

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.391/RJT/2024

Assessment Year: (2017-18)

(Hybrid Hearing)

Pranam Enterprise Office No.3, City Centre, Opp. New Collector Office, Junagadh – 362001, Gujarat	Vs.	The DCIT Circle-1(1), Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAFFP7926H		
(Assessee)		(Respondent)
Assessee by	Shri Mehul Ranpura, AR	
Respondent by	Shri Abhimanyu Singh Yadav, Sr.DR	
Date of Hearing	18/12/2024	
Date of Pronouncement	06/03/2025	

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short ‘Ld. CIT(A)’], dated 29.03.2024, which in turn arises out of a penalty order passed by the Assessing Officer (in short ‘AO’) u/s 270A of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’), dated 18.01.2022.

2. The Grounds of appeal raised by the assessee are as follows:

- “1. The grounds of appeal mentioned hereunder are without prejudice to one another.*
- 2. The learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi erred on facts as also in law in confirming levy of penalty of Rs.72,924/-, u/s 270A of the Income-tax Act, 1961*

[hereinafter referred as to the "Act"] on the alleged ground of under reporting of income of Rs.1,18,000/-, being disallowance of deduction claimed u/s80IB(10) of the Act. The penalty confirmed is totally unjustified on facts as also in law and may kindly be deleted.

3. *Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal."*

3. Succinct facts are that the assessee, before us, is a partnership firm and filed his return of income for the year under consideration, on 16/10/2017, declaring therein total income of Rs. NIL. Subsequently, the return was selected for scrutiny and accordingly a notice u/s 143(2) was issued on 21/08/2018 and duly served upon the assessee. Subsequently, notices u/s 142(1) of the Act, dated 14/09/2019, calling for relevant details in connection with the reasons for selection were served on the assessee. The assessee made the necessary submissions on various dates, before the assessing officer. During the course of assessment proceeding, the assessee was asked to furnish the details of the total income and claim of deduction made u/s 80IB(10) of the Act. On verification of the Profit and Loss Account, submitted by the assessee, it was noticed by the assessing officer that assessee has offered receipts from the sale of housing units and also direct income of Rs. 1,18,000/-. On further verification of the schedule of the said direct income it was noticed by the assessing officer that the said income includes the income from electric power and maintenance charges received. This income is regular electricity and maintenance charges of the building society or campus and therefore, it cannot be considered as income of the project. Therefore, the assessing officer observed that since this income is not derived from developing and building of housing projects, it is not eligible for deduction u/s 80IB (10) of the Act. Accordingly, the amount of Rs. 1,18,000/-, included in the profit

on which, the assessee has claimed deduction u/s 80IB(10) was disallowed and added to the total income of the assessee.

4. Therefore, the assessment order was passed u/s 143(3) of the Act, on 07/11/2019, by making the additions due to disallowance of deduction under section 80IB(10) of the Act, of Rs.1,18,000/-. Simultaneously, penalty proceeding u/s 270A(1)r.w.s. 270A(9) (a) of the Act, was initiated separately for under-reporting of income, as a consequence of misreporting thereof, on account of disallowance of deduction under section 80IB(10) of the Act, of Rs.1,18,000/-.

5. Therefore, during the penalty proceedings, the assessing officer issued a show- cause notice to the assessee, stating that why the penalty should not be imposed. Considering the penalty proceedings, the assessee in response to the notice issued u/s.274 r.w.s. 270A of the Act submitted its reply which is reproduced in the penalty order by the assessing officer, in para no.3.1 of page no.2 of the penalty order. In the reply, the assessee submitted that the returned income is on account of differential treatment given by the assessing officer, while allowing the exemption u/s80IB(10) of the Act, in respect of receipt of Rs.1,18,000/-, being income from electric power and maintenance charges, on sale of housing units, the project undertaken by the assessee. The assessee also argued that the similar claim of the assessee u/s. 80IB(10) of the Act, was allowed to the assessee, on same set of facts, during the previous years, by the assessing officer, therefore, with this impression, the assessee claimed deduction u/s.80IB(10) of the Act and hence, there was no any intention for under reporting of income, due to misreporting.

6. However, the assessing officer has rejected the contention of the assessee and held that in the assessee's case, the assessed income u/s.143(3) of the Act, is greater than that of the determined in the return processed, under clause(a) of sub-section 1 of Section 143 of the Act, therefore, assessee has underreported its income to the extent of Rs.1,18,000/-. Accordingly, the assessee is liable to pay penalty on account of under reported income as a consequence of mis-reporting, therefore, the assessing officer imposed the penalty on the assessee to the tune of Rs.72,924/-, under section 270A(8) of the Act.

7. Aggrieved by the order of the assessing officer, the assessee carried the matter, in appeal, before the Ld. CIT(A), who has confirmed the action of the assessing officer. The Ld CIT(A) noticed that the facts of the assessee, make it clear that regular electricity and maintenance charges were sought to be passed off, as part of income from developing and building housing projects in order to avail excess deduction of Section 80IB(10) of the Act. In itself, such a claim is a misrepresentation of facts which would have succeeded but for selection of case in scrutiny and detection thereof in assessment. The Ld. CIT(A) was of the view that misrepresentation has led to underreporting of income, therefore, Ld.CIT(A), confirmed the penalty imposed by the assessing officer.

8. Aggrieved by the order of the Ld. CIT(A), the assessee is in further appeal before us.

9. Learned Counsel for the assessee, pleaded that there was no intention of the assessee to defraud the Revenue, since, the assessee has claimed deduction u/s80IB(10) of the Act and the same deduction was allowed

to the assessee in the previous years, however, this year the assessing officer has disallowed the deduction u/s.80IB(10) of the Act, that does not mean that the assessee has misrepresented the facts or under reported income. As per assessee's view, the deduction 80IB(10) of the Act, should be allowed to him, because, assessee has been allowed same deduction in the previous year, whereas, as per the opinion of the assessing officer, since certain conditions were not fulfilled, by the assessee, therefore, assessing officer disallowed the deduction u/s.80IB(10) of the Act. Hence, on these facts, the penalty should not be levied on the assessee.

10. On the other hand, the Ld. DR for the Revenue, submitted that there should be strict interpretation of taxing statute and if the assessee was not eligible to claim deduction u/s.80IB(10) of the Act, then in that circumstance, the assessee ought not to have claimed the deduction u/s.80IB(10) of the Act. The assessee has knowingly claimed wrong deduction u/s.80IB(10) of the Act, therefore, it is a matter of misrepresentation of fact and mis-reporting of income and, therefore, the assessee is liable for penalty u/s.270A of the Act. Hence, the Ld. DR for the Revenue contended that the penalty order passed by the assessing officer should be upheld.

11. We heard both sides in detail and also perused the records of the case including the paper book filed by the assessee. The key issue that arises for consideration is whether the penalty under section 270A(8) of the Act, can be levied, when the assessee has claimed deduction u/s 80IB(10) of the Act, in the previous year and the same deduction was allowed to the assessee in the previous years by the assessing officer. It is neither under reporting nor mis-representation of facts. The assessee,

under consideration claimed the deduction u/s.80IB(10) of the Act, because, assessee has been allowed same deduction in the previous year, and the assessing officer allowed the deduction u/s.80IB(10) of the Act, based on the same facts and circumstances which is prevailing in the current assessment year, therefore, it is not under reporting and mis-reporting on the part of the assessee. However, this year the assessing officer has disallowed the deduction u/s.80IB(10) of the Act, that does not mean that the assessee has misrepresented the facts or under reported income. As per assessee's view, the deduction under section 80IB(10) of the Act, should be allowed to him, because, assessee has been allowed same deduction in the previous year, whereas, as per the opinion of the assessing officer, since certain conditions were not fulfilled, by the assessee, therefore, assessing officer disallowed the deduction u/s.80IB(10) of the Act, in the assessment year under consideration. On the basis of the detailed factual and legal discussions as above, we are of the view, that penalty should not be imposed on the assessee. For that, we rely on the judgment of the Jurisdictional Co-ordinate Bench ITAT, Ahmedabad in the case of Parulben Vijaykumar Patel vs. ITO, [2024] 163 taxmann.com 191 (Ahmedabad – trib.), wherein Tribunal held as follows:

“9. We have heard the rival contentions and perused the material on record.

10. The issue for consideration before us is that whether penalty under Section 270A of the Act can be levied in the instant set of facts, when as per the assessee, she was under the genuine belief that since taxes has been deducted at source on such sale of property then there was no occasion to file return of income. Second issue consideration before us is if penalty is leviable, then is the present case one of under-reporting of income, thereby attracting tax @ 50% on such underreported income or is it a case of misreporting of income, thereby attracting penalty @ 200% on the amount of tax payable on such misreported income under Section 271A(8) of the Act.

11. Section 270A provides for penalty for "under-reporting of income" [penalty at fifty per cent, of tax payable on such under-reported income, under sub Section (7)] and "misreporting of income" [under sub Section (8) and (9), penalty at two hundred per cent, of tax payable on such income]. Penalty under sub Section (8) is independent of levy of penalty under sub Section (7) even if there is no under reported income. Under sub Section (1), the AO, Commissioner, Principal Commissioner or the Appellate Commissioner may direct that any person who has under-reported his income to pay penalty on such under-reported income. In our view, the mere fact that there is a provision for automatic levy of penalty does not mean that penalty has to be imposed. The Supreme Court in the case of Hindustan Steel Ltd. v. Assistant Commissioner, held that a penalty should not be imposed merely because it is lawful to do so. Even if a minimum penalty is prescribed, the authority will be justified in not imposing penalty where the breach is merely technical or is based upon the bona fide belief that a particular provision has been complied with. The Supreme Court stressed the importance of not levying penalty where the assessee acts with "honest and genuine belief".

12. Before proceedings further, it would be useful to reproduce the relevant extract of Section 270A of the Act for ready reference:-

"(1) The Assessing Officer 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;
- (d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;
- (e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC 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;
- (f) the amount of deemed total income reassessed as per the provisions

of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;

(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

(6) The under-reported income, for the purposes of this section, shall not include the following, namely:—

(a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or 29-30 [the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;

(b) the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or 29-30 [the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;

(c) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;

(d) the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and

(e) the amount of undisclosed income referred to in section 271AAB.

(7) The penalty referred to in sub-section (1) shall be a sum equal to fifty per cent of the amount of tax payable on under-reported income.

(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where underreported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income.

(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—

(a) misrepresentation or suppression of facts;

- (b) failure to record investments in the books of account;
- (c) claim of expenditure not substantiated by any evidence;
- (d) recording of any false entry in the books of account;
- (e) failure to record any receipt in books of account having a bearing on total income; and
- (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply. "

13. The term "under-reporting" is defined in sub-Section (2) which provides seven situations wherein a person is considered to have under-reported his income. Sub-Section (8) provides five cases which shall not be recorded as under-reporting of income. Section 270A(6)(a) provides that where the explanation for non-reporting or under-reporting of income is bona fide and all the facts material to the computation are disclosed, then it shall not be considered as a case of under-reporting of income. Sub-Section (8) provides that "notwithstanding anything contained any sub-Section (6)", where underreported income is in consequences of any misreporting thereof by any person, the penalty shall be equal to 200% of the amount of tax payable of underreported income. Sub-Section (9) set out six circumstances that amount to "misreporting of income". Clause (a) deals with misrepresentation or suppression of facts. We are not discussing other circumstances referred to any sub-Section (9), since the same are not pertinent / relevant to assessee's particular set of facts. In the case of CIT v. Om Prakash Mittal [\[2005\] 194 CTR 97/273 ITR 326/143 Taxman 373 \(SC\)](#), it was held that the term "misrepresentation" implies that there is no true and fair disclosure. The Madras High Court in the case of P.M. Perianna Pillai v. CIT 46 STC 94 has held that the act of making a false or misleading assertion about something, usually with the intent to deceive amounts to "misrepresentation". The word "misrepresentation" denotes not just written or spoken words but also any other conduct that amounts to a false assertion. The assertion so made, an assertion that does not accord with the facts is also termed false representation.

14. Now the issue for consideration before us is that in view of the assessee's particular set of facts, as applied to the relevant statutory provisions are reproduced above, whether firstly the case of the assessee is one of underreporting of income or one of misreporting of income. Secondly, can the assessee claim the benefit of sub-Section (6) of the Act which is to the effect that the assessee has been able to provide the reasonable explanation for such non-disclosure regarding sale of property by not filing of return of income.

15. In our considered view, the case of the assessee does not fall under any of the specific provision content in Section 270A(2) of the Act which deals with various circumstances relating to "under reporting of income". Therefore, since the assessee's case does not fall under sub-Section (2) of Section 270A, then the benefit of sub-Section (6) to Section 270A is also not

available to the assessee. Therefore, the next issue for consideration is whether the assessee's case is one of misreporting of income and whether the case of assessee falls specifically under sub-Section (a) to Section 9 dealing with "misrepresentation or suppression of facts". Further, since sub-Section (a) to Section 270A specifically provides that "notwithstanding anything content in sub-Section (6)", where underreported income is in consequence of misreporting thereof by any person, the penalty shall be equal to 200% of the amount of tax payable on such under reported income. In the instant facts, certain facts are noteworthy. The first fact is that the purchaser, at the time of sale of property, property taxes had been effectively deducted at source at approximately 50% of the amount of taxes payable on such sale consideration. Secondly, the assessee was, in the instant facts, under a bona fide believe that she was not liable to pay taxes on sale of property, when taxes had been withheld at source at the time of purchase by the purchaser of such property. Thirdly, the assessee was under the genuine belief that there is no misrepresentation or suppression of facts, since the purchaser of property had deducted taxes at the time of purchase and the entire transaction was duly reflecting in Form No. 26AS on the portal of the Department, which was within the knowledge of the Income Tax Department, therefore, there is no question as regards to any misrepresentation or suppression of facts, since the Department has not disputed the actual amount of sale consideration, which has been reported in Form No. 26AS. In our view, it would be a different matter if the Department would have alleged that there was a difference / mismatch between the sale consideration as reflecting in Form No. 26AS on which TDS has been deducted under Section 194-IA of the Act and the actual sale consideration which had been received by the assessee on such sale of land. That, in our view, it would have been a case of misrepresentation or suppression of facts. However, once the sale consideration is reported in Form No. 26AS on the Government website and the amount of sale consideration has not been challenged / disputed by the Department and taxes has been withheld on such sale consideration by the purchaser of property under Section 194-IA of the Act, then, in our view, this is not case of misrepresentation or suppression of facts. In the instant case, the assessee was under a bona fide believe that once the correct income flowing from sale of property is duly reflecting in Form No. 26AS on the Government website and taxes have been deducted at source by the purchaser of such property under Section 194-IA of the Act, the assessee was under no further obligation to file return of income disclosing sale of aforesaid property and pay any further taxes thereon. Looking into the instant facts, the intention of the assessee was not to misrepresent or suppress any facts and the return of income had not been filed under a bona fide belief that since the entire transaction has been correctly reported in Form No. 26AS on the website, there is no further requirement to file return of income and disclose such transaction in the return of income.

16. Accordingly, looking into the instant facts, we are of the considered view that this is not a fit case for levy of penalty under Section 270A of the Act.

17. In the result, the appeal of the assessee is allowed.”

12. At the cost of repetition, we state that assessee has claimed the deduction u/s.80IB(10) of the Act, during the assessment year under consideration, as the assessee has been allowed deduction in the previous year u/s.80IB(10) of the Act, on same facts and circumstances. However, this year, the assessing officer did not allow the deduction u/s. 80IB(10) of the Act on account of non-fulfillment of certain conditions, therefore, deduction u/s.80IB(10) of the Act was disallowed by the assessing officer. The assessee was in every hope to get the deduction u/s.80IB(10) of the Act because he was allowed the deduction by the department in the previous year and just because of non-fulfillment of certain conditions, this year, the deduction u/s.80IB(10) of the Act was disallowed by the assessing officer, doesn't mean that the assessee has under reported or mis-represented the facts. Therefore, based on these circumstances, it cannot be said that the assessee had intention to under report the income or mis-represent the facts. The assessee, under consideration acts with "honest and genuine belief, that he would get deduction u/s.80IB(10) of the Act. Therefore, respectfully following the judgment of the Co-ordinate Bench in the case of Parulben Vijaykumar Patel (supra), we delete the penalty.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 06/ 03/2025 at Rajkot.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Rajkot

(True Copy)

दिनांक/ Date: 06/03/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

4. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot