

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE "A" BENCH : PUNE  
BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER

I.T.A.No.1344/PUN./2024  
Assessment Year 2017-2018

Advik Hi-Tech Pvt. Ltd., Gat No.357, Plot No.99, Village Kharabwadi, Khed, Chakan – 410 501. Maharashtra. PAN AACCA3106E	vs.	The DCIT, Circle-8, Pratyakshakar Bhavan, Nigdi Pradhikaran, Akurdi, PUNE – 411 044. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Sharad A. Shah
For Revenue :	Shri Ramnath P. Murkude

Date of Hearing :	03.12.2024
Date of Pronouncement :	05.12.2024

**ORDER**

**PER RAMA KANTA PANDA, V.P. :**

This appeal filed by the Assessee is directed against the order dated 21.05.2024 of the learned CIT(A)-NFAC, Delhi relating to assessment year 2017-2018.

2. Facts of the case, in brief, are that the assessee is a company and filed its original return of income on 28.11.2017 declaring total income of Rs.36,98,30,710/-. Subsequently, the case was reopened within the meaning of sec.147 of the Act as the assessee had received Rs.32,20,796/- on account of interest on income tax refund and had not offered the same for tax. In response to the notice u/sec.148 dated 25.07.2012, the assessee filed its ITR declaring total income at

Rs.38,31,53,640/- by enhancing it by Rs.1,33,22,930/-. The reassessment was completed by the Assessing Officer on 11.02.2023 u/s 147 of the Act and no addition/disallowance was made in the order. However, it was noted by the AO that the assessee has offered an additional amount of Rs.21,22,930/- under the head 'income from other sources' in the return of income filed against notice issued u/s.148 of the Act. The Assessing Officer, accordingly, levied penalty of Rs.3,27,993/- u/s 270A of the Act being 50% of tax determined for under-reporting in consequence of misreporting.

3. In appeal, the Ld. CIT(A) upheld the penalty levied by the Assessing Officer by observing as under :

*“4. Decision: I have considered the facts and the circumstances of the case, grounds of appeal, penalty order, written submission and the cited case laws made by the appellant during the appellate proceedings. The sole issue in this appeal is levy of penalty of Rs.3,27,993/- u/s 270A of the Act.*

*4.1. The penalty of Rs.3,27,993/- u/s 270A of the Act was levied being 50% of tax determined for under-reporting of income by not disclosing the interest in IT refund. The AO has noted that the appellant has shown additional amount of Rs.21,22,930/- in the return filed*

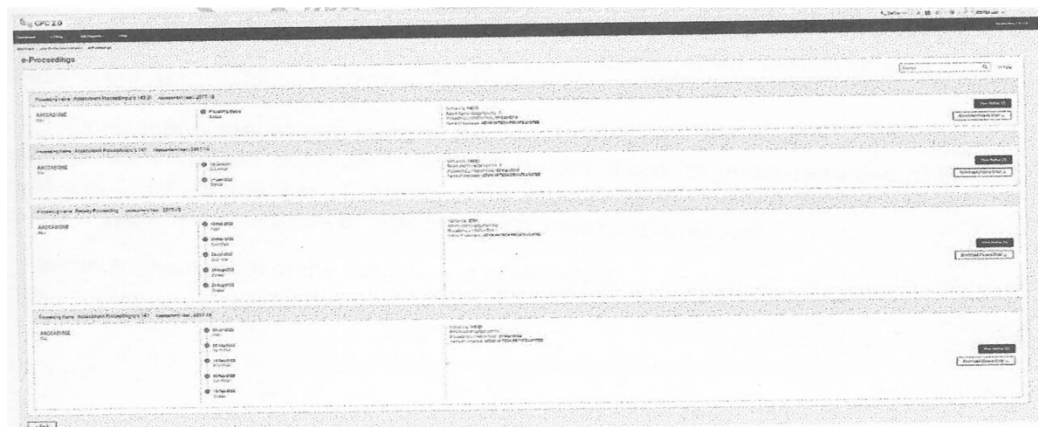
*against the notice u/s 148 of the Act being interest on income tax refund. This amount was not offered to tax in the return filed u/s 139(1) of the Act. The appellant has submitted that there is no difference in income assessed and income returned by the appellant and therefore, no penalty can be computed u/s 270A(7) or section 270A(10). Further the appellant has contended that no clauses of sub section (2) of sec 270A is applicable and therefore, there is no under reported income. Further, it has submitted that if an assessee offers bona fide explanation and the assessee discloses all the material facts to substantiate the explanation offered, the penalty cannot be levied in the light of provision 270A(6) of the Act.*

*4.2. The matter has been examined and it is observed that the appellant filed its original return of income u/s 139(1) of the Act on 28.11.2017 declaring total income of Rs.36,98,30,710/-. The case of the appellant was reopened within the meaning of sec 147 of the Act on basis of the details available on record that appellant did not offer to tax on account of interest received on income tax refund. In response to the notice u/s 148 of the Act, the appellant filed its return of income declaring total income of Rs.38,31,53,640/-, which was more than the returned income u/s 139(1) of the Act. The reassessment was completed without any addition made to the total*

*Income of the appellant. However, it was noted by the AO that the appellant has offered an additional amount of Rs.21,22,930/- under the head income from other sources' in the return of income filed against notice issued u/s 148 of the Act. The AO levied penalty of Rs.3,27,993/- u/s 270A of the Act being 50% of tax determined for underreporting of income.*

*4.3. On perusal of sec 270A, it is observed that the sub-section 2 of sec 270A prescribes the persons falling under the category of under reported his income and one of the clause (c) of sub-section (2) prescribed that "the income reassessed is greater than the income assessed or reassessed immediately before such reassessment shall be considered to have under-reported income. It is observed that the appellant had filed its original return of income declaring income at Rs. 36,98,30,710/- and subsequently filed return against notice issued u/s 148 of the Act declaring income at Rs. 38,31,53,640/- and reassessed completed at the same. income. So the total income has been increased in reassessment order u/s 147 of the Act in comparison to the income declared by the appellant in the return u/s 139(1) of the Act. The appellant contended that the return filed u/s 139(1) of the Act was neither processed u/s 143(1) nor scrutinized u/s 143(3) in earlier occasion. In support of this, the appellant*

reproduced screen shot of filing tab of e-filing portal, wherein it is seen that the appellant had filed return u/s 143(1) and 148 of the Act. However, the appellant failed to see the e-proceeding tab on e-filing portal, which is reproduced as under-



From the above screen shot, it is clear that the return of income for AY 2017- 18 was scrutinized by the AO and therefore, the clause (c) of sub-section 2 of section 270A of the Act is applicable in the present case. It is also seen from the e- proceeding tab of e-filing portal that notices u/s 143(2) as well as 142(1) of the Act were issued for AY 2017-18 and the appellant had furnished its written submission and various document on the e-filing portal, however, the appellant failed to disclose these material facts during the appellate proceedings. Therefore, it is crystal clear that the appellant's case shall fall under the ambit of under-reported income as the statute has prescribed various criteria in this regard and one of the criteria is applicable in the case of the appellant. Therefore, the contention of the appellant that no clauses

*of sub section (2) of sec 270A is applicable, is factually incorrect.*

*4.4. With regard to the explanation furnished by the appellant regarding receipt of interest on income tax refund, the appellant has submitted that the said refund was never received by it and was directly adjusted against the outstanding demand. In this regard, it is clear that the appellant has not disputed the receipt of interest on IT refund during FY 2016-17. Further, the contention of the appellant that it was not in its knowledge cannot be relied upon as the appellant itself has declared the interest amount on IT refund in the return filed against the notice u/s 148 of the Act which it failed to declare in the original return, which was filed much after the adjustment of the interest on IT refund against the outstanding demands for earlier years. Apart from this, it is a practice that the CPC always adjust the refund against outstanding demand under intimation to the appellant and also after determining the refund including interest thereon, a letter of adjustment u/s 245 of the Act is issued to the appellant seeking any objection or acceptance. Hence, the explanation offered by the appellant is not bonafide and the appellant is not entitled for the benefit of section 270A(6) of the Act.*

4.5. *Considering the above facts and circumstances of the case, I am of the considered view that the appellant is liable to be penalised for under-reporting of its income u/s 270A of the Act. Therefore, the penalty levied by the AO is hereby confirmed. Thus, the sole issue of levy of penalty hereby dismissed.*

5. *In result, the appeal of the appellant is dismissed.”*

4. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee carried the matter in appeal before the Tribunal by raising the following grounds :

1. *“The Ld. AO erred in levying (Ld. CIT-A erred in confirming) penalty u/s 270A of Rs.3,27,993/-.*
2. *None of the clauses of subsection (2) of S. 270A are applicable to the present case & therefore, Ld. AO & CIT-A ought to have appreciated the fact that there is no under-reporting of income. Thus, the levy of penalty be quashed.*
3. *The computation mechanism of the penalty u/s 270A fails as there is neither intimation order passed [u/s 143(1)] nor there is assessment order passed u/s 143(3) & thus the levy of penalty be deleted.*
4. *The Penalty order passed by AO be quashed as the Penalty u/s 270A (9) imposed by the AO is without specifying the limb u/s 270A (a) to (f).*

*5. The appellant craves its right to add to or alter the Ground of objections at any time before or during the Course of the hearing of the case.*

5. Learned Counsel for the Assessee, at the outset, submitted that penalty in the instant case has been levied on account of non-disclosure of interest on income tax refund in the original return of income. He submitted that the refund along with interest thereon was adjusted by the department against the outstanding demand of earlier years and therefore, inadvertently the interest element of the income tax refund could not be included in the total income of the assessee. Since this is a non-intentional and technical defect, penalty should not have been levied u/sec.270A of the Act. The Learned Counsel for the Assessee drew the attention of the Bench to sub-section (2) of sec.270A according to which, a person shall be considered to have under-reported his income if the following conditions are satisfied.

- a. "the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;*
- b. the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 148;*

- c. the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;*
- d. the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;*
- e. the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 148;*
- f. the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;*
- g. the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.*

5.1. Referring to the above clauses, he submitted that assessee does not fall under any of the above clauses. He submitted that once it is to be held that there is no under-reporting of income, the question of mis-reporting of income does not arise. He accordingly submitted that the penalty levied by the Assessing Officer and sustained by the Ld. CIT(A)

is liable to be deleted. In his second plank of argument he submitted that the penalty u/sec.270A(9) imposed by the Assessing Officer is without specifying the limb as per clauses (a) to (f) of sec.270A(9). Relying on various decisions, he submitted that in absence of specifying the limb, the penalty levied by the Assessing Officer and upheld by the CIT(A) is not in accordance with law and therefore, has to be deleted.

5.2. Referring to the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd., vs. CIT [2012] 348 ITR 306 (SC), he drew the attention of the Bench to para-19 of the order which reads as under :

*“19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the*

*assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.*

20. *We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.”*

5.3. He accordingly submitted that the penalty levied by the Assessing Officer and upheld by the CIT(A) be deleted.

6. The Learned DR on the other hand, relied on the order of the Assessing Officer and the Ld. CIT(A). He submitted that assessee cannot take plea of an inadvertent error for not disclosing the interest on income tax refund. Therefore, the assessee has misreported and thereby under-reported the income for which the CIT(A) was fully justified in confirming the penalty levied by the Assessing Officer u/sec.270A of the Act.

6.1. So far as the ground taken by the assessee that return was not processed u/sec.143(1) is concerned, the Learned DR filed the following report from the Assessing Officer :

*“In this connection, the facts of the case as verified from the system are submitted hereunder:-*

*(i) The assessee company had filed its original return of income for AY 2017-18 u/s 139(1) declaring (1) Income at Rs.36,98,30,710- on 28-11-2017. The said return of income was not processed by CPC hence became invalid as per the ITBA system-ITR Processing-View RRR Entries.*

*(ii) Further the case was selected for scrutiny u/s.143(3) of the Act through CASS. Notice u/s.143(2) was issued to the assessee on 17-08-2018. It is pertinent to mention that with regards to the invalid return, Central Board of Direct Taxes, New Delhi vide Circular No.F.No.225/333/2019/ITA-II dated 29.11.2019 had issued guidelines for scrutiny of invalid return selected through CASS Cycle-2018 wherein, it has been stated that as the scrutiny of such invalid return(s) will pose a challenge for the AO and is bad in law, Assessing Officer shall drop the proceedings u/s.143(2) of the I.T. Act in such cases and reopen the same by issue of notice u/s.148 of the Act. In view of the said Circular dated 29.11.2019, the proceedings so initiated were dropped on 28.12.2019.*

*(iii) Accordingly, after recording due reasons and taking necessary approval from the Competent Authority, the case of the assessee was re-opened u/s.147 of the Act*

*and notice u/s.148 of the I.T.Act, 1961 was issued on 25/07/2022 which was duly served on the assessee through E-mail thereby requiring the assessee to file his ITR within 30 days of receipt of the notice. In compliance thereto, the assessee had filed its ITR on 19/08/2022 declaring total income at Rs.38,31,53,640 by enhancing the same by Rs.1,33,22,930. Thereafter, assessment proceedings u/s.147 r.ws.144B of the Act were completed by the Faceless Assessing Officer on 11/02/2023 assessing the total income at Rs.38,31,53,640/-.*

*(iv) Further, under para 3.5 of the order u/s.147 rws.144B of the Act dated 11.02.2023, it has been clearly mentioned that penalty proceedings u/s.270A is separately initiated for under reporting of income in consequence of misreporting of income.*

*(v) The penalty so initiated was levied u/s.270A of the Act vide order dated 22/08/2023 by the Faceless Assessing Officer.*

*2. With regard to the ground taken-up by the assessee company regarding not passing of intimation Order u/s.143(1) and assessment order, it is submitted that there seems a typographical error in para 4 (S.No.2) of the assessment order u/s.147 r.ws.144B of the Act dated 11.02.2023 'Income as computed u/s.143(1)(a)' which should be 'Income computed u/s 147 rws.144B of the Act.*

*Similarly, there are two typographical mistakes in final para of penalty order dated 22.08.2023 as follows:-*

*(i) For Total taxable liability as per intimation u/s 143(1) it should be 'Income declared as per original ITR.*

*(ii) For Taxable liability as per 143(3) order it should be "Taxable liability as per 147 r.w.s.144B.*

3. *In view of the above, it seems that the assessee desires to take benefit of the above mentioned typographical errors in the orders. Therefore, it is requested that the ground taken by the assessee company may kindly be disallowed as the penalty has been levied rightly on the income which is under reporting of income in consequence of misreporting of income."*

7. Learned Counsel for the Assessee in his rejoinder submitted that assessee could not have concealed anything from the department since the interest on income tax refund was granted by the Income Tax Department only.

8. We have heard rival arguments made by both the parties and perused the material available on record. It is an admitted fact that assessee in it's original return of income has not disclosed the interest on income tax refund which was disclosed only in the return filed in response to notice u/sec.148. We find the return was accepted by the Assessing

Officer without making any addition vide order dated 11.02.2023 passed u/sec.143(3)/147 of the Act. We find the Assessing Officer levied the penalty of Rs.3,27,993/- u/sec.270A of the Act being 50% of tax sought to be evaded on such undisclosed income. We find the Ld. CIT(A) sustained the penalty so levied by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that assessee does not fall under any of the clauses of sec.270A(2) which deals with under-reporting of income. It is also his submission that in view of the decision of Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd., vs. CIT (supra), no penalty is leivable for an inadvertent error on the part of the assessee for not disclosing the interest on income tax refund.

8.1. We find some force in the arguments advanced by the assessee. The provisions of sec.270A(2) gives the circumstances under which a person shall be considered to have under-reported his income. From the report of the Assessing Officer, it is crystal clear that neither any intimation was passed u/s.143(1) nor any order u/s.143(3). Under these circumstances, the assessee, in our opinion, does not fall under any of the categories i.e., clauses (a) to (g) of sub-sec.(2) of sec.270A of the Act. Once it is held that assessee has not

under-reported his income, the question of mis-reporting does not arise.

8.2. It is also an admitted fact that the income tax refund along with interest on such refunds were adjusted against the outstanding demand for earlier years and no amount was received by the assessee in its bank account. We, therefore, find merit in the arguments of the Learned Counsel for the Assessee that it is an inadvertent and bonafide error in not disclosing the interest on income tax refund. We find the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd., vs. CIT (supra) observed that a bonafide and an inadvertent error does not attract penalty u/sec.271(1)(c) of the Act. In view of the above discussion, we hold that the Ld. CIT(A), in the instant case, is not justified in sustaining the penalty levied by the Assessing Officer u/sec.270A of the Act. We, therefore, set aside the order of the Ld. CIT(A) and direct the Assessing Officer to delete the penalty. The grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 05.12.2024.

Sd/-  
[MS. ASTHA CHANDRA]  
JUDICIAL MEMBER

Sd/-  
[RAMA KANTA PANDA]  
VICE PRESIDENT

Pune, Dated 05<sup>th</sup> December, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.