

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.3235/MUM/2024

(Assessment Year : 2018-19)

Aawagaman Mercantile LLP,
204, Anand Estate, Arthur Road 189,
Mumbai, Jacob Circle S.O.
Mumbai - 400011
Maharashtra
PAN: ABBFA0328F

..... Appellant

v/s

ITO, Ward – 1(1),
Aayakar Bhawan, Kolkata
P-7, Chowringhee Square,
Kolkata.

..... Respondent

Assessee by : Ms. Dinkle Hariya
Revenue by : Shri Manoj Kumar Sinha, Sr.DR

Date of Hearing – 11/09/2024

Date of Order – 09/12/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 27/05/2024, passed under section 250 of the Income Tax Act, 1960 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], which in turn arose from the penalty order dated 28/03/2022 passed under section 270A of the Act, for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: –

"1. THE ORDER BAD, ILLEGAL AND WITHOUT JURISDICTION

1.1 *In the facts and the circumstances of the case, and in law the appellate order framed by the Commissioner of Income - tax (Appeals), National Faceless*

Appeal Centre (NFAC), Delhi, ['Ld. CIT (A)'] is bad and illegal, as the same is framed in breach of the statutory provisions and the scheme and as otherwise also is not in accordance with the law.

1.2 *Without prejudice to the generality of the above, the appellate order so passed is bad, illegal and void as the same is utterly cryptic and perverse.*

2. NATURAL JUSTICE

2.1 *The Ld. CIT (A) erred in passing the appellate order in breach of the principles of Natural Justice.*

2.2 *While doing so, the Ld. CIT (A) failed to appreciate that:*

(i) The Appellant was not given fair, reasonable and proper opportunity of being heard; and

(ii) In any case, the Appellant was prevented by reasonable causes beyond its control to make effective and proper representation.

Without Prejudice to the above

3.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty u/s. 270A of the Act, on the Appellant.*

3.2 *The Ld. CIT (A) failed to appreciate that the order passed by the A.O. and / or the penalty levied was bad and illegal as the necessary conditions for initiating the penalty proceedings and the completion thereof were not fulfilled, in terms of section 270A of the Act.*

3.3 *It is submitted that in the facts and the circumstances of the case, and in law, no such penalty was leviable.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

4.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty of Rs. 3,47,776/- u/s. 270A of the Act, on the ground of alleged under reporting / misreporting of income.*

4.2 *It is submitted that in the facts and the circumstances of the case and in law, on merits also, no such penalty was leviable.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

5.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty at 200%.*

5.2 *The Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty on the charge of misreporting.*

5.3 Without prejudice to the generality of the above, assuming - but not admitting - that some penalty was leviable, the Ld. CIT (A) failed to appreciate that the computation of the amount of penalty was excessive and arbitrary and not in accordance with the law.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

6.1 The Ld. CIT (A) erred in confirming the action of the A.O. in passing order rejecting the Appellant's application under section 270AA of the Act.

6.2 In the facts and the circumstances of the case, and in law, no such action was called for."

3. The solitary grievance of the assessee, in the present appeal, is against the levy of penalty under section 270 A of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a Limited Liability Partnership firm and is engaged in the business of providing temporary loans and hundi business. For the year under consideration, the assessee filed its return of income on 21/07/2018, declaring a total income of INR 3,09,21,920. Subsequently, the assessee filed a revised return of income on 26/02/2019 declaring the same income. The return filed by the assessee was selected for complete scrutiny through CASS with the issue of verification being "*Short Term Capital Gains under section 111A of the Act and Refund Claim*". Accordingly, statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to submit the details of short-term capital gain and long-term capital gains shown by the assessee in the income tax return. In response, the assessee filed the computation statement wherein the assessee itself accepted the mistake in the computation of short-term capital gain and

disallowance of the Securities Transaction Tax ("STT"). The assessee submitted that an amount of INR 6,35,357 was shown as short-term capital gain and tax was calculated @15% instead of the actual tax calculation of @30% being the said short-term capital gains arrived on account of the sale of liquid bonds. The assessee further admitted that by oversight it had not added the STT paid of INR 1,84,773, which was already considered in arriving at the net profit as per the profit and loss account. Accordingly, the assessee submitted the revised computation of income wherein the tax liability increased. Since the assessee admitted it was a mistake, the Assessing Officer ("AO") completed the assessment by considering the above modification and the total income of the assessee was assessed at INR 3,11,06,693.

5. In the meanwhile, penalty proceedings under section 270A were initiated and notice under section 274 read with section 270A of the Act was issued on 12/02/2021 for under-reported income which is in consequence of misreporting. In response to the aforesaid notice, the assessee filed its reply on 08/03/2021 submitting that the assessee while preparing the first submission during the assessment proceedings realised the error, which was not pointed out to it during the assessment and filed the revised computation of income. Thus, the assessee submitted that there was no *malafide* intention to evade the tax. The assessee also submitted that in the earlier as well as the subsequent year, the STT was duly disallowed by the assessee while filing its return of income. Therefore, it was submitted that the error was merely accidental and not intentional. As regards the computation of tax on the short-term capital gains earned by the assessee, it was submitted that in past the

assessee never made investments in mutual fund units and all the investments were made in equity shares where STT is paid. Since investment in liquid bonds was not a regular transaction, therefore due to oversight, the same was treated under the STT paid transaction and tax was not offered @30% to the *bonafide* mistake.

6. The AO, vide order dated 28/03/2022, disagreed with the submissions of the assessee and held that the assessee has under-reported its income, which is in consequence of misreporting of income under section 270A of the Act. Accordingly, the AO levied a penalty of INR 3,47,776 under section 270A of the Act.

7. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the penalty levied under section 270A of the Act. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. From the perusal of the penalty order dated 28/03/2022 passed under section 270A of the Act, it is evident that the penalty was levied for under-reported income which is in consequence of misreporting as the assessee failed to disallow the STT paid and offered the short-term capital gains to tax @15% instead of @30% being the short-term capital gains arrived on sale of liquid bonds. As per the assessee, both mistakes were *bonafide* mistakes, which were not pointed out by the Revenue during the assessment proceedings, and the assessee, while filing its first submission in response to the statutory notices issued under section 142(1)

of the Act, *suo motu* realised its mistake and corrected the error by filing the revised computation of income. As regards the disallowance of STT paid during the year, we find from the computation of income for the preceding assessment year, i.e. 2017-18, which forms part of the paper book on page 75-77, and subsequent assessment year, i.e. 2019-20, which forms part of the paper book from pages 78-80, that the assessee disallowed the STT paid. As regards the computation of tax on the short-term capital gains earned by the assessee @15%, it is the plea of the assessee that due to oversight the short-term capital gains were grouped under the short-term capital gains earned from the equity shares and therefore the tax was computed @15% instead of 30%. Therefore, as per the assessee, the aforesaid mistakes occurred due to oversight and there was no *malafide* intention on the part of the assessee to evade any tax.

9. Apart from claiming that the aforesaid mistakes were due to *bonafide* oversight on the part of the assessee, it was submitted that neither in the notice issued under section 274 read with section 270A of the Act nor in the penalty order passed under section 270A of the Act, the AO has specified the specific limb of section 270A(9) under which the assessee has misreported its income. Before proceeding further, it is pertinent to note the relevant provisions of section 270A of the Act, which reads as follows: -

"(8) Notwithstanding anything contained in sub-section (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 under-reported income.

(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—

- (a) misrepresentation or suppression of facts;*
- (b) failure to record investments in the books of account;*
- (c) claim of expenditure not substantiated by any evidence;*
- (d) recording of any false entry in the books of account;*
- (e) failure to record any receipt in books of account having a bearing on total income; and*
- (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.”*

10. Therefore, from a careful perusal of the provisions of section 270A(9) of the Act, it is evident that section 270A(9) of the Act lays down the circumstances under which it can be held that under-reported income is in consequence of misreporting thereof. In the present case, it is undisputed that the AO has alleged that the assessee has under-reported its income which is in consequence of misreporting of income under section 270A of the Act. However, it is the plea of the assessee that the AO has not specified the specific limb of section 270A(9) under which the assessee has misreported its income.

11. We find that while deciding a similar issue in favour of the taxpayer, the coordinate bench of the Tribunal in M/s Allied Photographics India Ltd. v/s NFAC, in ITA No. 3540/Mum./2023, vide its order dated 30/04/2024, held that while passing the penalty order under section 270A(1) read with section 270A(8) of the Act, the AO is required to specify the specific limb of section 270A(9) of the Act under which the assessee has misreported its income

leading to under-reporting of income. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as follows: –

"9. The next issue that arises for consideration is whether the Assessing Officer is required to specify in the order levying penalty for under-reporting in consequence of misreporting under Section 270A(1) read with Section 270A(8) of the Act the specific limb of Section 270A(9) of the Act invoked by the Assessing Officer while levying such penalty.

9.1 In our view, having been confronted with the charge of underreporting in consequence of misreporting, it is for the assessee to take a defense that there is no misreporting as none of the provisions contained in Section 270A(9)(a) to Section 270A(9)(g) of the Act get triggered. On co-joint reading of various provisions contained in Section 270A of the Act it becomes clear that on occurrence of the instance of underreporting of income specified in Section 270A(2)(a) to 270A(2)(g) of the Act, the assessee is required to provide explanation, inter alia, in terms of Section 270A(6)(a) of the Act and make out a case for non-levy of penalty. In case the explanation does not meet the requirements of Section 270A(6)(a) of the Act, the Assessing Officer can levy penalty under Section 270A(7) of the Act at a rate of 50% of the amount of tax on under-reported income. However, in case the Assessing Officer arrives at a conclusion that the underreporting of income is in consequence of misreporting, Assessing Officer is required to exhibit that the aforesaid misreporting falls within the ambit of the cases of misreporting specified in Section 270A(9)(a) to 270A(9)(g) of the Act before the Assessing Officer can levy penalty at a higher rate of 200% of the amount of tax on under-reported income by invoking provisions of Section 270A(8) of the Act. Therefore, while levying penalty under Section 270A of the Act for under-reporting income in consequence of misreporting, the Assessing Officer is required to establish that there is misreporting and that such misreporting falls within the cases of misreporting specified in Section 270(9)(a) to 270(9)(g) of the Act. Therefore, we hold that while passing the penalty order under Section 270A(1) read with Section 270A(8) of the Act the Assessing Officer is required to specify the specific limb of Section 270A(9) of the Act under which the Appellant was held to have misreported its income leading to under-reporting of income. The invocation of specific limb of Section 270A(9)(a) to 270A(9)(g) of the Act should either be apparent from the express provisions stated in the penalty order or should be unambiguously discernible from the reading of the penalty order as a whole."

12. Since, in the present case, from the perusal of the penalty order passed under section 270A of the Act, it is discernible that the AO has failed to specify the specific limb of section 270A(9) of the Act under which the assessee was held to have under-reported income in consequence of misreporting of income, respectfully following the aforesaid decision of the coordinate bench

of the Tribunal, we are of the considered view that the penalty levied under section 270A of the Act is unsustainable and therefore is deleted. Accordingly, the impugned order is set aside and grounds raised by the assessee challenging the levy of penalty under section 270A of the Act are allowed.

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

Order pronounced in the open Court on 09/12/2024

Sd/-

**AMARJIT SINGH
ACCOUNTANT MEMBER**

MUMBAI, DATED: 09/12/2024

prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

By Order

Assistant Registrar
ITAT, Mumbai