

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1274/Bang/2024
Assessment Year: 2017-18

Sri Arif Hussain No.35, 5 <sup>th</sup> Main, Kauser Nagar R.T. Nagar Bangalore 560 032  <b>PAN NO : ABGPH8458N</b>	<b>Vs.</b>	ITO Ward-6(3)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri V. Narendra Sharma, A.R.
<b>Respondent by</b>	:	Ms. Neha Sahay, D.R.

<b>Date of Hearing</b>	:	18.09.2024
<b>Date of Pronouncement</b>	:	12.12.2024

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the assessee is directed against the order of the Id. CIT(A)/NFAC dated 7.6.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1065479876(1) for the AY 2017-18, passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”).

**2.** The assessee has raised the following grounds of appeal:

- 1. The orders of the authorities below in so far as levying penalty U/s 270A the act against the appellant are opposed to law, equity, weight of probabilities, facts and circumstances of the case.*
- 2. The order levying penalty u/s 27CA of the Act dated 14/02/2024 is bad in law in as much as the Hon'ble ITAT, Bangalore has set-aside the matter to the file of the learned A.O. for fresh consideration and therefore, the penalty based on the original assessment order is bad in law.*
- 3. Without prejudice to the above, the appellant denies himself penalty imposed u/s. 270A of the Act of Rs. 7,31,794/- for the alleged reporting*

*of income in consequence of mis-reporting income of Rs. 17,67,466/under the facts and in the circumstances of the appellant's case.*

- 4. The order levying penalty u/s 270A of the Act dated 14/02/2024 is bad in law in as much as no satisfaction has been recorded in the order of assessment u/s. 144 of the Act dated 30/11/2019 for initiating penalty proceedings u/s 270A of the Act for under-reporting of income in consequence of mis-reporting of income for which notice has been issued to the appellant and therefore, the very initiation of the proceedings suffers from an infirmity and consequently, the order imposing penalty deserves to be annulled.*
  - 5. The authorities below are not justified in levying penalty u/s.270A of the Act, of Rs. 7,31,794/- at 200% of the tax payable on the alleged under-reported income in consequence of misreporting, under the facts and in the circumstances of the appellant's case.*
  - 6. The authorities below ought to have appreciated that the that levy of penalty is discretionary and not mandatory as the provisions of section 270A of the Act employs the word "may" and not "shall" and thus having regard to the facts and in the circumstances of the appellant's case, the learned Assessment Unit ought to have exercised its discretion and refrained from imposing penalty u/s 270A of the Act under the facts and in the circumstances of the appellant's case.*
  - 7. Without prejudice to the above, the penalty levied at 200% of the taxes is excessive and liable to be reduced substantially.*
  - 8. Without prejudice to the above, the learned Assessment Unit ought to have appreciated that there was no under-reporting of income by the appellant and no penalty was imposable in terms of sub-section [6] of Section 270A of the Act under the facts and in the circumstances of the appellant's case.*
  - 9. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*
- 3.** The brief facts of the case are that while passing the assessment order u/s 144 of the Act dated 30.11.2019, the AO concluded the assessment by adopting the following incomes:-

a) Business Income:

Total amount credited in the Axis bank current account is Rs.2,35,48,326/- during the financial year 2016-17. However, the cash deposit made during the period of demonetization is Rs.14,55,000/- only. Therefore, the balance cash deposited amounting to Rs.2,22,93,326/- was treated as business receipts and accordingly the income computed by applying @ 8%, which comes to Rs.17,67,466/-.

b) Unexplained money u/s 69A of the Act:

As no explanation has been submitted for cash deposited to the extent of Rs.14,55,000/- during the demonetization period, the AO held the same as unexplained money u/s 69A of the Act.

**3.1** On or before completion of assessment proceeding the AO also initiated penalty proceedings by observing that since the assessee has not furnished the return of income for AY 2017-18, despite having taxable income from business, the assessee has mis-reported the income resulting in under reporting of income and accordingly, penalty u/s 270A of the Act is initiated separately. Thereafter, after the completion of the assessment, the AO issued notice u/s 270A of the Act dated 6.12.2019 calling upon to state as to why an order imposing penalty should not be made for under reporting as a consequence of mis reporting. The AO after considering the reply of the assessee dated 24.11.2023 passed an order by imposing penalty of Rs.7,31,794/- only determined on estimate basis at 8% of Rs.2,20,93,326/- being the credits in the bank accounts of the assessee holding that the Hon'ble ITAT had only set aside the issue pertaining to cash deposited and not the issue of income estimated @ 8% of Rs.2,20,93,326/- which the AO has considered to be confirmed and thus, according to him, there was under reporting of income in consequence of misreporting.

**4.** Before us, at the outset, the ld. A.R. of the assessee drew our attention on the Tribunal order placed in page 16 to 21 passed by ITAT SMC 'C' Bench in ITA No.431/Bang/2023 dated 27.6.2023 in which the ITAT had remanded the issue to the AO to carry out necessary verification of cash deposited in the bank account of the assessee in the light of the circulars and instructions issued for demonetization cases and prayed that the penalty order may also be set aside to AO as the quantum appeal has also been remanded back to AO, which is pending disposal.

**4.1** The ld. D.R. on the other hand supported the order of authorities below.

**5.** We have heard the rival submissions and perused the material available on record. On going through the Tribunal order, we find that at paragraph 2, the Tribunal had clearly noted that the only issue raised in the appeal is on account of cash deposited in SBNs noted during the relevant assessment year under consideration of Rs.14,55,000/- u/s 69 of the Act. Further, the ld. AO also disallowed Rs.17,67,466/- being 8% of income from business deposited as cash alleged made prior to demonetization period. Therefore, in our opinion, the entire issue of cash deposited during the financial year 2016-17 relevant for the assessment year 2017-18 has been remanded to the file of AO to carry out necessary verification of the cash deposited in the bank account of the assessee. Since we held that this Tribunal vide order dated 27.6.2023 in ITA No.431/Bang/2023 had set aside the entire issue of bank deposit to the file of AO for fresh consideration and also as the ld. A.R. of the assessee submitted that the proceeding is pending for disposal before the AO, therefore, we also set aside the entire penalty proceedings to the file of AO for fresh consideration in accordance with law. Since

in our opinion, if a quantum appeal is set aside by the ITAT, the penalty proceedings based on the same quantum assessment cannot sustain. We are of the considered opinion that if an order of assessment or reassessment which forms the basis for the penalty is set aside, then the penalty cannot stand by itself and is liable to be set aside. Accordingly, the penalty proceeding is also set aside to the file of AO for fresh consideration in accordance with law.

**6.** In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 12<sup>th</sup> Dec, 2024

**Sd/-**  
**(Waseem Ahmed)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 12<sup>th</sup> 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.**