

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1148/Bang/2024
Assessment year : 2017-18

Shri Holehucheshwar Co-operative Credit Society Ltd., 1, Main Road, Kamatagi – 587 120. Taluk Hungund. PAN : AAABS 1769E	Vs.	The Income Tax Officer, Ward 1, Bagalkot.
APPELLANT		RESPONDENT

Appellant by	:	Shri Tarun Kothari, Advocate
Respondent by	:	Shri V. Parithivel, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	16.07.2024
Date of Pronouncement	:	28.08.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against order dated 28.5.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18 confirming the penalty order u/s. 270A of the Act passed by the Assessing Officer.

2. Briefly stated the facts of the case are that the assessee is a co-operative society engaged in the business of offering credit facilities to

its members. It filed return of income on 04.10.2017 claiming deduction u/s. 80P declaring Nil income. The case was selected for scrutiny and statutory notices issued to the assessee which were complied by the assessee. The AO noted from the financial statements that assessee earned gross income of Rs.7,24,44,274 out of which interest earned from long term investment activity is Rs.68,01,672 out of idle funds deposited in BDCC Bank as fixed deposits for a period of one year or more than one year. The AO relying on judgment of jurisdictional High Court in the case of *Totgars Co-operative Sale Society* dated 16.06.2017 held that assessee is not eligible for deduction u/s. 80P(2)(a)(i) and u/s. 80P(2)(d) of the Act on such interest income received. The AO computed 9.38% of net profit at Rs.9,42,445 for disallowance u/s. 80P arbitrary. The assessee did not challenge the addition made by the AO before any of the appellate forum. Penalty proceedings u/s. 270A was initiated for misreporting of income. The assessee filed reply on 14.8.2021 stating that the entire interest on bank deposits of Rs.93,06,062 has been claimed as deduction u/s. 80P and the assessee is bound to keep funds as statutory reserved in the DCC Bank and interest income on such investment is purely attributable to the business of the assessee. The AO had made estimated addition under the head income from other sources and taxation of such interest income is purely dependent upon interpretation of law and does not amount to under reporting or mis-reporting of income and requested to drop the penalty proceedings.

3. The AO noted that the explanation offered by the assessee is not cogent explanation with documents. Penalty u/s. 270A is leviable if the AO is satisfied in the course of any proceedings that any person has misreported income and section 270A(9) provides for circumstances in which a person shall be considered to have misreported his income. In the present case the assessee has not disclosed the interest income earned from the funds which is not deductible u/s. 80P. The assessee has not brought any fact / evidence to corroborate the allowability of interest received u/s. 80P in the assessment proceedings. The assessee has not preferred any appeal before the CIT(Appeals). He held that assessee has misreported the income within the meaning of section 270A and levied penalty @ 200% of the tax sought to be evaded amounting to Rs.5,76,254. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

4. The assessee submitted before the FAA that the AO has assessed income on estimate basis and penalty cannot be levied on estimated income. The assessee has not filed any appeal against the quantum addition and has paid entire taxes. However, the Id. FAA did not accept the arguments of the assessee and noted that assessee has claimed deduction on such interest income received from investments with banks which is not allowable as deduction and it is clearly mis-reporting of income and upheld the order of the AO. Aggrieved, the assessee is in appeal before the ITAT.

5. The Id. AR reiterated submissions made before the lower authorities and submitted that in notice issued by the AO towards penalty u/s. 274 r.w.s. 270A dated 05.12.2019 it has not been mentioned under which limb the AO wants to impose penalty, for under reporting of income or misreporting of income and relied on the jurisdictional High Court judgment in the case of Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565 (Kar). The assessee has disclosed entire interest income out of deposits made in the banks which was as per direction of the Registrar, Co-operative societies. The AO has imposed penalty only on estimate basis which cannot be levied. As per section 270A(9), the AO has also not stated the reason under which limb penalty is imposed. The AO has arbitrarily imposed penalty @ 200% of tax which is not sustainable.

6. On the other hand, the Id. DR relied on the order of lower authorities and further submitted that there is misreporting of income by the assessee for claim of excess deduction which is not sustainable as per the provisions of the Act. The deduction provisions should be strictly interpreted, interest income on which assessee has claimed deduction u/s. 80P is not correct. Deduction u/s. 80P(2)(a)(i) of the Act is eligible only for the business income received from providing credit facilities to its members. However, the interest income received from fixed deposits which were kept for more than a year is not covered by section 80P(2)(a)(i) and u/s. 80P(2)(d) of the Act since the interest income was not received from any cooperative society and it was received from cooperative bank. The assessee concealed this fact

in its return of income and therefore it comes under section 270A(9)(a) as misreporting of income and therefore the CIT(Appeals) is justified in confirming the penalty order of the AO.

7. Considering the rival submissions, we note that the assessee has claimed deduction u/s. 80P on the interest income from its investment. The AO has estimated income arbitrarily @ 9.38% of net profit and made addition of Rs.9,42,445. The AO has not stated in the penalty notice under which limb of section 270A(9) (a) to (f) the assessee is liable for penalty. Penalty should be specific why the penalty is leviable as per section 270A(9) of the Act. Similar issue has been decided by the coordinate Bench of the Tribunal in the case of Shri Chiguruvada Dileep Kumar in ITA Nos.832/Bang/2023 dated 27.05.2024 in which it has been held as under:-

“12.5 We refer to the decision of Hon’ble Delhi High Court in case of Prem Brothers Infrastructure LLP vs. NFAC reported in (2022) 142 taxmann.com 38, wherein the penalty was levied by the assessing authority similar as that of present assessee by alleging misreporting of income. It is also noted that in the present facts of the case, the assessee furnished all the details pertaining to the rent paid to the authorities below. In respect of the addition accepted by the assessee u/s. 80E, the Ld.CIT(A) has reproduced the submissions of the assessee that reads as under:

“5.3.1. The appellant was provided with stock options every year by his employer. The stocks vests on a specific date and the employer deducts tax on the said vesting. But the F.Y 2019-20 was black-out period, wherein there was a restriction imposed by the employer, stating that the internal employees can't sell the shares for 3 months' time. By the time the black-out period was over, stock value reduces to a great extent by 30%, and employees tend to loose the money. However, taxes were deducted by employer on notional gains of stock options, whereas employees has to incur losses when the stocks were actually sold. Hence, the appellant approached a tax consultant to seek

guidance on the tax treatment on the said losses incurred during the year. However, the tax consultant, instead of providing the insight on provisions of claiming loss on stock options, misguided the appellant and claimed the deduction U/s. 80E and filed income tax returns with the above refund claim. This claim of refund was not brought to the knowledge of the appellant while filing the return of Income.

5.3.2 The appellant further submitted that, the appellant had no intention to claim refund nor any intention to default tax payments. But due to lack of knowledge about Income tax provisions/rules and overlooking and relying on the tax consultant the income tax return was filed with wrong claim. Later when the return of Income was processed and refund was determined, the appellant came to know about the claim made by tax consultant and hence requested to revise the returns and pay the applicable taxes on the wrong claim. However, the revised return filed by the tax consultant still has more flaws and tax consultant mentioned that he doesn't have the knowledge on taxability of stock options. Hence, appellant didn't e-verify or accept the revised returns filed for the said assessment year. Further, it is to bring to your kind notice that the appellant tried various options on his own, contacted helpline to file revised returns in order to remove wrong claim of deductions and pay the applicable taxes. However, the appellant did not hear from the helpline and left the same as it is. During the assessment proceedings appellant duly accepted that deduction U/s 80E was wrongly claimed by his tax consultant while filing of returns and also accepted to pay the tax demands that he is liable on the wrong claim made in ITR.”

From the above, the bonafide of the assessee is established and the Ld.CIT(A) should have considered the application seeking immunity.

12.6 Hon'ble Delhi High Court in the case of Schneider Electric South East Asia (HQ) PTE Ltd. Vs. ACIT, International Taxation Circle 3(1)(2), New Delhi and Ors. W.P.(C) No. 5111/2022 vide judgment dated 28.03.2022 observed as under:-

“6. Having perused the impugned order dated 9th March, 2022, this Court is of the view that the Respondents' action of denying the benefit of immunity on the ground that the penalty was initiated under Section 270A of the Act for misreporting of income is not only erroneous but also arbitrary and bereft of any reason as in the penalty notice the Respondents have failed to specify the limb - "underreporting" or "misreporting" of income, under which the penalty proceedings had been initiated.

7. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the assessment order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary.

8. This Court is of the opinion that the entire edifice of the assessment order framed by Respondent No.1 was actually voluntary computation of income filed by the Petitioner to buy peace and avoid litigation, which fact has been duly noted and accepted in the assessment order as well and consequently, there is no question of any misreporting.

9. This Court is further of the view that the impugned action of Respondent No.1 is contrary to the avowed Legislative intent of Section 270AA of the Act to encourage/incentivize a taxpayer to (i) fast-track settlement of issue, (ii) recover tax demand; and (iii) reduce protracted litigation.

10. Consequently, the impugned order dated 09th March, 2022 passed by Respondent No.1 under Section 270AA (4) of the Act is set aside and Respondent No.1 is directed to grant immunity under Section 270AA of the Act to the Petitioner.”

12.7 We are conscious of the fact that there can be cases where underreporting of income may result in misreporting of income. However, in facts of the present case, the underreporting has not been established in respect of deduction u/s. 10(13A), the assessee had furnished all the details in respect of rental paid. In respect of the wrong claim u/s. 80E, the assessee admitted the addition voluntarily which is evident from the submissions reproduced hereinabove in para 12.4. The assessee took necessary steps to correct the claim before the assessment which was unsuccessful. All these circumstances have not been considered by the Ld.CIT(A)/AO.

12.8 Based on the above discussions, we are of the opinion that there is no whisper as to which limb of section 270A of the act is directed and how any of the ingredients of sub-section (9) to section 270A stands satisfied in the present facts of the case. There is no basis to invoke sub-section (9) to section 270A and in the absence of any such particulars in the assessment order dated 17.09.2022, a mere reference of the phrase “underreporting of income in consequence of

misreporting”, cannot be a reason to deny immunity from imposition of penalty and prosecution.

We therefore quash and set aside the penalty order dated 15.03.2023 and direct the Ld.AO to consider the application seeking immunity filed by the assessee u/s. 270AA of the act and to pass necessary orders in accordance with law.

Accordingly, the appeal filed by the assessee in ITA No. 832/Bang/2023 stands partly allowed for statistical purposes.”

8. Respectfully following the above judgment and considering the judgments relied by the Id. AR, we allow the appeal of the assessee.

9. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 28th day of August, 2024.

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 28th August, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.