

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" A " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.62/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2018-19

Patel Kenwood Pvt.Ltd. Plot No.100 to 103 Timber Market GIDC Ankleshwar Ankleshwar - 393 002 Gujarat	<u>बनाम/</u> <u>v/s.</u>	The ITO Ward-2(1)(1) Vadodara
स्थायी लेखा सं./PAN: AACCP 0220 G		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Ms. Nilisha Shah, AR
Revenue by :		Shri Ritesh Parmar, CIT-DR

सुनवाई की तारीख/Date of Hearing : 17/10/2024
घोषणा की तारीख /Date of Pronouncement: 29/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [NFAC] [hereinafter referred to as "CIT(A)"] on 21.11.2023, confirming the levy of penalty of Rs.1,66,080/- under section 270A of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], for the Assessment Year (AY) 2018-19.

Facts of the case:

2. The assessee filed its return of income for AY 2018-19 on 30.09.2018, declaring a total income of Rs.3,42,59,970/-. The case was selected for scrutiny through Computer Aided Scrutiny Selection (CASS), and during the assessment proceedings, the Assessing Officer (AO) observed that in the previous assessment year, AY 2017-18, a disallowance of Rs.43,95,474/- was made on account of alleged bogus purchases from M/s.Laxmi Enterprises. For the year under consideration, AY 2018-19, the AO once again found that purchases amounting to Rs.2,40,000/- from M/s.Laxmi Enterprises were unsubstantiated and treated them as bogus. Consequently, the AO disallowed the amount and added it back to the assessee's total income, completing the assessment under section 143(3) of the Act on 05.02.2021. The total income was determined at Rs.3,44,99,970/-.

2.1. Subsequently, the AO initiated penalty proceedings under section 270A of the Act for under-reporting of income in the nature of misreporting and issued penalty notices. The AO, being unsatisfied with the assessee's explanations, levied a penalty of Rs.1,66,080/- under section 270A(8) of the Act.

3. The assessee preferred an appeal before the CIT(A), who confirmed the impugned order. Therefore, the assessee is in appeal before us with following grounds:

1. *On the facts and circumstances of the case as well as law on the subject, the learned CITA has erred in confirming the action of Assessing Officer in levying penalty of Rs.1,66,080/-.*

2. *It is therefore prayed that the above penalty u/s.270A levied by assessing officer and confirmed by CIT(A) may please be deleted.*
3. *Appellant craves leave to add, alter or delete any grounds) either before or in the course of hearing of the appeal.*

4. The Authorised Representative (AR) for the assessee submitted that the penalty was unjustly levied by the AO and confirmed by the CIT(A). The AR pointed out that the addition of Rs.2,40,000/- was based merely on the non-verification of purchases from M/s.Laxmi Enterprises, and that there was no intentional misreporting on the part of the assessee. The AR further submitted that the assessee had filed an appeal before the Co-ordinate Bench of the Tribunal against the quantum addition in ITA No.61/Ahd/2024, wherein the Tribunal, vide its order dated 09.10.2024, deleted the entire addition of Rs.2,40,000/-. A copy of the Tribunal's order was placed on record. In light of the deletion of the quantum addition, the AR argued that the penalty under section 270A of the Act cannot be sustained and should be deleted.

5. The learned Departmental Representative (DR) relied on the orders of the lower authorities.

6. We have heard the rival submissions and carefully perused the material on record, including the order passed by the Co-ordinate Bench in the quantum appeal. At the outset, it is pertinent to note that the Co-ordinate Bench, vide its order dated 09.10.2024 in ITA No. 61/Ahd/2024, has deleted the entire quantum addition of Rs.2,40,000/- related to alleged bogus purchases from M/s.Laxmi Enterprises. In view of the deletion of the

quantum addition, the penalty levied under section 270A of the Act cannot survive. It is well established in law that where the quantum addition is deleted, any penalty based on such addition must also be deleted. Since the co-ordinate bench has held that the disallowance made by the AO was unjustified, there remains no legal basis for levying a penalty for under-reporting of income due to misreporting.

6.1. In light of the deletion of the quantum addition by the Tribunal and considering the facts and circumstances of the case, we find no justification for the levy of penalty under section 270A. Accordingly, the penalty of Rs.1,66,080/- imposed by the AO and confirmed by the CIT(A) is hereby deleted.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 29 October, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 29/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजोकट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad