

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 No.2431/PUN/2024  
निर्धारण वर्ष / Assessment Year : 2018-19

Rajendra Shivaji Thete, Shivanjali, Plot No.25, H.No.4669, Shivaji Nagar, Ozar Mig, Nashik- 422206. PAN : ABWPT0060C	Vs.	ITO, Ward-2(1), Nashik.
Appellant		Respondent

Assessee by : None  
Revenue by : Shri Arvind Desai  
Date of hearing : 09.01.2025  
Date of pronouncement : 21.02.2025

**आदेश / ORDER**

**PER VINAY BHAMORE, JM:**

This appeal filed by the assessee is directed against the order dated 26.09.2024 passed by Ld. CIT(A)/NFAC for the assessment year 2018-19.

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

"1. *The learned Commissioner of Income Tax is not justified in levying penalty u/s 270A of Rs. 1,49,704/- on the ground that the assessee had under reporting of income in consequence of misreporting of income. In consequence of misreporting 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 under reporting 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 270A 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 270A was not justified in view of the explanation offered by the assessee.”*

3. Facts of the case, in brief, are that the assessee is an individual salaried employee filed return of income for the assessment year 2018-19 declaring taxable income of Rs.4,38,070/- after claiming various deductions of Rs.3,89,000/- under Chapter VI-A. 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 taxable income of Rs.8,47,880/-- after claiming deductions under Chapter VI-A of Rs 1,57,268/-. 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 09.12.2021 the Assessing Officer imposed penalty of Rs.1,49,704/- u/s 270A for under reporting of income in consequence of misreporting of income of Rs.3,83,860/-.

4. After considering the reply of the assessee, Ld. CIT(A)/NFAC dismissed the appeal without condoning the delay in filing of appeal before him and confirmed the penalty of Rs.1,49,704/- imposed u/s 270A of the IT Act. It is this order against which the assessee is in appeal before this Tribunal.

5. 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.

6. 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.

7. We have heard Ld. DR & perused the material available on record. We find that Ld. CIT(A)/NFAC has dismissed the appeal in summery manner without condoning the delay of 223 days in filing the appeal before him & has not gone into merits of the case. From the statement of facts, we find that the assessee is a salaried employee & belongs to technical background. The return of most of the employees of CEAT Co., Bosch Company, HAL & Mahindra & Mahindra 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. We find that the Assessing Officer has levied penalty u/s 270A of the IT Act of Rs.1,49,704/- on the basis of the fact that the correct income was not returned voluntarily but only after issue of notice u/s 148 of the IT Act. It is also found that when the notice u/s 148 was issued the appellant has disclosed his correct income & paid the due tax. 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 revised return was not voluntary therefore the penalty u/s 270A of the Act is inevitable. From the perusal of penalty order, it appears that the penalty u/s 270A was initiated for the assessment year under consideration and subsequently penalty of Rs.1,49,704- u/s 270A was imposed for underreporting of income as a consequence of misreporting. In this regard, we find that in the penalty order itself the particular clause ('a' to 'f') of sub-section (9) of section 270A of the IT Act was not mentioned & only penalty u/s 270A has been mentioned which itself proves that in the notice also, nothing, must have been mentioned with regard to clause under which the Assessing Officer intends to impose the impugned penalty. 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.”*

8. We further find that apart from above decision the Coordinate Bench of this Tribunal Pune Benches Pune has also passed other decisions, in the case of Annasaheb Namdeo Gunjal vs ITO Nashik in ITA No.182/P/2024 order dated 21-10-2024 & in the case of Deepak Bhikha vs ITO Nashik in ITA No.685/PUN/2024 order dated 21-10-2024, wherein similar penalty was directed to be deleted. Since in the instant case Ld. CIT(A)/NFAC has dismissed the appeal without condoning the delay, & merits of the case were not adjudicated. In this regard, we find that the period of delay consists of covid period also, therefore, we deem it appropriate to set-aside the order passed by Ld. CIT(A)/NFAC & remand the matter back to his file with a direction to condone the delay & decide the appeal afresh as per fact and law after providing reasonable opportunity of hearing to the assessee in the light of our above observations & discussions made in foregoing paragraphs. The assessee is also hereby directed to respond to the notices issued by Ld. CIT(A)/NFAC in this regard and produce supporting

documents/evidences, in any, in support of his claim, otherwise, Ld. CIT(A)/NFAC shall be at liberty to pass appropriate order as per law. Thus, the grounds of appeal raised by the assessee in the present appeal are partly allowed.

9. In the result, the appeal of the assessee is allowed for statistical purposes..

Order pronounced on 21<sup>st</sup> day of February, 2025.

**Sd/-**  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> 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.