

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1980/PUN/2024
Assessment Year : 2018-19**

Smita Virendra Lodha 1, Manik Nagar, Ahmednagar – 414001	Vs.	ITO, Ward-1, Ahmednagar
PAN: ABJPL0867E		
(Appellant)		(Respondent)

Assessee by : Shri Prasad Bhandari
Department by : Shri Arvind Desai, CIT-DR
Date of hearing : 23-10-2024
Date of pronouncement : 12-11-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 31.07.2024 of the CIT(A) / NFAC, Delhi relating to assessment year 2018-19.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the CIT(A) / NFAC in confirming the levy of penalty of Rs.6,37,912/- levied by the Assessing Officer u/s 270A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. Facts of the case, in brief, are that the assessee is an individual. On the basis of information that the assessee had sold an immovable property of Rs.63,32,700/- and earned salary income of Rs.6,00,000/-, but has not filed the return of income

for the impugned assessment year, the case of the assessee was reopened as per the provisions of section 147 of the Act after recording the reasons and notice u/s 148 of the Act was issued and served on the assessee. In response to the same, the assessee filed return on 11.05.2023 declaring total income of Rs.18,74,800/-. The Assessing Officer thereafter issued statutory notices u/s 143(2) and 142(1) of the Act, in response to which the AR of the assessee appeared before the Assessing Officer and filed the requisite details. The Assessing Officer accepted the income returned of Rs.18,74,800/-. However, he initiated penalty proceedings u/s 270A of the Act for under-reporting of income in consequence of mis-reporting of income.

4. During the course of such penalty proceedings the assessee filed a detailed reply submitting that the penalty u/s 270A of the Act should not be levied. However, the Assessing Officer rejected the contention of the assessee and levied the penalty of Rs.6,37,912/- being 200% of the tax sought to be evaded by observing as under:

"4.1 The above reply filed by the assessee has been perused and examined. The assessee has submitted copy of death certificate of her husband issued in the year 2016. The assessee submitted that 'assessee was not knowing the provisions under the law she was under the impression that capital gain is not attracted on sale of agriculture land as agriculture land is situated in rural area. Previously all the Income Tax matters were handled by her husband who suddenly expired due to heart attack on 06/05/2016 and as such she was under impression that tax is not payable on sale of agriculture land. After that she received the notice u/s 148 after which she came to know that long term capital gain is attracted on sale of said agricultural land, she immediately files the return and paid the taxes. There was no intention to evade the tax It was sharing the ignorance of law. Secondly it is not the aim of Govt to collect the revenue through penalty and interest. So, we request you to pl. consider the facts and drop penalty proceedings."

4.2 The above submission of the assessee has been perused and examined and the contention of the assessee that she does not know the provision of the law and her husband handled previously all the income tax matters do not support since her husband passed in the year 2016 and the assessee's case is for the AY 2018-19. The assessee sold immovable property of Rs.63,32,700/- and earned salary income of Rs.6,00,000/- during the FY 2017-18 and has not filed ITR for the relevant AY 2018-19. The assessee filed her return of income on 11.05.2023 declaring income of Rs.18,74,800/- in response to the notice issued u/s 148 of the Act on 29.04.2022 mostly more than one year from the issue of notice u/s 148 of the Act. If the case of the assessee does not re-open u/s 147 of the Act on the basis of the information available on record, the assessee will escape to pay the tax on Long Term Capital Gain. In view of the above, the Assessing Officer rightly invoked the provision of section 270A of the Act for under-reporting of income in consequence to mis-reporting of income.

5 Considering the facts and circumstances of the case, I hold that assessee has 'under-reporting of income in consequence of misreporting and are liable to pay a sum equal to 200 per cent of the amount of tax payable on under-reported income as per section 270A of the Act. The penalty amounts are calculated as under -

<i>The amount of under reporting of income</i>	<i>18,74,800</i>
<i>Tax on assessed income</i>	<i>3,18,956</i>
<i>Tax liability of returned income (no original return of income filed)</i>	<i>-</i>
<i>Tax on 'under-reporting of income in consequence of misreporting.</i>	<i>3,18,956</i>
<i>Penalty on 'under-reporting of income in consequence of misreporting (200% of the tax)</i>	<i>6,37,912</i>

5. In appeal, the CIT(A) / NFAC confirmed the penalty so levied by the Assessing Officer by observing as under:

“6.5 I have considered the submission of the appellant in view of the facts described by the Id. AO in the penalty order and the case laws referred to by him. The appellant's plea that she was not aware of the provision of the income tax cannot be accepted as it is matter of fact that she had taxable salary income more than 6 lakh apart from capital gain on sale of urban agricultural land. TDS must have been made u/s 1941A by the buyer of the property sold by the appellant. In such circumstances the above submission of the appellant is not convincing. The contention that the appellant has suo moto declared her taxable income in the return filed by her in response to the notice issued by the AO u/s 148 of the Act also cannot rescue the appellant from levy of penalty u/s 270A of the Act. This is matter of fact that the appellant had substantial taxable income during the year

under reference still she did not file her return of income u/s 139(1) of the Act. Had the AO not issued notice u/s 148, the entire taxable income of the appellant would have gone untaxed. Reliance is placed on the decision of hon'ble Madras High Court in the case of Gangotri Textiles Ltd. Vs DCIT [2020] 121 taxmann.com 171 (Madras). In its decision the hon'ble court has held that where assessee did not disclose about sale of lands and windmill in return of income and it was only when AO, on basis of information received from Registration Department, issued notice u/s 143(2) that assessee, for first time stated that due to inadvertence, it did not disclose particulars relating to capital gains, it was a clear case for levying penalty u/s 271(1)(c).

6.7. In view of the facts of the case and the above-mentioned judicial decision, I am of the considered opinion that the appellant had underreported his income by filing inaccurate particulars of income. Therefore, the impugned penalty order u/s 270A of the Income Tax Act for under-reporting of income in consequence to mis-reporting of income by the appellant, passed by the Id. AO deserves to be sustained and upheld Accordingly, the appeal of the appellant on this issue is dismissed and not allowed.”

6. Aggrieved with such order of the CIT(A) / NFAC, the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee at the outset referring to the copy of the notice issued by the Assessing Officer submitted that the notice does not specify the relevant limb under sub-section (9) of section 270A. Referring to the decision of the Pune Bench of the Tribunal in the case of Kishor Digambar Patil vs. ITO vide ITA Nos.54 & 55/PUN/2023 for assessment years 2017-18 and 2018-19, order dated 30.03.2023 and various other decisions, he submitted that since the Assessing Officer has not pointed out under which clause of section 270A(9) of the Act the penalty has been levied, therefore, such penalty is not sustainable in law and is liable to be deleted.

8. Even on merit also, he submitted that since the assessee was not knowing the provisions of law and was misguided by one Counsel that capital gain is not attracted on sale of agricultural land which is situated at rural area and she has bonafide belief that no capital gain is attracted on such sale of agricultural land. Further, the husband of the assessee suddenly expired due to heart attack on 06.05.2016 for which she got stuck in financial crisis, for which the land was sold. Since the return of income has already been accepted by the department and no addition has been made, therefore, no penalty u/s 270A of the Act is leviable.

9. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the CIT(A) / NFAC. He submitted that had there been no notice u/s 148 of the Act, the assessee would not have filed her return of income declaring income of Rs.18,74,800/-. Since the assessee has accepted such return of income and has not filed any appeal and since such return was filed due to issue of notice u/s 148 of the Act, therefore, the penalty levied by the Assessing Officer and sustained by the CIT(A)/ NFAC is fully justified. He accordingly submitted that the order of the CIT(A) / NFAC be upheld and the grounds raised by the assessee should be dismissed.

10. We have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC. We find the Assessing Officer completed the assessment u/s 147 r.w.s. 144B of the Act on a total income of Rs.18,74,800/- which was the income returned by the assessee in response to the

notice u/s 148 of the Act. We find the Assessing Officer levied the penalty of Rs.6,37,912/- u/s 270A of the Act on account of under-reporting of income in consequence of mis-reporting. We find the Ld. CIT(A) / NFAC upheld the action of the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the penalty notice issued by the Assessing Officer is silent about the clause under which the assessee has under-reported or mis-reported the income.

11. We find some force in the above arguments of the Ld. Counsel for the assessee. We find the Co-ordinate Bench of the Tribunal in the case of Kishor Digambar Patil vs. ITO (supra) while deciding an identical issue has quashed the penalty levied u/s 270A for failure of the Assessing Officer in quoting any of the six limbs as mentioned in section 270A(9) of the Act. The relevant observations of the Tribunal from para 4 onwards read as under:

“4. Both the learned representatives vehemently reiterated their respective stands against and in support of the impugned penalties. The assessee more particularly argued that both the learned lower authorities have erred in law and on facts in imposing sec.270A penalties in issue without even specifying the relevant limb under sub-section (9) thereof pertaining to “misreporting of income”. Learned counsel quoted the erstwhile earlier penalty mechanism provided u/sec.271(1)(c) of the Act wherein the law stood duly settled in light of Mohd. Farhan A Shaikh vs. ACIT [2021] 434 ITR 1 (Bom.) (FB); CIT vs. M/s. SSA’s Emerald Meadows [2016] 386 ITR (St.) 13 (SC) and CIT vs. Manjunatha Cotton Ginning Factory (2013) 359 ITR 565 (Kar) (HC) that an assessing authority has to specify the corresponding limb in the show cause notice to be issued u/sec.274 of the Act. Learned counsel’s case is that the legal position would hardly be any different wherein the legislature has now prescribed clauses (a) to (f) in sec.270A (9) of the Act only to “rationalise and bring objectivity, certainty and clarity in the penalty provisions” as per the CBDT’s circular no.3/2017 [F.No.370142/20/2016-TPL]. Mr. Sonawane strongly argued in tune thereof that the very line of reasoning is required to be adopted herein as well whilst dealing with penalty proceedings under this new scheme of u/s.270A introduced by the legislature by the Finance Act, 2016 w.e.f. 01.04.2017.

5. Mr. Murkunde on the other hand strongly supported the learned lower authorities action imposing the impugned penalties. He took us to the Assessing Officer's corresponding assessments, penalty orders as well as the lower appellate discussion extracted in the preceding paragraphs that the rigor of sub-section (9) stands duly complied with once it has been categorically concluded that this is a fit case to impose penalty u/sec.270A of the Act for "under reporting which is in consequence of misreporting of income". His further contention is that such a penalty @ 200% is levied u/sec.270A(8) of the Act reading as under :

"Sec.270A(8) - Notwithstanding anything contained in subsection (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on underreported income."

5.1. Mr. Murkunde lastly sought to buttress the point that section 270A(8) nowhere makes it mandatory to include any of the clause "(a) to (f)" provided in sub-section (9) thereof. He further submitted that various judicial precedents quoted at the assessee's behest in the preceding paragraphs are no more applicable once the legislature has amended the penalty provision i.e., sec.271 itself.

6. I have given my thoughtful consideration to the vehement rival stands and find no merit in the Revenue's arguments. It is made clear that the assessee's case law indeed relates to the earlier penalty provision i.e., sec.271(1)(c) of the Act only wherein various hon'ble higher judicial forums had settled the law that the Assessing Officer ought to specify as to whether the concerned taxpayer had concealed or furnished inaccurate particulars of his taxable income during the course of assessment. I am of the view that the very line of judicial precedents would squarely apply even for the amended penalty provision i.e., sec.270A of the Act as well wherein the legislature has not only prescribed twin limbs of "under reporting of income as well as misreporting of income", but also, unlike the earlier provision u/sec.271, this time it has stipulated specific deeming illustrations under both the twin foregoing heads of the "under reported income" and "misreporting of income" in sub-sections (2) and (9) (a to f) respectively. In my considered opinion, once the instant twin appeals involve levy of penalty @ 200% of the taxes sought to be evaded and the learned lower authorities have held the assessee to have "under-reported his taxable income in consequence to misreporting", the latter limb of misreporting containing six "sub-limbs" in clauses (a to f) under sub-section- (9) deserve to be read as an extension of sub-section (8) to section 270A only. This indeed seems to be the only possible view as the legislature has incorporated the non-obstante clause "Notwithstanding anything contained in sub-sec.(6) or sub-sec.(7)" thereby not including the sub-section (9) envisaging the six instances defining "misreporting of income" in section 270A of the Act.

6.1. Mr. Murkunde could further not dispute the fact that right from the Assessing Officer's twin assessments to his impugned penalty orders as well the NFAC's

detailed discussion, the learned lower authorities have nowhere specified the corresponding “sub-limbs” (a to f) in sub-sec.(9) of sec.270A of the Act. That being the case, I wish to quote para 62.10 in the CBDT’s circular no.3/2017 (supra) making it explicitly clear that these six clauses (a to f) would indeed form part of sub-section (8) to sec.270A as under :

“62.10 The rate of penalty shall be fifty per cent of the tax payable on under-reported income. However in a case where under reporting of income results from misreporting of income by the assessee, the person shall be liable for penalty at the rate of two hundred per cent of the tax payable on such misreported income. The cases of misreporting of income have been specified as under :

- (i) misrepresentation or suppression of facts;*
- (ii) non-recording of investments in books of account;*
- (iii) claiming of expenditure not substantiated by evidence;*
- (iv) recording of false entry in books of account;*
- (iv) failure to record any receipt in books of account having a bearing on total income;*
- (vi) failure to report any international transaction or deemed international transaction under Chapter X of the Income tax Act.”*

6.2. Faced with the situation and in light of overwhelming material strongly supporting the assessee’s case and going by stricter interpretation as per Commissioner of Customs (Imports), Mumbai vs. Dilipkumar And Co. & Ors. 2018 (9) SCC 1 (SC) (FB), I am of the view that the above stated judicial precedents regarding the “limb theory” would squarely apply even in case of failure of the Assessing Officer to quote any of the six sub-limbs as well prescribed in sec.270A(9) (a) to (f) of the Act introduced by the legislature in order “to rationalize and bring objectivity, certainty and clarity in the penalty provisions”. And that his noncompliance to this clinching effect would not only defeat the legislative mandate but also it renders the amending provisions an otiose. I accordingly hold in these peculiar facts and circumstances that both the impugned penalties deserve to be quashed as not sustainable in the eye of law. Ordered accordingly.

12. Since the Assessing Officer in the instant case has admittedly not mentioned as to under which limb of sub-section (9) of section 270A he has levied the penalty, therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal in the case of Kishor Digambar Patil vs. ITO (supra), we hold that the penalty so levied by the Assessing Officer u/s 270A is not in accordance with law. We, therefore, set aside the order of the Ld. CIT(A) / NFAC and direct the

Assessing Officer to delete the penalty. The grounds raised by the assessee are accordingly allowed.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 12th November, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER
पुणे Pune; दिनांक Dated : 12th November, 2024
GCVSR

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

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	04.11.2024		Sr. PS/PS
2	Draft placed before author	05.11.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
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10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			