

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member  
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 1454/Ahd/2024  
Assessment Year 2018-19**

Baroda Gujarat Gramin Bank 3 <sup>rd</sup> and 4 <sup>th</sup> Floor, Suraj Plaza-1, Sayajiganj, Vadodara Gujarat 390020  <b>PAN: AABTB0390F (Appellant)</b>	Vs	The Dy.CIT, Circle-1(1)(1), Vadodara  <b>(Respondent)</b>
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**Assessee Represented: Shri Mukund Rao, A.R.  
Revenue Represented: Shri Rignesh Das, Sr.D.R.**

Date of hearing : 30-10-2024  
Date of pronouncement : 22-11-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against order dated 10.06.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the penalty levied under section 270A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2018-19.

2. Brief facts of the case is that the assessee is a regional rural bank filed its Return of Income for the Asst. Year 2018-19 on 18-08-2018 declaring total income of Rs.13,30,38,090/-. The return was selected for scrutiny assessment and regular assessment order u/s. 143(3) was passed by making few disallowances and determining the total income as Rs. 13,90,42,220/-. There is a difference between the assessed income and returned income, therefore the A.O. levied penalty of Rs.5,28,949/- u/s. 270A on account of under reporting of income.

3. Aggrieved against the penalty order, assessee filed an appeal before Ld. CIT(A) who has confirmed the levy of penalty by observing as follows:

“It could be seen that the assessed income was Rs. 13,90,42,228/- whereas returned income was Rs. 13,30,38,090/- which is obviously higher than returned income. However, during the appellant proceeding, the CIT(A) has allowed brought forward loss of Rs. 1,05,49,069/- which is even not claimed by the return of income. Due to giving of appeal effect to the order of CIT(A), the returned income becomes lower than returned income. In the present case, the assessed income was much higher than returned income filed by the appellant. Therefore, the plea taken by the appellant is not tenable. In my considerate opinion is that the appellant has under reporting of his income by way of not offering dividend income under STCG. In view of aforesaid facts, the penalty levied of Rs 5,28,949/- for underreporting the income is hereby upheld. Accordingly all the grounds raised by the appellant stands dismissed.”

4. Aggrieved against the appellate order, the assessee is in appeal before us. Ld. Counsel appearing for the assessee submitted that the giving effect to CIT(A) order on the quantum appeal vide order dated 21-09-2023 wherein the Assessing Officer determined the total income/revised income as Rs.12,84,93,150/-. Thus the assessed income is lesser than the returned income of Rs.13.30

crores. Therefore no question of levying penalty u/s. 270A arise in its case and the same is liable to be deleted.

5. Per contra, Ld. Sr. D.R. appearing for the Revenue submitted that the Assessing Officer levied penalty u/s. 270A of the Act, since the assessee has shown Rs.59,54,126/- is exempt dividend income in its return of income. The same was disallowed and added as Short Term Capital Gain by the A.O. and treated as under reported income and levied penalty u/s. 270A of the Act.

6. We have considered rival submissions and perused the materials available on record. In reply to Section 142(1) notice dated 28-12-2020, the assessee explained as follows:

“ ..... 3) Details of exempt income earned during the year. The bank has not earned any exempt income during the year, though the bank had declared dividend income of Rs.59,54,126/- the same was to be treated as either STCG or as business income. In the revised computation of income (Annex.2) filed along with this letter, the bank had reflected the said income as STCG. You are requested to treat the same as STCG of Rs.59,54,126/- instead of dividend as exempt income in the return filed as per computation of income as Annex.1.

.....

The points No.4 & 5 of Para (i) and Para (ii) and (iii) raised in your Annexure to the notice u/s.142(1) of the Act are no, longer applicable to the assessee as the exempt income is treated as taxable income in the revised computation of income as per Annex.2 as STCG.

The bank here prays and brings to your notice the fact that loss of Rs.1,05,49,069/- was carried forward from A.Y.2017-18 and the same needs to be set-off against the income of the year under review. This is mistake apparent and with this letter the assessee bank is taking the claim and the same need to be allowed as per the provisions of the I.T. Act. We enclosed herewith order passed u/s,143(3) dated 30/12/2019 vide DIN & order No. ITBA/AST/S/143(3)/2019-20/1023411766(1) as Annex.10

enclosed. The above claims are basic and tantamount to mistake apparent. The claims are allowable and rectifiable during the course of assessment proceedings. The claims are otherwise allowable.”

6.1. On appeal against the quantum addition, Ld. CIT(A) allowed the brought forward losses of Rs.1,05,49,070/- was allowed thereby determined the revised income as Rs.12,84,93,150/- which is much lesser than the returned income of Rs.13,30,38,090/-. Thus the question of invoking provisions of Section 270A does not arise. Therefore we hereby direct the Assessing Officer to delete Rs.5,28,949/- levied as penalty u/s. 270A of the Act.

7. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 22 -11-2024

**Sd/-**  
**(NARENDRA PRASAD SINHA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 22/11/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद