Paul Dhinakaran #7, Jeevarathinam Nagar, Adyar, Chennai-600 020.	बनाम/ Vs.	DCIT Central Circle-3(1) Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAJPD-2491-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

2. आयकरअपील सं./ ITA No.1177/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2019-20)

Shri Samuel Paul Dhinakaran #7, Jeevarathinam Nagar, Adyar, Chennai-600 020.	बनाम/ Vs.	DCIT Central Circle-3(1) Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ATSPD-8564-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri G. Baskar (Advocate) - Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Ms. R. Anita (Addl.CIT) -Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	01-08-2024
घोषणाकीतारीख / Date of Pronouncement	:	12-08-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by confirmation of certain penalty for Assessment Year (AY) 2019-20, the two assesseees are in further appeal before us. ITA No.1177/Chny/2024 arises out of an order passed by learned

Commissioner of Income Tax (Appeals)-20, Chennai [CIT(A)] on 11-03-2024 confirming penalty levied by Ld. AO u/s. 270A of the Act on 28-09-2022 for under-reporting of income. The grounds of appeal read as under: -

1. The CIT(A) erred in confirming the penalty levied u/s 270A of the Act.
2. The CIT(A) failed to note that penalty can be levied u/s 270A only if there is any underreporting or misreporting of income identified during the assessment proceedings.
3. The CIT(A) failed to note that the question of levy of penalty u/s 270A does not arise when no addition was made based on any incriminating material found during the search.
4. The CIT(A) erred in holding that residential status was disclosed on the basis of search finding. He failed to note that the Appellant voluntarily filed the return of income under "resident" status.
5. The CIT(A) failed to note that the return filed u/s 153A takes the place of original return of income u/s 139 and thus AO erred in comparing the income declared ii) the earlier original return of income, which does not exist.
6. The CIT(A) failed to note that the return filed u/s 153A takes the place of original return of income u/s 139 and thus there is no underreporting or misreporting of income.
7. The CIT(A) failed to note that the AO had not considered the request for grant for immunity u/s 270AA which she was fully eligible.
8. The CIT(A) failed to adjudicate on all the grounds raised by the Appellant.

The Ld. AR advance arguments assailing the impugned penalty on the ground that the return as filed by the assessee u/s 153A has been accepted in toto. The Ld. Sr. DR supported the action of lower authorities. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

2. Facts leading to imposition of penalty are that the assessee was subjected to search and an assessment was framed u/s 153A on 31-03-2022 wherein the returned income filed by the assessee u/s 153A for Rs.45.44 was accepted. However, penalty proceedings u/s 270A was initiated in the assessment order for under-reporting of income consequence of mis-reporting. Accordingly, a show-cause notice was issued on same date which was followed by another notice on 05-09-2022. The assessee submitted that as soon notice u/s 153A was issued,

it filed return of income and voluntarily admitted income of Rs.45.44 Lacs. Further, due taxes were paid on the same. It was also submitted that no incriminating material was found during search.

3. However Ld. AO noted that the assessee was showing his status as non-resident consistently and did not disclose true income. Once notice u/s 153A was issued, residential status was changed to that of resident and taxes were paid. Therefore, the provision of Sec. 270A(9)(a) would apply for under-reporting in consequence of misreporting of income. Accordingly, Ld. AO levied penalty of Rs.24.46 Lacs.

4. The Ld. CIT(A) held that in terms of provisions of Sec.270A(3)(i)(a), when the income is assessed for the first time, difference between income assessed and income determined u/s 143(1), constitute under-reporting of income. Though the assessee had certain sources of income, the same was not disclosed in the regular return of income. This income includes income earned from Cyprus, USA and Gifts etc. The assessee chose to disclose the same in the return of income filed u/s 153A. The penalty provisions do not differentiate between voluntary disclosure made by the assessee or disclosure made by the assessee based on incriminating material. If there is under reporting and such under reporting is on account of instances mentioned in Sec. 270A(9) then it was to be treated as a case of under reporting as a consequence of misreporting. Accordingly, the penalty was confirmed against which the assessee is in further appeal before us.

5. It emerges that the assessee was subjected to search proceedings and filed return of income u/s 153A. Undisputedly, the same has been accepted by Ld. AO in toto. It could be seen that the assessee reflected

his status as non-resident whereas in return of income filed u/s 153A, the status has been shown to be that of resident and accordingly, the income earned from foreign sources have also been included in the offered income. We concur with the submissions of Ld. AR that deriving status of the assessee would involve certain calculation of number of days during which the assessee was resident in India. The said calculations may have been overlooked by the assessee and the assessee, in such a case, would not offer foreign income in its return of income. Nevertheless, this same has been corrected by the assessee in subsequent return of income which has been accepted and no discrepancy has been found in the same. The assessee has duly paid all the taxes. We are of the considered opinion that penalty is not automatic in nature. The provisions of Sec. 270A(6) provide that the under-reporting of income shall not include the amount of income in respect of which the assessee offers an explanation and lower authorities accept the explanation to be bona-fide. We find that the explanation of the assessee was a plausible one and the same could be accepted. Under these circumstances, imposition of penalty could not be held to be justified. Therefore, we delete the same and allow the appeal of the assessee.

6. Facts in ITA No.1176/Chny/2024 are quite identical. The returned income as filed by the assessee has been accepted. The assessee has offered to tax certain bank credits in return of income. Accordingly, Ld. AO has levied penalty of Rs.13.92 Lacs. The Ld. CIT(A) has confirmed the same on similar lines. Aggrieved, the assessee is in further appeal before us.

7. Considering the fact that the returned income has been accepted and due taxes have been paid by the assessee, taking the same view, we delete the impugned penalty. In our considered opinion, this is not a fit case for levy of penalty. Therefore, we delete the same and allow the appeal of the assessee.

8. Both the appeals stand allowed.

Order pronounced on 12th August, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :12-08-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF