

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

BEFORE SHRI INTURI RAMA RAO, AM

**ITA No. 657/Coch/2024
Assessment Year: 2018-19**

Savan Sabeer Appellant
K.K. Reidency, HAL Vinayaka Nagar Road
Koneru Agrahara, Bangalore 560016
[PAN: DVOPS2307L]

vs.

The Income Tax Officer Respondent
Ward - 1, Kalpetta

Appellant by: Shri P.M. Veeramani, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 16.01.2025
Date of Pronouncement: 29.01.2025

ORDER

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 26.06.2023 for Assessment Year (AY) 2018-19.

2. Brief facts of the case are that the appellant is an individual stated to be engaged in the business of dealing in vehicles, land & building, etc. No regular return of income was filed by the assessee under the provisions of section 139(1) of the Income Tax Act, 1961 (the Act). However, the Income Tax Officer, Ward-1, Kalpatta (hereinafter called "the AO") formed an opinion that come escaped

assessment to tax based on the information that cash of Rs. 18,08,000/- was seized from the appellant on 07.03.2018 by the police during vehicle checking and the same was handed over to the Income Tax Department. Accordingly, a notice u/s. 148 of the Act was issued to the appellant. In response to the notice the appellant had filed return of income on 03.09.2022 disclosing income of Rs. 18,08,000/-.

3. Against the said return of income, the assessment was completed by the AO accepting the returned income. The AO also initiated penalty proceedings u/s. 270A of the Act by holding that the appellant is guilty of misreporting of income. In response to the show cause notice u/s. 270A dated 13.02.2023, the appellant submitted that the question of levy of penalty does not arise, inasmuch as, the income was offered voluntarily and also that the application u/s. 270AA of the Act seeking immunity from imposition of penalty was filed in the prescribed form. On due consideration of the above submission of the assessee the AO proceeded to hold that the appellant is not eligible for immunity as envisaged u/s. 270AA of the Act for the reason that penalty proceedings were initiated for misreporting of income and also levied penalty of Rs. 7,31,094/- being 200% of the tax vide order dated 07.08.2023.

4. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the levy of penalty by holding

that it cannot be said that the income was offered voluntarily as the income would have escaped assessment to tax, but for the notice issued u/s. 148 of the Act. As regards to the rejection of application seeking immunity u/s. 270AA of the Act the CIT(A) held that the order passed u/s. 270AA(4) of the Act is final and cannot be subject matter of appeal and accordingly chose not to adjudicate on merits of rejection of application u/s. 270AA of the Act.

5. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

6. The learned A.R. submitted that the CIT(A) is grossly erred in holding that the appellant is guilty of misreporting of income. It is further submitted that the AO was not justified in rejecting the application u/s. 270AA of the Act, inasmuch as, the necessary conditions were complied with.

7. On the other hand, the learned Sr. DR supported the orders of the lower authorities submitting that no interference is required.

8. I heard the rival contentions of both the parties and perused the material available on record. The solitary issue that arises for my consideration is whether the CIT(A) was justified in confirming the levy of penalty u/s. 270A of the Act. Admittedly, the appellant had not filed original return of income. The appellant filed the return of income in response to notice u/s. 148 of the Act disclosing income of Rs. 18,08,000/-. The returned income was accepted in the

assessment proceedings u/s. 143(3) r.w.s. 147 of the Act. The appellant had not filed any appeal against the assessment order and also tax due on assessed income along with interest payable as per the order of assessment had been paid within the period specified. Thus, the appellant had fulfilled the two necessary ingredients, for the purpose of availing of immunity u/s. 270AA of the Act. The AO levied penalty u/s. 270A of the Act by rejecting the application u/s. 270AA by holding that the appellant is guilty of misreporting of income as envisaged under the provisions of subsection (9) of section 270A of the Act. In the circumstances narrated supra the case of the appellant does not fall under the category of unreported income. It can be considered under clause (b) of subsection (2) of section 270A of the Act. For the sake of convenience subsection 2(b) is reproduced below: -

Penalty for under-reporting and misreporting of income.

270A. (1)

(2)

(a)

(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;

9. So it cannot be said that the case of the appellant falls under subsection (9) of section 270A of the Act. Under the circumstances the AO was neither justified in rejecting the application u/s. 270AA of the Act nor ought not have levied penalty holding the appellant is guilty of misreporting of income. It is the settled position of law that

when penalty proceedings were initiated invoking one limb of section 270A, penalty cannot be levied under another limb of this section. Reliance on this is placed on the judgement of the Hon'ble Delhi High Court in the case of Prem Brothers Infrastructure LLP v. NFAC [2022] 142 taxmann.com 38 (Delhi) wherein it was held as under:

“Where penalty was levied on assessee u/s. 270A alleging misreporting of income, however, fact that assessee had furnished all details of transactions relating to disallowance made u/s. 14A and Assessing Officer as well as assessee had used same details to arrive at different quantum of disallowances, this by no stretch of imagination could be held to be misreporting and further, in absence of details as to which limb of section 270A was attracted, impugned penalty order was to be quashed and revenue was to be directed to grant immunity u/s 270AA.”

Therefore, in the light of above facts and law the order of penalty is hereby quashed.

10. In the result, appeal of the assessee stands allowed.

Order pronounced in the open court on 29th January, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 29th January, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin