

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No. 133/DEL/2024
[Assessment Year: 2017-18]**

Man Mohan Singh, 76, Friends Colony, East of Kailash, Phase-1, New Delhi-110065.	<u>Vs</u>	DCIT, Circle-28(1), New Delhi.
PAN: AAAPS 7334 P		
APPELLANT		RESPONDENT
Appellant by	Shri Shailender Bajaj, CA & Shri R.R. Mauriya, Adv.	
Respondent by	None (application for adjournment rejected)	
Date of hearing	07.10.2024	
Date of pronouncement	07.10.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 22.11.2023, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

“1. That the penalty of Rs. 3,85,370/- levied under section 270A(9) by, National Faceless E Assessment Centre (NFEAC) in the order dated 15-09-2021 and further confirmed by National Faceless Appellate Centre (NFAC) vide order dated 22-11-2023 is bad in law and against the facts of the case.

2. That the *exparte* order dated 22-11-2023 passed by NFAC is *prima facie* illegal, void and contrary to the principles of natural justice since it has been passed without giving opportunity of hearing by ignoring the adjournment application filed on 20-10-2023 and by dismissing the appeal only for alleged non co-operation rather than on the actual merits of the case.

3. That the order passed by NFAC confirming the levy of penalty under section 270A(9) by NFEAC by is bad in law and against the facts of the case since it failed to appreciate that:

a. The assessment order initiating the impugned penalty proceedings did not specify the specific section under which it has been initiated.

b. That the notice issued under section 270A did not specify under which limb of sub section 9 relating to "misreporting" has been invoked on the basis of which the penalty proceedings have been initiated.

c. The rejection of application for immunity from penalty under section 270AA by the jurisdictional assessing officer was bad in law and against the facts of the case.

4. That NFAC has erred both in facts and law while confirming the levy of penalty under section 270A(9) by NFEAC since it failed to appreciate that the appellant had made the claim under section 24 read with section 23(3) of the Act and there is no "misrepresentation or suppression of facts" which would warrant levy of penalty under section 270A(9) (a) of the Act.”

2. Facts, in brief, are that for A.Y. 2017-18 the assessee filed his return of income on 31.10.2017 declaring income of Rs. 3,45,35,140/-. Subsequently, the assessee revised its return of income on 04.01.2018 declaring income of Rs. 3,15,90,560/-. It was processed u/s 143(1) of the Income-tax Act, 1961 (the “Act”)

at the returned income. The case was selected for complete scrutiny through CPC. In response to statutory notices issued the assessee submitted details/information as called for. The AO completed the assessment u/s 143(3) of the Act at total income of Rs. 3,50,77,377/- by adding Rs. 34,86,817/- on account of deduction of excess interest on borrowed capital of the self-occupied property. Against the aforesaid addition the AO also initiated penalty proceedings u/s 274 read with Section 270A of the Act for under reporting/misreporting of the income and vide penalty order dated 15.09.2021 u/s 270A of the Act imposed a penalty of Rs. 3,85,370/-. In appeal the learned CIT(Appeals) affirmed the penalty levied by the AO. Aggrieved against it the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee submitted that assessee had filed appeal before learned CIT(A) on bona fide grounds challenging the imposition of penalty levied u/s 270A of the Act. He submitted that there was no under reporting of income and the learned CIT(Appeal) affirmed the penalty of Rs. 3,85,370/- without going into the merits of the case, on the ground that the assessee had not filed any quantum appeal against the addition made by the AO and simply affirmed the penalty order by observing that assessee had not cooperated during appellate proceedings. He prayed that order of learned First Appellate Authority confirming the penalty levied by the AO may be set aside and matter may be restored to his

file for fresh adjudication on merit after affording adequate opportunity to the assessee of being heard.

4. On the other hand learned DR supported the order of learned First Appellate Authority.

5. I have heard rival submissions and perused the material available on record. The learned CIT(Appeals) has dismissed assessee's appeal, inter alia, by observing as under:

“10.1 Ground of Appeal No.1 to 4 are pertaining to levying of penalty of Rs.3,85,370/- u/s 270A(9)(a) of the Act by the AO. The Ld. AO passed order u/s 143(3) of the Act on 29.12.2019 by making addition of Rs.34,86,817/- on account of deduction of excess interest on borrowed capital of the self-occupied property. It appears that the appellant did not challenge the said addition by filing the appeal. The Ld. AO passed penalty order u/s 270A of the Act on 15.09.2021. During the course of penalty proceedings, the appellant submitted before the AO that there is no under reporting of the income and the additions were made on the basis of difference of opinion. The Ld. AO examined the submissions of the appellant and addressed all the objections raised by the appellant. Since, the appellant has not cooperated during the appellate proceedings, and unable to contradict finding of the Ld. AO, I hold that the penalty levied by the Ld. AO is as per the provisions of the Act. The ground filed by the appellant are dismissed.”

5.1 Since the learned First Appellate Authority has dismissed assessee's appeal, in limine, without going into the merits of the case, therefore, to sub serve the interests of natural justice I hereby set aside the order of learned CIT(Appeals) and restore the matter back to his file to decide the appeal on merit after affording

adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 07.10.2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI