

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.2131 & 2132/PUN/2024
निर्धारण वर्ष / Assessment Years : 2016-17 & 2017-18

Santosh Barhanpurkar, Flat No.B-8, Deepali Appt., Near Bus Stop Mahatmanagar, Nashik- 422007. PAN : AAWPB8671N	Ashokrao	Vs.	ITO, ward-2(1), Nashik.
Appellant			Respondent

Assessee by : None
Revenue by : Shri Arvind Desai
Date of hearing : 05.12.2024
Date of pronouncement : 18.02.2025

आदेश / ORDER

PER VINAY BHAMORE, JM:

Both the above captioned appeals filed by the assessee are directed against the separate orders dated 23.07.2024 passed by Ld. CIT(A)/NFAC for the assessment years 2016-17 and 2017-18 respectively.

2. Since the identical facts and common issues are involved in both the above captioned appeals of the assessee, we proceed to dispose of the same by this common order.

3. First, we shall take up the appeal of the assessee in ITA No.2131/PUN/2024 for A.Y. 2016-14.

ITA No.2131/PUN/2024, A.Y. 2016-17 :

4. The appellant has raised the following grounds of appeal :-

- “1. *The learned Commissioner of Income Tax is not justified in levying penalty u/s 271(1)(c) of Rs. 36,000/- on the ground that the assessee had concealment of income without appreciating that the said levy of penalty was not justified in law.*
2. *The learned Commissioner of Income Tax failed to appreciate that before the Commissioner of Income Tax, the assessee had duly explained that concealment of income in his case was attributable to wrong action of tax consultant and all the material facts relating thereto along with substantiating evidences in form of complaint filed against Tax Consultant before Economic Wing of Police Department etc. were also furnished by the assessee and therefore, the levy of penalty u/s 271(1)(c) without rebutting the explanation offered by the assessee was not justified in view of provisions of the said Act.*
3. *The learned Commissioner of Income Tax ought to have appreciated that the bona fides of the explanation offered by assessee were established from the fact that the assessee, being salaried employee from technical background, was totally dependent upon the tax consultant for filing income tax return and therefore, the levy of penalty u/s 271(1)(c) was not justified in view of the explanation offered by the assessee.”*

5. Facts of the case, in brief, are that the assessee is an individual salaried employee filed return of income for the assessment year 2016-17 declaring taxable income of Rs.5,55,550/- after claiming

various deductions of Rs.1,50,564/- under Chapter VI-A, however, later on the assessee filed revised income tax return on taxable income of Rs.2,86,850/- after claiming deductions under Chapter VI-A of Rs.2,74,000/-. Later the Assessing Officer, on the basis of information received from the Income Tax Officer, (Investigation) Nashik, that the assessee has claimed excess deductions, initiated proceeding u/s 147 of the IT Act after obtaining approval from the authorities & accordingly, a notice u/s 148 was issued. The assessee furnished return of income in response to notice u/s 148 of the IT Act, declaring gross total income of Rs.7,18,181/- and taxable income of Rs.5,63,510/- after claiming deductions under Chapter VI-A. The assessment was completed u/s 147 r.w.s. 144B of the IT Act on 20.09.2021 by accepting the income returned in response to notice u/s 148 of the IT Act. Subsequently, vide order dated 08.01.2022 the Assessing Officer imposed penalty of Rs.36,000/- u/s 271(1)(c) of the IT Act for concealing the particulars of income of Rs.2,76,660/-.

6. After considering the reply of the assessee, Ld. CIT(A)/NFAC dismissed the appeal and confirmed the penalty of Rs.36,000/-

imposed u/s 271(1)(c) of the IT Act. It is this order against which the assessee is in appeal before this Tribunal.

7. When the present appeal was called for hearing, none appeared on behalf of the assessee, neither any application for adjournment was filed despite due service of notice. Therefore, we proceed to decide the appeal on the basis of material available on record & after hearing Ld. DR.

8. Ld. DR submitted before us that the appellant has not filed correct return of income voluntarily & therefore the appellant is liable for penalty. It was therefore requested by Ld. DR to confirm the penalty order passed by AO & sustained by Ld. CIT(A)/NFAC.

9. We have heard Ld. DR & perused the material available on record. From the statement of facts, we find that the assessee is a salaried employee of BOSCH Limited & belongs to technical background. The return of most of the employees of Bosch Company, including that of the assessee was filed by a tax consultant namely Kishor Patil. We further find that the assessee came to know from other employees in company that Mr. Kishor Patil with his expertise is able to legally calculate lower tax, resulting in refund of TDS deducted by employer. The assessee was

unaware about the contents of the Income Tax Return filed by Kishor Patil & truly believed that the returns are filed legally as per the provisions of the Income Tax Act. The assessee being from technical background does not understand ABCD of Income Tax & therefore completely relied on the above named tax consultant, who without informing him & others, claimed excess deduction under chapter VI-A of the IT Act & claimed refund. It was Kishor Patil who cheated all the employees & claimed excess deduction in their returns without informing them for his own benefit. The fact of the cheating came in light when a survey u/s 133A was conducted at the premises of Mr Kishor Patil. When the fact that this kind of fraud was made in the name of number of persons all of them complaint to the Economic Offence Wing of Police Nashik, against the tax consultant Kishore Patil. The news regarding fraud committed by Kishore Patil also flashed in the daily news paper of Nashik. It is also apparent that there is no mistake of the assessee but it was the hidden interest of the tax consultant who triggered the gun by using shoulders of the assessee & many more for his own benefit. It is also found that as soon as the fact of excess deduction claimed, came to the knowledge of the assessee he immediately contacted

another genuine tax consultant who prepared and furnished correct return in response to the notice u/s 148 of the IT Act & paid the due tax with interest, even before the issue of notice u/s 148 of the IT Act. We find that the Assessing Officer has levied penalty u/s 271(1)(c) of the IT Act of Rs.36,000/- on the basis that the assessee has not filed correct income voluntarily. It is also found that when the notice u/s 148 was issued the appellant has disclosed his correct income & paid the due tax before issue of notice. We also find that the Assessing Officer has accepted the return as it is which was furnished by the appellant in response to the notice u/s 148 of the IT Act. We cannot accept the contention of Ld. DR that the appeal has not been filed by the appellant against assessment order wherein penalty was initiated & the revised return was not voluntary therefore the penalty u/s 271(1)(c) is inevitable. From the perusal of penalty order, it appears that the Assessing Officer himself is not sure about the particular limb under which the penalty is imposed. In para 16 of the penalty order, it is mentioned that the assessee has furnished inaccurate particular of income whereas in para 18 of the penalty order the Assessing Officer has mentioned that in view of the concealment of income the penalty u/s 271(1)(c) is imposed. In

this kind of situation, we find support from a Co-ordinate Bench decision of this Tribunal passed in the case of Sunil Chunilal Kumavat vs. ITO in ITA Nos.1447, 1401 & 1402/PUN./2023 for assessment years 2016-2017, 2017-2018 & 2018-2019 order dated 22.03.2024, wherein, under identical situation and similar facts, the penalty u/s 271(1)(c) & 270A was deleted by observing as under :-

“3. I have given my thoughtful consideration to the assessee’s pleadings and Revenue’s foregoing vehement contentions. I find no reason to sustain either one of these three penalties. This is for the precise reason that the Assessing Officer’s sec.271(1)(c) order in the first and foremost assessment year 2016-17 had concluded that the assessee’s bogus claim under sec.80C deduction(s) is an instance of “furnishing inaccurate particulars of income” in para-iii pages 7 to 8 in the NFAC’s order. Whereas it’s impugned discussion in para.7.9 onwards holds it as a fit case for confirming the impugned penalty after having found the assessee having concealed his taxable income. I am of the view that such a deviation regarding applicability of the statutory twin “limbs” of “concealment of taxable income vis-à-vis furnishing of inaccurate particulars thereof”; is not sustainable in law in light of hon’ble jurisdictional high court’s decision in Mohd. Farhan A. Shaikh vs. ACIT [2021] 434 ITR (1) (Bom.). The impugned penalty is deleted in very terms. The assessee succeeds in his instant first and foremost appeal ITA.No.1447/PUN./2023 for assessment year 2016-2017.

4. The outcome would be hardly any different in the assessee’s latter twin appeals I.T.A.Nos.1401 & 1402/PUN./2023 for assessment years 2017-2018 & 2018-2019, respectively. The Revenue could not dispute the clinching fact that although the learned lower authorities have levied 200% penalty(ies) in assessee’s case going by sec.270A(8) on one hand; whereas they nowhere specify the corresponding limb(s) of “under-reporting of income in consequence of any mis-reporting” thereof; as prescribed sub-sec. (9) containing (a) to (f) clauses. Faced with this situation, I adopt stricter interpretation as per Commissioner of Customs (Imports), Mumbai vs. Dilip Kumar And Co. & Ors. [2018] 9 SCC 1 (SC) (FB) and conclude that these twin penalties for assessment years 2017-2018 and 2018-2019 also deserve to be deleted. Ordered accordingly.”

10. Respectfully following the above decision of the Tribunal (supra), wherein under similar/ identical situation the penalty imposed u/s 271(1)(c) was deleted, we direct the AO to delete the penalty of Rs.36,000/- imposed u/s 271(1)(c) of the IT Act. Thus, the grounds raised by the assessee are allowed.

11. In the result, the appeal filed by the assessee in ITA No.2131/PUN/2024 for A.Y. 2016-17 is allowed.

ITA No.2132/PUN/2024, A.Y. A.Y. 2017-18 :

12. This appeal is filed by the assessee against the order passed by Ld. CIT(A) wherein imposition of penalty by the AO u/s 270A of the IT Act was confirmed.

13. Since penalty u/s 271(1)(c) was applicable only upto assessment year 2016-17 and was replaced by a new section i.e. 270A of the IT Act, the Assessing Officer under similar facts imposed penalty u/s 270A of the IT Act for assessment year 2017-18. As the facts of the case have already been discussed in preceding paragraphs, we proceed to decide the appeal accordingly.

14. For the assessment year under consideration, notices u/s 147/148 were issued to the assessee and the assessee furnished return in response to above notices and disclosed the correct income

which was accepted by the Assessing Officer while completing the assessment. Penalty u/s 270A was initiated in the assessment order and subsequently penalty of Rs.66,332/- u/s 270A(9) was imposed for underreporting of income as a consequence of misreporting. In this regard, we find that prior to imposition of penalty a notice to show-cause – *why an order imposing penalty u/s 270A should not be passed*, was issued to the assessee but the particular clause ('a' to 'f') of sub-section (9) of section 270A of the IT Act was not mentioned. In such kind of situation, we find support from the decision of Co-ordinate Bench of this Tribunal in the case of Shashikant Sukdeo Ambekar in ITA No.365 & 366/PUN/2023 dated 20-07-2023 wherein under identical facts and similar circumstances the Tribunal has deleted the penalty u/s 270A by observing as under : -

“8. In the case under consideration, the AO has failed to identify the specific Clauses from Clause (a-f) of section 270A(9) of the Act. Therefore, respectfully following ITAT Pune and ITAT Mumbai decisions the AO is directed to delete the penalty under section 270A of the Act. Accordingly, grounds of appeal raised by the assessee are allowed.”

15. Respectfully following the above decisions passed by the Coordinate Bench of this Tribunal (supra), we direct the AO to delete the penalty of Rs.66,332/- imposed u/s 270A(9) of the IT Act.

Thus, the grounds of appeal raised by the assessee in the present appeal are allowed.

16. In the result, the appeal filed by the assessee in ITA No.2132/PUN/2024 is allowed.

17. To sum up, both the above captioned appeals of the assessee are allowed.

Order pronounced on 18th day of February, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th February, 2025.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.