

**IN THE INCOME TAX APPELLATE TRIBUNAL "DB" BENCH, PATNA
(Through virtual hearing at Kolkata)**

**BEFORE SHRI RAJPAL YADAV, VP
AND
SHRI DR. MANISH BORAD, AM**

**ITA Nos. 163 to 166/PAT/2023
(AYs: 2017-18 to 2020-21)**

**Bishwanath prasad
Muzaffarpur, Bihar-842001** Vs. **Lok Nayak Bhawan
Muzaffarpur, Bihar,**
(Appellant) **(Respondent)**
PAN No. AOWPP7694H

**ITA Nos. 170 & 172/PAT/2023
(AYs: 2019-20 & 2020-21)**

**Nand Kumar Prasad Sah
Muzaffarpur, Bihar-842001** Vs. **Lok Nayak Bhawan
Muzaffarpur, Bihar,**
(Appellant) **(Respondent)**
PAN No. AJNPS7052G

Assessee by : Shri SK Tulsiyan, &
Ms. Puja Somani, ARs
Revenue by : Shri Ashwani Kr. Singal, DR

Date of hearing: 20.06.2024
Date of pronouncement: 29.08.2024

ORDER

PER BENCH:

These appeals at the instance of the assessee are directed against the orders of Commissioner of Income-tax (Appeals) [learned CIT (A)] dated 24.04.23, 22.05.2023 & 25.04.23 for A.Ys. 2017-18 to 2020-21, 2019-20 & 2020-21. The penalties were levied by AC/DCIT u/s 270A of the Act vide orders dated 23rd August, 2022 for A.Ys. 2017-18 to 2020-21, 2019-20 & 2020-21 respectively.

02. As the issue raised in all these appeals are actually raised against the levy of penalty u/s 270A of the Income-tax Act, 1961 (the Act) for alleged under reporting of income, we for the purpose of adjudication taken up the facts of ITA No. 163/PAT/2023, for A.Y. 2014-15 in the case of Nand Kumar Prasad Sah, and shall apply our decision *mutatis mutandis* to all the remaining captioned appeals.

03. Assessee has raised following grounds of appeal in ITA No. 163/PAT/2023 for A.Y. 2017-18:-

"1. For that the Ld. CIT(A) has erred in passing penalty order u/s 270A and levied penalty of Rs.76,192/-.

2. For that the Ld. CIT(A) has not followed the procedure given in Sub-section (4) of section 270A. It is a clear mandate that the A.O. shall within one month from the end of the month in which the application was received pass an order accepting for rejecting such application. Provided that no order rejecting the application shall be passed. Unless the assessee has been given an opportunity of being heard. Further, the word used each shall not may. The procedure prescribed in Sub-section (4) has not been followed while passing the penalty order which is against the intention of legislature behind the introduction of new regime of penalty is to create less litigation environment. It is well settled law that substantive right accrue to the applicant should not be defeated citing the procedural defects which is capable of being cured.

3. For that the Ld. CIT(A) has erred in passing a vague and cryptic order.

4. For that the Ld. CIT(A) has erred in passing the order without giving the opportunity of being heard which is against the principle of natural justice. The appellant has filed a time petition on 24.04.2023. The Ld. CIT(A) was in hurry to pass the order on the same date on which the time petition was filed. The order was passed after 8:00 p.m.

5. For that whole order is bad in fact and the law of the case and is fit to be quashed.

6. For that other grounds, if any, shall be urged at the time of hearing of the appeal.”

04. Facts in brief are that the assessee is an individual and earns income from salary, interest income, consultancy fees and hire rental charges. Regular return of income u/s 139(1) of the Act on 11th November, 2017, declaring income of ₹8,35,425/-. Subsequently, search, seizure and survey operation u/s 132 of the Act and 133A of the Act, conducted on the business premises of Nand Kumar Prasad Sah and other related concerns on 17th September, 2020, and assessee was also subjected to search and certain incriminating material / loose paper / tally data were found. Pursuant to the of search, notice u/s 153A of the Act were issued and in compliance, assessee furnished the return for A.Y. 2017-18 to 2020-21. In this return furnished for A.Y. 2017-18, assessee offered total income of ₹13,97,271/-, which included the additional income of ₹5,15,000/-. The return of income furnished in response to notice u/s 153A of the Act was accepted as assessed income by the learned Assessing Officer in the assessment proceedings carried out

u/s 143(3) read with section 153A of the Act. Considering the fact that assessee had declared additional income in the return filed u/s 153A of the Act, the learned Assessing Officer initiated the penalty proceedings u/s 270A of the Act for alleged under reporting of income. However, the assessee filed an application belatedly u/s 270AA of the Act for grant of immunity from levy of penalty u/s 270A of the Act but the same was rejected and the learned Assessing Officer completed the penalty proceedings levying the penalty u/s 270A of the Act at ₹6,20,495/-. Aggrieved assessee preferred the appeal before the learned CIT (A), claiming that since the returned income has been accepted as assessed income, it is not a case of under reporting of income and is not covered under any of the sub-clause of Section 270A(2) of the Act. It was also argued that the learned Assessing Officer ought to have considered the application filed u/s 270AA of the Act. The learned CIT (A) was not convinced and he dismissed the appeal of the assessee and confirmed the impugned penalty. Aggrieved, assessee is now in appeal before this Tribunal.

05. The learned counsel for the assessee referring to the written submission, firstly, contended that the penalty order is not as per law and the learned Assessing Officer erred in holding that assessee is liable to be penalized as per Section 270A(A) of the Act. He further referring to the judgement of Hon'ble Delhi High Court in case of *PCIT vs. Neeraj Jindal (2017) 393 ITR 0001 (Delhi)*, stated that once the assessee is subjected to search and notice u/s 153A of the Act is issued for furnishing the return and the assessee furnished

the return then such return takes the color of the original return since the return filed originally gets abated and become non-est. He further submitted that since, there is no difference between the returned income and assessed income, no penalty is leviable u/s 270A of the Act. In the second fold of arguments, he submitted that the learned Assessing Officer erred in rejecting the assessee's application for immunity u/s 270A of the Act from levy of penalty u/s 270A of the Act without granting any opportunity of being heard and which is against the principle of natural justice. Reliance placed of Hon'ble *Madras High Court in case of Natarajan Anandh Kumar Vs. DCIT (2024) 159 taxmann.com 637 (Madras)* and stated that same is squarely applicable on the facts of the present case and the learned Assessing Officer should have condoned the delay in furnishing the application u/s 270AA of the Act because assessee has fulfilled all the conditions required for grant of immunity u/s 270AA of the Act.

06. On the other hand, the learned Departmental Representative vehemently argued, supporting the orders of the learned lower authorities.
07. We have heard the rival contentions and perused the records placed before us. Finding of learned CIT (A) confirming the levy of penalty u/s 270A of the Act for alleged under reporting of income is in challenge before us at the instance of the assessee. Uncontroverted facts are that the assessee filed regular return on 11th November, 2017, declaring income of ₹8,35,425/-. Search and survey

action was carried out u/s 132 and 133A of the Act, various incriminating material were found including computer data and loose papers. Assessment for A.Y. 2017-18 was abated and assessment proceedings were carried out by issuance of notice u/s 153A of the Act. In compliance the assessee furnished the return on 19th February, 2022, declaring income of ₹13,97,271/-, which included additional income of ₹5,15,000/-. The learned Assessing Officer carried out the assessment proceeding but finally accepted the returned income. In nutshell, there is no difference between the assessed income and the returned income shown in the return filed u/s 153A of the Act.

08. Now, the learned Assessing Officer has initiated the penalty proceedings for under reporting income by considering the income originally declared in the return filed u/s 139 of the Act on 11th July, 2017 as against the return filed in reply to notice u/s 153A of the Act. Before us, two-fold of arguments were submitted by the learned counsel for the assessee. Firstly, the case of the assessee do not fall u/s 270A(2)(A) of the Act and secondly, since, the assessee has fulfilled the conditions of Section 270AA(1)(a) and (b) of the Act, assessee deserves immunity from imposition of penalty.
09. We will first take up the second fold of argument that the assessee deserves immunity from imposition of penalty u/s 270AA of the Act and that case of the assessee is squarely covered by the judgements of Hon'ble Madrass High Court in case of *Natarajan Anandh Kumar (Supra)*.

010. The assessee filed the return of income u/s 153A of the Act on 19th February, 2022, declaring income of ₹13,97,271/-. The assessment was completed u/s 143(3) read with section 153A of the Act on 13th March, 2022, and returned income was accepted. Hon'ble Courts have held time and again that once the assessee furnishes income tax return u/s 153A of the Act, and the same is accepted by the learned Assessing Officer for the purpose of carrying out assessment proceedings then original return filed u/s 139 of the Act gets abated rather becomes *non-est*. In the instant case, though the income disclosed in the return filed u/s 153A of the Act has been accepted by the learned Assessing Officer as assessed income, still he has initiated the penalty proceedings u/s 270A(2)(a) of the Act, which in itself is not in accordance with law. However, the assessee filed Form no.68 u/s 270AA(1) of the Act on 16th June 2022, for immunity from levy of penalty. Before moving ahead, we would first go through the provisions of Section 270AA of the Act and the same read as under: -

"(1)An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, if he fulfils the following conditions, namely:—

(a)the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of section 143 or section 147, as the case may be, has been paid within the period specified in such notice of demand; and

(b) no appeal against the order referred to in clause (a) has been filed.

(2) An application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in clause (a) of sub-section (1) has been received and shall be made in such form and verified in such manner as may be prescribed.

(3) The Assessing Officer shall, subject to fulfilment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 286CC, where the proceedings for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A.

(4) The Assessing Officer shall, within a period of one month from the end of the month in which the application under sub-section (1) is received, pass an order accepting or rejecting such application: Provided that no order rejecting the application shall be passed unless the assessee has been given an opportunity of being heard.

(5) The order made under sub-section (4) shall be final.

(6) No appeal under section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment, referred to in clause (a) of sub-section (1), in a case where an order under sub-section (4) has been made accepting the application.”.

011. Now, from perusal of the above Section, we note that so far as the conditions mentioned in sub-section (2) in 270AA of the Act, the assessee has duly fulfilled the conditions mentioned in 270AA(1)(a)(b) of the Act, because there is no tax and the interest payable as per the order u/s 143(3) of the Act because returned income has been accepted as assessed income. Secondly, assessee had not preferred any appeal against the order of the learned Assessing Officer.
012. Now, for grant of immunity application has to be filed within one month from the end of month in which the assessment order is received by the assessee. Now, in the instant case, assessment order has been framed on 31st March, 2022, and the application u/s270AA(1) of the Act has been furnished on 16th June, 2022. Even if we, consider that the assessee received the assessment order on the very date of its passing, there is a delay of around 45 days. Now the assessee's application has been rejected without providing any opportunity of being heard and also no order has been passed rejecting the assessee's application. Now, under there given facts and circumstances, we find pertinent to note that Hon'ble *Madras High Court in case of Natarajan Anandh Kumar (supra)* had dealt with almost identical issue and has held as under: -

"The follow on question is whether the facts and circumstances justify exemption from imposition of penalty and whether the application in such regard was filed in time. It is evident from sub- section (2) of section 270AA that the application is required to be filed within one month from the end of the month in which the order referred to in clause (a) of sub-section (1) was issued.

Since the assessment order was issued on 9-3-2023, the one month period would run from 31-3-2023. If so computed the application should have been filed on or before 30-4-2023. Instead the application was filed on 31-5-2023. The delay is about one month beyond the stipulated period. By taking into account the fact that the gross total income disclosed by the assessee in the return of income was accepted in the assessment order and the fact that the total tax liability as disclosed in the return of income was also accepted in assessment order, this is a fit case to condone the delay of 30 days in filing the application for immunity from imposition of penalty. Therefore, the delay is condoned. [Para 8]"

013. We also note that Hon'ble Delhi High Court in case of *Ultimate Infratech Private Limited Vs. National Faceless Assessment Centre in WP 6305/2022 dated 20th April, 2022*, dealing with similar issue has held as under: -

"5. Having heard learned counsel for the petitioner, this Court is of the view that it is only in cases where proceedings for levy of penalty have been initiated on account of alleged misreporting of income that an assessee is prohibited from applying and availing the benefit of immunity from penalty and prosecution under Section 270AA.

6. In fact, the statutory scheme for grant of immunity is based on satisfaction of three fundamental conditions, namely, (i) payment of tax demand; (ii) non-institution of appeal; and (iii) initiation of penalty on account of underreporting of income and not on account of misreporting of income.

7. This Court is also of the view that the petitioner cannot be prejudiced by the inaction of the Assessing Officer in passing an

order under Section 270AA of the Act within the statutory time limit as it is settled law that no prejudice can be caused to any assessee on account of delay/default on the part of the Revenue.

8. In the present case, the petitioner has satisfied the aforesaid conditions, inasmuch as, (i) the tax has been paid on the additions; (ii) appeal has undisputedly not been filed; and (iii) penalty (as would be evident from the penalty notice) has been initiated on account of "under-reporting" of income.

9. Consequently, this Court is of the view that the petitioner acquired a right to be granted immunity under Section 270AA of the Act. In fact, this Court, in Schneider Electric South East Asia (HQ) Pte Ltd. Vs. Asst. Commissioner of Income Tax International Taxation Circle 3(1)(2), New Delhi and Ors., WP(C) \$111/2022, has held, "This Court is further of the view that the impugned action of Respondent No. I 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 under Section 270A of the Act is set aside and the respondents are directed to grant immunity under Section 270AA of the Act to the petitioner. With the aforesaid directions, the present writ petition along with pending applications stands disposed of."

014. Further, Hon'ble Rajasthan High Court in case of *GR Infraprojects Ltd. vs. ACIT (2024) 158 taxmann.com 80 (Rajasthan)*, held as under: -

"Further reliance is placed on the judgment of the Rajasthan HC in the case of G R Infraprojects Ltd vs ACIT [2024] 158 taxmann.com 80 (Rajasthan) wherein it was held that, "Sub-section (4) of section 270AA provides that the Assessing Officer shall pass an order accepting or rejecting any application filed by the assessee seeking immunity from imposition of penalty under section 270A within a period of one month from the end of month in which the application under sub-section (1) is received. [Para 23]"

015. On perusal of the judgments given by the Hon'ble courts referred (*supra*), we find that the ratio laid down therein are squarely applicable in favour of the assessee and therefore, we are of the considered view since, the assessee has fulfilled the conditions for grant of immunity from levy of penalty u/s 270AA of the Act and the actions of the learned Assessing Officer levying penalty u/s 270A of the Act, is not justified because firstly, no opportunity has been given to the assessee and secondly, no order has been passed by the learned Assessing Officer rejecting the assessee's application. We are therefore of the considered view that assessee's case is a fit case for immunity of penalty u/s 270AA of the Act and on this ground itself the impugned penalty is deleted.

016. Since, we have already deleted the impugned penalty on the second fold of arguments raised by the learned counsel for the assessee raised in ground no.2 and 4, dealing with the first fold of arguments would be merely academic in nature. Thus, the findings of the learned CIT (A) is set aside and impugned penalty u/s 270A of the Act is deleted.



Effective ground of appeal are allowed. The appeal of the assessee is allowed.

017. As far as remaining appeal in ITA nos. 164 to 166, 170 & 172 /PAT/2023, for A.Ys. 2018-19 to 2020-21, are concerned, since the issue in these appeals raised are verbatim similar to that of ITA No. 163/PAT/2023, except the change in figures and this fact being not controverted by both the sides, we apply our decision of ITA No. 163/PAT/2023 *mutatis mutandis* on ITA Nos. in ITA nos. 164 to 166, 170 & 172 /PAT/2023 and delete the impugned penalties levied u/s 270A of the Act and allow the effective grounds raised in all these appeals.

018. In the result, all the appeals of the assessee (s) in ITA Nos. 163 to 166, 170 & 172 /PAT/2023 are allowed.

019. Order pronounced in the open court on 29/08/2024.

Sd/-
(RAJPAL YADAV)
(JUDICIAL MEMBER)

Sd/-
(DR. MANISH BORAD)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 29/08/2024

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata