

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA NOS. 5277 & 5278/MUM/2024 : A.Ys. : 2017-18 & 2016-17

Archana Achyut Sail Vs. ITO, Ward-42(2)(1), Mumbai/
B/402, Kapasi Niwas CHS, Lilya Nagar, NFAC, Delhi (Respondent)
Nr. Veer Savarkar FOB, S.V. Road,
Goregaon (W), Mumbai 400 104.
PAN : AFXPS8155C (Appellant)

Appellant by : Shri Sumit Mantri
Respondent by : Shri Umesh Chandra Sinha

Date of Hearing : 27/02/2025
Date of Pronouncement : 25/03/2025

ORDER

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

Both these appeals are by the assessee. In ITA No.5277/Mum/2024 for A.Y.2017-18, the assessee is challenging the order imposing penalty under Section 270A of the Income Tax Act, 1961 ('Act' in short) (In ITA No.5278/Mum/2024 for A.Y.2016-17 the challenge is to the order imposing penalty, under Section 271(1)(c) of the Act).

2. The appellant-assessee was employed with Mahanagar Telephone Nigam Limited (MTNL). For assessment year 2016-17, the assessee had filed her Return of Income (RoI) declaring total income of Rs.7,73,500/- while for assessment year 2017-18 the assessee had declared total income of Rs.7,53,000/-.

3. It appears that a survey was conducted under Section 133A on 30/09/2018 at two premises of Shri Vijay Sawant who was working as a Tax Return Preparer (TRP) in which certain computers and other incriminating material was impounded and statement of Shri Vijay Sawant and two of his clients Shri Tanaji M Mohite and Shri Awadhinarayan R Yadav were recorded. Incidentally, Shri Vijay Sawant was filing the income tax returns of the appellant and other employees of MTNL. It is alleged that Shri Vijay Sawant had admitted of having suppressed or misreported certain components of the salary and claimed deductions/exemptions which were not admissible. In so far as the present appellant is concerned, it is claimed that there were certain irregularities in claiming deduction under Chapter VIA towards House Rent Allowance (HRA) and certain other heads of income were suppressed.

4. It appears that the case was reopened for both these years by issuing notice under Section 148 of the Act in which the assessee filed her RoI (in response to the notice under Section 148 of the Act) on 16/08/2022 declaring total income of Rs.11,01,739/-. The assessee after claiming deduction under Chapter VIA of Rs.1,60,000/- had shown her taxable income at Rs.9,41,740/-. This was for assessment year 2016-17.

5. In so far as assessment year 2017-18 is concerned, the assessee filed her RoI in response to notice under Section 148 on 16/08/2022 declaring a gross total income of Rs.10,89,011/- and after claiming deduction of Rs.1,60,000/- under Chapter VIA the total income was shown at Rs.9,29,100/-.

6. It is a matter of record that the assessment for both these years was completed under Section 147 r.w.s.144B of the Act on 26/04/2023 determining the total income which is equivalent to the income returned as per the RoI filed on 16/08/2022. In other

words, there were no addition made to the income as against the income returned in the return filed in response to the notice under Section 148 of the Act.

7. The Assessing Officer initiated separate proceedings for imposition of penalty. After the compliance with the statutory formalities, the Assessing Officer by an order dated 29/02/2024 imposed a penalty of Rs.34,688/- for assessment year 2016-17 under Section 271(1)(c) of the Act for 'concealment of particulars of income'.

8. For assessment year 2017-18, a penalty of Rs.1,27,116/- has been imposed under Section 270A of the Act on the ground that there was 'under reporting of income, in consequence of misreporting'.

9. Both these orders were challenged by the assessee in appeal. The Id. CIT(A) vide separate orders both dated 12/08/2024 has confirmed the order of penalty. Hence, these appeals.

10. We have heard parties. Perused record. The appellant has also filed, brief written submissions on record. We have gone through the same.

11. Insofar as ITA No. 5278/Mum/2024 (assessment year 2016-17) is concerned, reliance is placed on behalf of the appellant on the decision of this Tribunal in *Haresh Ghanshyamdas Makhija vs ITO [2024] 206 ITD 149 (Mumbai-Trib.)* and the decision of Calcutta High Court in *Commissioner of Income Tax, Central-III, Kolkata vs Brijendra Gupta [2015] 234 Taxman 51 (Calcutta)* in order to submit that if there was no disallowance or addition made by the Assessing Officer in the income as disclosed in pursuance of notice under Section 148 of the Act, no penalty can be levied under Section 271(1)(c) of the Act.

12. Insofar as ITA No. 5277/Mum/2024 (assessment year 2017-18) is concerned, it is submitted that although the penalty has been levied under Section 270A of the Act, a similar principle (as the penalty under Section 271(1)(c) of the Act) would apply. Alternatively, it is submitted that the authorities below were not justified in treating the case as one falling under the head of “under-reporting of income in consequence of misreporting”.

13. It is submitted that in the notice issued by the Assessing Officer there was only reference to under-reporting. It is submitted that the Assessing Officer had not indicated that the penalty is being proposed to be imposed for misreporting and had not even specified the limb under which the appellant had allegedly misreported the income.

14. Reliance is placed on the following decisions :

- i) DCIT vs Chakradhar Contractors and Engineers (P.) Ltd. [2025] 171 taxmann.com 133 (Pune-Trib.)
- ii) Manish Manohardas Asrani vs Int. Tax Ward-1(1)(1) [2025] 170 taxmann.com 792 (Mumbai - Trib.)
- iii) Advik Hi-Tech Pvt. Ltd. vs DCIT (ITA No. 1344/Pun/2024 – order dt. 05.12.2024)
- iv) Jaipur Telecom (P.) Ltd. vs DCIT [2024] 165 taxmann.com 289 (Jaipur - Trib.)
- v) Sunil Chunilal Kumavat vs ITO [2024] 165 taxmann.com 287 (Pune - Trib.)

15. We have considered the submissions made. We first take up ITA No. 5278/Mum/2024 for assessment year 2016-17. The Calcutta High Court in the case of *Brijendra Gupta (supra)* has held that where there is no disallowance or addition made by the Assessing Officer in the income as disclosed in pursuance of the notice under Section 148 of the Act, no penalty can be levied under Section 271(1)(c) of the Act. The co-ordinate Bench of this Tribunal in *Haresh Ghanshyamdas Makhija (supra)* has taken a similar view placing reliance on the decision of Delhi High Court in *CIT vs SAS*

Pharmaceuticals, 335 ITR 259 (Delhi). In such circumstances, we find that the penalty under Section 271(1)(c) of the Act could not have been levied and the appeal deserves to succeed.

16. Coming to ITA No. 5277/Mum/2024 for assessment year 2017-18, we have carefully considered the submissions in the context of the findings recorded by the authorities below. It is necessary to note that the appellant is a retired employee of MTNL and had taken the assistance of a TRP in filing the return. She has claimed in her reply that she was unaware of the relevant provisions and fully relied upon the TRP in filing the return in which certain deduction was claimed without her knowledge. In the first place, we find that both in the assessment order as well as the order passed by learned CIT(A), the findings is only about under-reporting of income. Sub-section (1) to Section 270A of the Act provides that the Assessing Officer “may” during the course of any proceedings direct that any person who has under-reported his income shall be liable to pay penalty in addition to tax, if any, on the under-reported income.

17. It is contended on behalf of the appellant that in *Chakradhar Contractors and Engineers (P.) Ltd. (supra)* a co-ordinate Bench of this Tribunal at Pune has held that where neither in assessment order nor in notice issued under Section 274 read with Section 270A of the Act the Assessing Officer has specified as to under which limb of the provisions of Section 270A(2) or 270A(9) of the Act the assessee had misreported or under-reported his income, no penalty under Section 270A of the Act was leviable.

18. We find that the appeal has to succeed on the ground that the phraseology as used in Section 270 of the Act makes it discretionary/directory for the Assessing Officer to impose the penalty. In *CIT vs Dodsai Ltd., 312 ITR 112 (Bombay)*, which was a case arising out of block assessment in a search case, the Bombay High Court has held that the use of word ‘may’ in Section 158BFA(2) [which is similarly worded to Section 270A(1)] confers discretion on the Assessing Officer to direct payment of penalty.

Albeit such a discretion is not arbitrary and has to be guided by well-established principles depending upon the facts and circumstances of each case. In the present case, we find that the appellant-assessee is a retired employee of MTNL and had relied upon TRP to file her return. In the return filed in response to notice under Section 148 of the Act, the appellant has made a voluntary disallowance and paid taxes on the amount of HRA. Considering the overall circumstances, we find that this is a fit case where the Assessing Officer could have exercised the discretion not to impose penalty. At the cost of repetition, we make it clear that the exercise of such discretion would depend upon the facts of each case and there cannot be any straightjacket formula in this regard. In that view of the matter, the appeal deserves to succeed.

19. In the result, both the appeals are allowed. The Assessing Officer is directed to delete the penalty imposed for both the assessment years. Ordered accordingly.

Order pronounced in the open court on 25/03/2025.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai; Dated : 25/03/2025

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Copy of the Order forwarded to :

1. The Applicant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai