

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD  
BEFORE DR. BRR KUMAR ACCOUNTANT MEMBER**

**ITA No.1412/Ahd/2024  
Asstt.Year : 2017-18**

Shri Ram Co-op Credit Society Ltd. 0, Chakaliya Road Dahod. PAN : AAGAS 4007 A	Vs	ACIT, Panchmahal Circle Godhra.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by	:	Ms.Urvashi Shodhan, AR
Revenue by	:	Shri Ravindra, SR.DR

सुनवाई की तारीख / **Date of Hearing** : **08/10/2024**  
घोषणा की तारीख / **Date of Pronouncement**: **08/10/2024**

**आदेश/ORDER**

This is assessee's appeal against the order of the Id.Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi dated 11.06.2023 for the Asst.Year 2017-18 passed under section 250 of the Income Tax Act, 1961 ("the Act" for short).

2. The grounds raised by the assessee in the appeal read as under:

“1. Ld.CIT(A)(NFAC) erred in law and on facts in dismissing the ground raised appellant challenging action of AO initiating penalty proceedings u/s unit mentioning whether the penalty proceedings were initiated for sporting or misreporting of the income which is bad in law and against the tenets of legal principles.

2. Ld. CIT (A) (NFAC) erred in law and on facts in confirming part penalty levied by AO invoking provisions of s. 270A of the Act on erroneous plea that the appellant has underreported income in consequence of misreporting.

3. Ld. CIT (A) (NFAC) erred in law and on facts in not deleting total penalty but restricting it to the amount of tax payable in respect of under reported income despite holding that penalty is not imposable on account of under reporting of income in consequence of misreporting of income on deduction claimed u/s 80P of the Act.

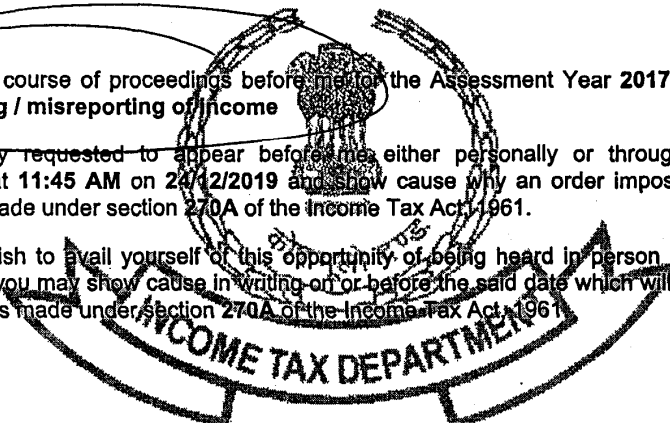
4. Ld. CIT (A) (NFAC) erred in law and on facts in confirming penalty levied by AO on disallowance of deduction claimed u/s SOP of the Act on interest earned from scheduled banks on the basis of certain decisions in favour.

5. Ld. CIT (A) (NFAC) erred in law and on facts in confirming penalty levied by AO on a highly debatable issue wherein deduction of interest earned from scheduled banks claimed u/s SOP is subjected to various amendments.

6. It is respectfully submitted that the appellant has offered bona fide explanation to substantiate the claim and has neither misreported nor suppressed the facts to entail levy of penalty.”

3. The appeal filed before the Tribunal mainly pertains to levy of penalty under section 270 without mentioning whether the penalty proceedings were initiated for underreporting or misreporting of the income which is bad in law, and against the tents of legal principles.

4. The notice issued by the Revenue is as under:

<b>To,</b> <b>SHRI RAM CO OP CREDIT SOCIETY LIMITED</b> <b>Q. CHAKALIYA ROAD</b> <b>DAHOD 389151, Gujarat</b> <b>India</b>			
<b>PAN:</b> AAGAS4007A	<b>Assessment Year:</b> 2017-18	<b>Notice No.:</b> ITBA/PNL/S/270A/2019- 20/1022091905(1)	<b>Date :</b> 10/12/2019
<b>Notice under section 274 read with section 270A of the Income Tax Act, 1961</b>			
<p><b>Sir/ Madam,</b></p> <p><b>Whereas</b> in the course of proceedings before me for the Assessment Year 2017-18, it appears to me <b>Under-reporting / misreporting of income</b></p> <p><b>You are hereby requested to appear before me either personally or through a duly authorised representative at 11:45 AM on 20/12/2019 and show cause why an order imposing a penalty on you should not be made under section 270A of the Income Tax Act, 1961.</b></p> <p><b>If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 270A of the Income Tax Act, 1961.</b></p>			
			

5. On this issue, I am guided by the decision of the Hon'ble Delhi High Court in the case of Prem Brothers Infrastructure LLP Vs. National Faceless Assessment Centre, (2022) 142 taxmann.com 38 (Delhi), and the following decisions of the Co-ordinate Bench of the ITAT:

- i) Alrameez Construction P.Ltd. Vs. CIT/NFAC, (2023) 152 taxmann.com 382 (Mum-Trib)
- ii) Enrica Enterprises P.Ltd. Vs. DCIT, (2024) 163 taxmann.com 105 (Che-Trib);
- iii) Greenwoods Govt Officers Welfare Society Vs. DCIT, (2024) 160 taxmann.com 237 (Delhi-Trib)
- iv) Ashok Kumar Gupta, 163 taxmann.com 1022 (Del-Trib)
- v) SBI Employees Coop Credit & Supply Society Ltd., ITA No.3339/Ahd/2016 (Ahd-ITAT)

6. For the sake of ready reference, the relevant portion of the order of the Co-ordinate Bench of the ITAT, Chennai Bench in the case of Enrica Enterprises P.Ltd. (supra) is reproduced as under:

*23. As regards Clause-(d) of sub-section 9 of section 270A of the Act, which speaks about failure to record investment in the books of accounts. In our considered view, it is not a case of any investment which is not recorded in the books of accounts. Therefore, said Clause is not applicable. In our considered view, the AO is completely erred in invoking said section and levied penalty u/s.270A of the Act. As regards sub-Clause (e) to section 270A(9) of the Act, invoked by the Ld.CIT(A), in our considered view, there is no allegation from the AO regarding failure to record any receipt in books of accounts of the assessee having a bearing on total income in so far as estimated disallowance of proportionate marketing expenses. The additional income has been quantified by the Revenue on the basis of estimated disallowance of marketing expenses and such estimation is ad hoc without there being any specific findings with regard to year for which the assessee has inflated expenditure. There cannot be any reasons for uniformity in inflation of expenditure for all assessment years as alleged by the AO. Further, it cannot be uniformly 1/3rd of total expenditure incurred under the head was inflated and further, it cannot be the case of receipt of 1/3rd amount from all suppliers. In absence of any findings as to quantification of inflated expenditure qua each assessment year with reference to total purchase from each party, amount of inflated expenditure, actual cash received back by the assessee, in our considered view, merely because addition was made on die*

*basis of voluntary surrender of income by die assessee, penalty for 'under reporting of income' or 'misreporting of income' cannot be fastened on the assessee. Therefore, we are of the considered view that even on merits, penalty levied by the AO u/s 270A of the Act, cannot be sustained.*

*24. In this view of the matter and considering the facts and circumstances of the case, we are of die considered view that penalty levied by die AO u/s.270A of the Act, is unsustainable in law on two counts, i.e. for failure to specify in the notice issued u/s.274 r.w.s.270A of the Act, as to under which limb of sub-section, 270A of the Act, penalty is initiated, i.e. 'under reporting of income' or 'misreporting of income', the penalty proceedings are initiated. Further, the AO accepted income admitted by the assessee with categorical statement without any allegation against the income admitted or incorrectness of the books of accounts or evidence for the expenditure. In our considered view, income voluntarily admitted by the assessee does not constitute 'under reporting of income' or 'misreporting of income', and thus, in our considered view, penalty levied u/s.270A of the Act is unsustainable in law on merits, and thus, we quashed the order passed by die AO imposing penalty u/s.270A(9) of die Act.”*

Keeping in view the parity of the facts and the legal proposition, the appeal of the assessee is allowed.

Dictated on the Open Court, typed and pronounced on 8<sup>th</sup> October, 2024.

Copy of this order be given to the assessee. The Registry is directed to dispatch as per procedure.

**Sd/-  
(DR. BRR KUMAR)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 08/10/2024