

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.1876/Bang/2024
Assessment Year: 2017-18

DACSS Granites Pvt. Ltd. 2439/2, Channamma Kalyana Mantapa Nagashettihalli Bengaluru 560 094 Karnataka PAN NO : AACCD3486G	Vs.	ITO Ward-2(1)(3) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Sri Balram R. Rao, A.R.
Respondent by	:	Sri Subramanian S., D.R.

Date of Hearing	:	09.12.2024
Date of Pronouncement	:	11.12.2024

O R D E R

PER PRAKASH CHAND YADAV, JUDICIAL MEMBER:

Present appeal of the assessee is arising from the order of Id. CIT(A) dated 26.8.2024 and relates to assessment year 2017-18 having DIN & Order No.ITBA/NFAC/S/250/2024-25/1067988663(1).

2. Brief facts of the case are that the assessee is a Private Limited company which is engaged in the business of granites. The scrutiny assessment was concluded under section 143(3) of the Income Tax Act, 1961 (in short “The Act”) wherein additions were made u/s 14A, 36(1)(iii) and 40(a)(ia) of the Act totaling to Rs.49,28,158/-. Since there was negative income returned, there was only a tax demand of Rs.5/- pursuant to the orders passed u/s 143(3) of the Act, the assessee chose not to contest the order under appeal and accepted

the additions made in the quantum assessment. Thereafter, a show cause notice dated 16.12.2019 u/s 270A of the Act was issued to the assessee asking him as to why penalty was not exigible for **under reporting**. In response the assessee filed its reply objecting to the levy of penalty u/s 270A of the Act. The AO without considering the same levied a penalty of Rs.7,61,400/- towards under reporting of income.

2.1. The relevant observations of the AO are as under:

✓ The contention of assessee is found to be unacceptable . ignoratia juris non excusat is basic fundamental principle of law . ignorance of law is no excuse for not following the law . The assessee's claim that it had made mistake while having no intention to conceal is not a valid contention. The language of the act makes it clear about what constitutes underreporting of income. The same is reproduced below:

A person shall be considered to have under-reported his income, if—

- (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;*
- (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 filed;*
- (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.*

It is clear that the assessee's case falls clearly in limb g of the provisions of the act. Hence it's a fit case for levy of penalty under section 270a of the income tax act 1961.

2.2 Aggrieved with the order of AO, the assessee filed an appeal before the Id. CIT(A) and contested that the penalty levied by the AO is not tenable. The assessee has contended that the assessee is neither guilty of under reporting nor guilty of mis-reporting. However, the Id. CIT(A) could not find any force in the arguments of the assessee and confirmed the levy of penalty.

2.3 Aggrieved with the order of Id. CIT(A), the assessee has come up in appeal before us and has raised following grounds of appeal:

1. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in upholding the order of the Assessing Officer in the manner in which he did.
2. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals), NFAC erred in upholding the penalty under Section 270A of the Act on the remaining two disallowance viz. Rs. 33, 92, 033/- made under Section 360(1)(iii) and Rs. 7, 50, 000/- under Section 40(a)(ia) of the Act by holding that under reporting was proved in respect of these disallowances.
3. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) as well as the Assessing Officer failed to appreciate that the Appellant had sought for immunity from levy of penalty under Section 270A of the Act and the Appellant had also not challenged the Assessment Order further in the appeal as required under Section 270AA of the Act.

4. On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) failed to appreciate that the application to be filed in FORM-68 for immunity from levy of penalty under section 270A of the Act was only a procedural defect which could be rectified.
5. Further, the Appellant prays that he may be permitted to raise additional grounds during the course of hearing if required.
6. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may please be allowed to meet the ends of justice.

2.4 Ld. Counsel for the assessee contended that the disallowance made by the ld. AO during the assessment proceedings are of two categories.

- a) Disallowance of Rs.33,92,033/- u/s 36(1)(iii) of the Act and
- b) Disallowance of Rs.7,50,000/- u/s 40(a)(i) of the Act.

2.5 Ld. Counsel for the assessee contended that the disallowance made by the AO u/s 36(1)(iii) of the Act is not tenable in view of the fact that the assessee was having reserves of Rs.17.89 Crores on the date, when the assessee had advanced the sum to its sister concern for the purpose of business. Ld. Counsel for the assessee relied upon the judgement in the case of Reliance Utilities & Power Ltd. reported in 313 ITR 340 for the proposition that when surplus funds are there with the assessee, then no disallowance can be made on proportionate basis u/s 36(1)(iii) of the Act. So far as the disallowance made by the ld. AO u/s 40(a)(i) of the Act is concerned, ld. Counsel for the assessee contended that the assessee has initially deducted TDS @ 30%. However, realizing the mistake, the assessee had disallowed 70% of the payments made and hence, there is no violation of section 40(a)(i) of the Act. Ld. Counsel for the assessee lastly contended that the figures disclosed by the assessee are accepted by the AO in totality and hence, it is not a case of either mis-reporting or under reporting of the income.

3. Ld. D.R. appearing on behalf of the revenue relied upon the order of authorities below.

4. We have heard the rival submissions and perused the materials available on record. We observe that in this case, it is an admitted position of fact that the assessee was having surplus funds in the shape of reserves to the tune of Rs.17.89 crores as evident from the facts coming out from the orders of authorities below. Further, the assessee has also acted *bona-fidely* while deducting the TDS @ 30% and upon realizing its mistake, disallowed the 70% of the payments made in accordance with law. These facts are not controverted by the ld. AO and the ld. D.R. It is pertinent to note that the Ld CIT(A) has partly deleted the penalty, levied by the AO with the respect to the issue of 14A disallowances and disallowance made by the AO in terms of the provisions of section 2(24)(X).

5. Further assessee has also sought immunity as per the provisions of section 270AA(2) of the Act. It is an admitted position of facts that the assessee has filed application for getting immunity in Form-68. However, the CIT(A) rejected this argument on the ground that the same was filed belatedly. We observe that there are two decisions of the coordinate Benches of the Tribunal wherein it is held that filing of Form 68 is mere procedural compliance and if the assessee has substantially complied with the payment of taxes then immunity shall be granted to the assessee. A reference can be made to the decision of Pawan Kumar Bhatia Vs ITO - ITA-No-454/Jodhpur/2023 dated 21.03.2024 and to the decision of Hyderabad Bench in the case of Karim Nagar District Cooperative Society ITA No- 701/Hyd/2024 order dated 20.09.2024. It is not in dispute that the assessee has deposited the due taxes, it also not in dispute that assessee has not filed any appeal against the assessment order. Therefore, filing of form 68 beyond due date is

mere irregularity in our view, as held by coordinate Bench in Pawan Kumar Bhatia case (Supra) and Karim Nagar District Case. Therefore, considering the totality of the facts and circumstances we are of the view that the penalty levied by the AO is not tenable in law.

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

Order pronounced in the open court on 11th Dec, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 11th Dec, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.