

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI S.S. GODARA, JUDICIAL MEMBER

ITA No.182/PUN/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Annasaheb Namdeo Gunjal 1, Vraj Vihar, Vidhate Nagar, S.No.15-10-2011, CTS No.2421, Fame Theatre, NSK Pune Road, Nashik – 422011 PAN: AAXPG5950C	Vs.	ITO, Nashik
Appellant		Respondent

ITA No.685/PUN/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Deepak Bhika Suryawanshi Plot No.36, Vrundavan Bunglow, Deffodil Soc, Wadala-Pathardi Road, Opp. Guru Govind Singh College, Indira Nagar, Nashik – 422009 PAN: ACHPS8498R	Vs.	ITO, Ward 2(1), Nashik
Appellant		Respondent

Assessee by Shri Abhilasha Sanjay Pawar
Revenue by Shri Ramnath P Murkunde

Date of hearing 15-10-2024
Date of pronouncement 21-10-2024

आदेश / ORDER

PER S.S. GODARA, JM :

These twin assessee's appeals ITA No.182/PUN/2024 and ITA No.685/PUN/2024 for AY 2017-18, arises against the NFAC, Delhi's as many lower appellate orders passed in Din & Order No.

ITBA/NFAC/S/250/2022-23/1043861206(1), dated 15.07.2022 and No. ITBA/NFAC/S/250/2023-24/1060578619(1), dated 06.02.2024 in proceedings under Section 250 of the Income Tax Act, 1961, in short 'the Act', affirming the assessing officer's action in levying section 270A penalties of Rs.2,02,118/- and Rs.11,16,390/-; case wise respectively.

Heard both the parties. Case file perused.

2. It emerges at the outset that the first and foremost issue which arises for our apt adjudication is that of validity of section 270A penalty proceedings itself since the assessing authority(ies) corresponding twin orders dated 15.07.2022 and dated 06.02.2024, nowhere specify the corresponding limbs in section 270A(9)(a) to (f) whilst concluding that these are the instances of under-reporting of income as a consequence to misreporting thereof.

3. When we pointed out this clinching fact to the department, *Mr. Murkunde* quoted *M/s. Veena Estate Pvt. Ltd. Vs. CIT (2024) 158 taxmann.com 341 (Bom.)* that the assessee's instant technical argument is not maintainable at this stage since both of them have failed to highlight exact prejudice caused to them in the lower appellate proceedings.

4. We find no merit in the Revenue's above stated submissions as this tribunal's recent coordinate bench's order in the second assessee herein Mr. Deepak Bhika Suryawanshi's case ITA No.98/PUN/2024 for AY 2018-19 has deleted the identical penalty as under :

"2. It emerges at the outset that the assessee's instant appeal raises the first and foremost legal issue of the validity of the impugned

section 270A penalty proceedings itself for the precise reason that the Assessing Officer relevant show cause notice dated 09.06.2021 nowhere specified the corresponding limbs in clauses (a) to (f) to sub-section 9 read with sub-section (8) thereof. His case in other words is that the Assessing Officer has failed to comply with the rigor of section 270A(8) and (9) (a to f) before concluding that the assessee committed any default of under-reporting of income as a consequence to misreporting.

3. Learned DR vehemently argued that the instant issue is no more resintegra in light of the hon'ble jurisdictional high court recent decision in M/s. Veena Estate Pvt. Ltd. Vs. CIT (2024) 158 taxmann.com 341 (Bombay) rejecting a similar plea in section 260A proceedings. Mr. Murkunde further sought to buttress the point that the learned lower authorities have duly considered the assessee's explanation(s) in the penalty order as well as in the impugned lower appellate discussion and therefore, it could not be taken as a case wherein any prejudice would be held to have been caused to him.

4. We have given our thoughtful consideration to the assessee's forgoing legal issue raised in the instant appeal that the impugned penalty proceedings stand vitiated on account of the Assessing Officer's failure to pinpoint the relevant clauses (a) to (f) to sub-section (9); while initiating the proceedings herein u/s. 270A(8) of the Act, thereby alleging under reporting of income as a sequence of misreporting. Faced with this situation, we find no merit in Revenue's arguments placing reliance on M/s. Veena Estate Pvt. Ltd. (supra) once the issue before their lordships was that of the concerned appellant seeking to frame an additional substantial question of law in section 260A proceedings whereas the law regarding the tribunal's jurisdiction to entertain such a pure question of law, not requiring any further detailed investigation on facts, is already settled in NTPC Ltd. Vs. CIT (1998) 229 ITR 383 (SC). That being the case, we are of the considered view that going by the foregoing judicial precedent, this tribunal is very much entitled to entertain and decide such a pure legal plea for the first time in section 254(1) proceedings. We accordingly reject the Revenue's instant technical arguments to conclude in light of section 270A (8) & (9) r.w. clauses (a to f) that the learned Assessing Officer's failure to pinpoint the corresponding default of assessee's part indeed vitiates the entire proceedings as per (2022) 443 ITR 186 (Del) Schneider Electric South Asia Ltd. Vs. ACIT (in the new scheme) and Md. Farhan Vs. ACIT (2021) 434 ITR 1 (Bom.) in section 271(1)(c) old penal provision. We order accordingly. The impugned penalty of Rs.98,324/- stands deleted in very terms."

5. Learned departmental representative could hardly dispute the fact that the AO's corresponding show cause notices as well as penalty orders in both these cases have not specified the relevant limb u/s.270A(a) to (f) in very terms. We thus delete the impugned penalty in both these assessee's cases therefore on the very analogy.

6. All other pleadings on merits in the instant twin appeals stand rendered academic.

7. These twin assessee's as many appeals are allowed. A copy of this order be placed in the respective case files.

Order pronounced in the Open Court on 21st October, 2024.

Sd/-
(R.K. PANDA)
VICE PRESIDENT

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 21st October, 2024
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The concerned Pr.CIT;
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A', ITAT, Pune
5. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune