आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.225/Ahd/2024
Assessment Year : 2018-19

ITO, Ward-1 Palanpur, Banaskantha Gujarat.	Vs.	Gelot Agri Exports At 13, Aditya Complex Opp: Jalaram Temple Deesa 385 535. PAN : AAPFG 5455 N

ITA No.1739/Ahd/2024
Assessment Year : 2018-19

Gelot Agri Exports At 13, Aditya Complex Opp: Jalaram Temple Deesa 385 535. PAN : AAPFG 5455 N	Vs.	ITO, Ward-1 Palanpur, Banaskantha Gujarat.

Assessee by	:	Shri Chetan Agarwal, AR
Revenue by	:	Shri AP Singh, CIT DR and Shri Rignesh Das, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 11/12/2024**
घोषणा की तारीख /**Date of Pronouncement: 19/12/2024**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

These are cross-appeals filed by the Revenue and the assessee against the order passed by the ld.Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi under section 250(6) of the Income Tax Act, 1961 ("the Act" for short)

pertaining Assessment Year 2018-19 confirming the levy of penalty under section 270A of the Act.

2. Brief facts of the case are that in the assessment framed on the assessee u/s 143(3) of the Act additions were made to its income on account of disallowances of expenses on which the assessee had failed to deduct TDS ,in terms of provisions of section 40(a)(ia) of the Act. The assessee was noted to have made payment amounting to Rs.15,09,50,972/- without deducting TDS, and therefore, applying provisions of section 40(a)(ia) of the Act, 30% of the said amount of Rs.15.09 crores,i.e Rs.4,52,85,292/-, was added to the income of the assessee. The AO initiated penalty proceedings for under-reporting of income in consequence of misreporting ,under section 270A(1) r.w.s 270(A)(9) of the Act.

3. During penalty proceedings, the assessee remained unrepresented and the AO accordingly levied penalty for under reporting of income in consequence of misreporting at the rate of 200% of the tax sought to be evaded on the addition made, as prescribed in law u/s 270A(8) of the Act, resulting in penalty of Rs.3,13,44,670/-.

4. The matter was carried in appeal before the ld.CIT(A), where again the assessee remained unrepresented, but the ld.CIT(A) on going through the facts of the case noted that it was not a case of misreporting of income, but on the contrary, he held that it was a case of underreporting of income in terms of provisions of section 270A(1)/(2) of the Act. Accordingly he restricted penalty levied to 50% of the tax sought to be evaded on the underreported income, in terms of the applicable provision of law u/s 270A (7) of the Act.Thus

restricting the penalty to Rs.78,36,168/- as opposed to Rs.3,13,44,670/- levied by the AO.

5. Aggrieved by the same, both the assessee and the Revenue have come up in appeal before us with the grievance of the assessee being that no penalty in terms of provisions of section 270A of the Act either on account of misreporting or under-reporting was leviable on the assessee, while that of the Revenue being that the assessee was liable to pay penalty at the rate of 200% of the tax sought to be evaded on account of misreporting of income as held by the AO. The grounds raised, therefore, by both the assessee and the Revenue read as under:

In the assessee's Appeal: ITA No.1739/Ahd/24

"The ld.CIT(A) erred in law as well as on facts in sustaining penalty of Rs.78,36,168/- under section 270A of the Act."

In the Revenue's Appeal: ITA No.225/Ahd/24

(a) The Ld.CIT(A) has erred in law and on facts in restricting the penalty u/s. 270A(1) of IT Act for under reporting of income in consequence of misreporting the income from Rs. 3,13,44,670/- to Rs. 78,36,168/- and granted relief of Rs. 2,35,08,502/-.

(b) The Ld.CIT(A) has erred in law and on facts in not appreciating the fact elaborated by the Assessing Officer that the assessee has misrepresented or suppressed the facts by not making suo moto disallowance u/s. 40(a)(ia) of the Act in its ITR.

(c) The appellant craves leave to add, alter and /or to amend all or any the ground before the final hearing of the appeal.

6. We have heard both the parties, and have gone through the orders of authorities below.

7. The argument of the ld.counsel for the assessee that no penalty in terms of the provisions of section 270A either on account of underreporting or on account of misreporting of the income was leviable in its case, was based on the contention that the addition made in its case did not fall in any of the parameters listed for under reporting of the income in sub-section (2) of section 270A of the Act or of misreporting of income under sub-section (9) of Section 270A of the Act. He pointed out that in the present case the addition/disallowance was made in terms of provisions of section 40(a)(ia) of the Act on account of expenses claimed by the assessee without deducting TDS. He pointed out that this violation of provision of TDS by the assessee was duly reported by it in the tax audit report submitted, and it was on the basis of this disclosure by the assessee in the tax audit report that the assessee's case was picked up for scrutiny assessment, and addition made on account of the said disclosure. In this regard, he drew our attention to para-1 of the assessment order, wherein he pointed out that it was specifically mentioned that the case was selected for limited scrutiny on account of "*Default in TDS, and disallowance for such default* "and the reason for limited scrutiny was "*Lower amount disallowed under section 40(a)(ia) in ITR (Part A-01) in comparison to audit report*". He pointed out that even in the questionnaire issued to the assessee under section 142(1) of the Act, noted at para-1 of the assessment order, the assessee was asked *to furnish complete details of disallowance under section 40(a)(ia) of the Act as per the audit report, and to explain why no amount had been disallowed under section*

40(a)(ia) of the Act, whereas the tax auditor had reported disallowance under section 40(a)(ia) of the Act. He pointed out that the assessment order contained the details of violation of provision of TDS by the assessee, picked up by the AO from the tax audit report and consequently addition was made to the income of the assessee on account of the same. The ld.counsel for the assessee, therefore, contended that there is no dispute with regard to the fact that the disallowance to be made under section 40(a)(ia) of the Act was duly reported in the tax audit report of the assessee.

8. Having state so, he pointed out that this disallowance needed to be effected in the intimation made to the assessee under section 143(1)(a) of the Act. He drew our attention to the provisions of section 143(1)(a) of the Act, which read as under:

> *"143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—*
>
> *(a) the total income or loss shall be computed after making the following adjustments, namely:—*
>
> *(i) any arithmetical error in the return;*
>
> *(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;*
>
> *(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;*
>
> *(iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return;*
>
> *(v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if the return is furnished beyond the due date specified under sub-section (1) of section 139; or*
>
> *(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:*

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

9. Referring to the sub-clause (iv) of the same, he pointed out that having reflected the disallowance in the tax audit report, but having not done so while computing the taxable income of the assessee in the return of income filed, it was incorrect claim apparent from the return. It was a disallowance of expenditure indicated in the audit report, but not taken into account in computing the total income in the return, which needed to be adjusted in the intimation made under section 143(1)(a) of the Act.

But, having said so, he thereafter pointed out that the fact of the matter was that, no such adjustment was made to the income of the assessee in the intimation made under section 143(1)(a) of the Act. Copy of the same was filed before us.

10. Thereafter, the ld.counsel for the assessee contended that in terms of provisions of section 270A sub-section (2) of the Act, no penalty was leviable on the addition/disallowance which were of the nature to be adjusted in the intimation made under section 143(1)(a) of the Act. He drew our attention to section 270A(1) sub-section (2) as under:

270A. (1) The Assessing Officer or 95[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

(2) 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 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;

11. Referring to the same, he pointed out that as per the provision of sub-section (2) underreporting income is only that income assessed, which is greater than the income determined in the return processed under clause (a)of sub-section (i) of section 143. He also drew our attention to sub-section (3) of section 270A of the Act as under:

(3) The amount of under-reported income shall be,—

(i) in a case where income has been assessed for the first time,—

(a) if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of sub-section (1) of section 143;

(b) in a case where no return of income has been furnished or where return has been furnished for the first time under section 148,—

(A) the amount of income assessed, in the case of a company, firm or local authority; and

(B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A)

12. He pointed from the above also that under-reporting the income is only that component of the income assessed, which is greater than the amount of income determined under section 143(1)(a) of the Act, in circumstances where the return of income is furnished by the assessee. He pointed out that only when no return of income was furnished the entire assessed income is treated as under reported income. He, therefore, contended that in the case of the assessee, the adjustment on account of expenditure not allowable to the assessee under section 40(a)(ia) of the Act as reported in the tax audit report, ought to have been made in the intimation under section 143(1)(a) of

the Act and no penalty was leviable on the same u/s 270A of the Act. The Revenue was unjustified in bye-passing that process and making the addition in regular assessment under section 143(3) of the Act, and thereafter levying penalty on the same under section 270A of the Act.

13. With respect to the aspect of the impugned addition, tantamounting to misreported income in terms of section 270A(9) of the Act, he relied on the order of the ld.CIT(A), pointing out that he had given categorical finding that sub-section (9) of section 270A is an inclusive list of cases of misreporting of the income, and the assesee's case does not fall in any of the instances listed therein. He drew our attention to the provision of section 270A(9) of the Act in this regard, and to the findings of the ld.CIT(A) to the effect that the addition made in the case of the assessee did not fall in any of the instances listed under section 270A(9) of the Act.

He, therefore, pleaded that in the present case, the addition made to the income of the assessee under section 40(a)(ia) of the Act, did not tantamount either to under reporting of income and or misreporting of income, and no penalty in terms of provision of section 270A(2) r.w.s 270A(7)or 270A(9) of the Act were leviable on the assessee.

14. The ld.DR, however, vehemently supported the order of the AO and contended that the AO had correctly levied penalty for misreporting of income in terms of provisions of section 270A(9) of the Act.

15. Having heard contentions of both the parties, and on going through the orders of the authorities below, as also on considering the relevant provisions of law, we find merit in the contentions of the ld.counsel for the assessee that in the facts and circumstances of the present case, no penalty either for under reporting of the income under section 270A(2) of the Act or misreporting under section 270A(9) of the Act was leviable on the assessee.

16. As noted above, undisputedly the addition made to the income of the assessee on which penalty was levied related to the expenses on which the assessee had failed to deduct TDS, in terms of provision of section 40(a)(ia) of the Act. It is also not in dispute that this violation of the provisions of TDS was reported in the tax audit report furnished by the assessee along with return of income, and the AO had also picked up the same from the tax audit report itself.

The contention of the Ld.Counsel for the assessee that since the assessee's disallowance under section 40(a)(ia) was reported in audit report furnished by the assessee itself, the same was liable to be adjusted to its income in the intimation made under section 143(1)(a) of the Act, we find is correct. The ld.counsel for the assessee has drawn our attention to the provision of section 143(1)(a) of the Act. For the sake of clarity the same is being reproduced again:

> *"143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—*
>
> *(a) the total income or loss shall be computed after making the following adjustments, namely:—*
>
> *(i) any arithmetical error in the return;*
>
> *(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;*

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

17. In terms of sub-clause (iv) thereto, we have noted ,all disallowance of expenditure reported in the audit report but not taken into account in computing the total income in the return, are liable to be adjusted in the intimation made under section 143(1)(a) of the Act. The fact on record being that the disallowance was reported in the Tax Audit Report of the assessee but was not made in the return of income, the adjustment clearly was liable to be made in the intimation made u/s 143(1)(a) of the Act The ld.DR was unable to controvert the said position of law.

But the fact of the matter is that in the intimation made to the assessee under section 143(1)(a) of the Act, this adjustment was not made.

18. Considering the same, what is to be considered is, whether, the disallowance of such expenses now made in assessment framed under section 143(3) of the Act would tantamount to under reporting of the income as per the provisions of section 270A(2) of the Act. The provision of section are reproduced by us above , and are being reproduced again for clarity:

270A. (1) The Assessing Officer or 95[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

(2) 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 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;

19. At the most, the assessee's case can be said to fall in sub-clause(a) as per which an assessee can be considered to have under reported its income, if the income assessed is greater than the income determined in the return processed under sub-clause (a) of sub-section (1) of section 143 of the Act. Interpreting this provision literally, the assessee's case appears to be a fit case for levy of penalty for under reporting of the income as its income assessed is greater than the income determined in the return processed under section 143(1)(a) of the Act. But we find that a literal reading of the section would defeat the intention of the provision.

20. U/s 143(1)(a) of the Act adjustments to income are to be made only of apparent mistakes , emanating from data furnished in the return itself. Like arithmetical errors, additions/disallowances reported in tax audit report but not considered for computing income and likewise. Such additions on the face of it are due to apparent mistakes while computing taxable incomes. That while otherwise complete disclosure of incomes, additions/disallowances are made but inadvertently they are missed to be considered while computing taxable incomes. Such incorrect reporting by mistake , the law has

deliberately and consciously kept out of the scope of levy of penalty treating only incomes assessed over and above that determined u/s 143(1)(a) of the Act as underreported income liable to levy of penalty u/s 270A of the Act. The purport, objective and intention of law , derived from section 270A(2)(a), by treating only income assessed which is greater than income determined u/s 143(1)(a) of the Act as underreported income , is very clear that apparent mistakes in the computation of income are not to be subject to imposition of any penalty.

21. Section 270A(2)(a) of the Act , has to be read likewise that additions which are subject matter of adjustments u/s 143(1)(a) of the Act are outside the purview of being subject to penalty on account of underreporting of income. It is only income determined after scrutiny assessment which qualifies as underreported income .

22. In the facts circumstances of the case, since the addition made to the income of the assessee was an apparent mistake, which was liable to be adjusted in the intimation made under section 143(1)(a) of the Act, the addition of the same made in the regular assessment would not qualify as under reported income.

23. Having said so, since we have held the impugned income not to qualify as under reported income there is no question of the same qualifying as misreported income, since it is only when the under reported income is in consequence of misreporting that it qualifies as misreported of income. Therefore, its only when an income first qualifies as under-reported income that it is to be, thereafter seen, whether it further qualifies as misreported income as per the criteria listed in sub section (9) of section 270A of the Act.

24. In the present case, since we have held the addition made in the case of the assessee did not qualify as under reporting itself, there is no case, therefore, for the same qualifying as misreported income in terms of provision of section 270A(9) of the Act. Therefore, there is no case for levy of penalty for misreporting of the income, we hold.

25. The order of the ld.CIT(A) holding no levy of penalty on misreporting of the income is confirmed, while his order, levying penalty for under-reporting of income is set aside.

26. The AO is directed to delete the impugned penalty levied u/s 270A of the Act.

Thus, the appeal of the assessee is allowed, while that of the Revenue is dismissed.

Order pronounced in the Court on 19th December, 2024 at Ahmedabad.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad, dated 19/12/2024