

**IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench, Visakhapatnam**

**Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Balakrishnan, S. Accountant Member**

आ.अपी.सं / **ITA No.494/Viz/2024**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Dy. CIT Circle 3(1) Visakhapatnam (Appellant)	Vs.	Shri Muralikrishna Vaddi Visakhapatnam PAN: AWMPV9717D (Respondent)
निर्धारिती द्वारा / Assessee by:		Shri A Chakradhar, CA (Hybrid)
राजस्व द्वारा / Revenue by:		Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of hearing:	22/04/2025	
घोषणा की तारीख / Pronouncement:	28/04/2025	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal by the Revenue is directed against the order dated, 04/10/2024 of the learned CIT (A)-NFAC Delhi, for the A.Y. 2018-19.

2. The revenue has raised the following grounds of appeal:

1. The order of the Ld.CIT(A), National Faceless Assessment Centre (NFAC) is erroneous both on facts and in law.

2.1. The Ld.CIT(A) erred in deleting the penalty of Rs.75,27,796/- levied u/s.270A of the Income-tax Act by the Assessing Officer.

2.2. The Ld.CIT(A) erred in not appreciating the fact that the assessee has claimed Foreign Tax credit amounting to Rs.37,63,898/- in his return of income filed for A.Y.2018-19 on 27.03.2019 without filing Form 67 within the due date of filing of return contravening the Rule 128(9) of Income-tax Rules, 1962 r.w.s 90/90A of the Income-tax Act, which led to misrepresentation of facts as per the provisions of Sec.270A(9) of the Income-tax Act, 1961 which warranted levy of penalty u/s.270A(8) of the Income-tax Act.

3. The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal.

4. For these and other grounds that may be urged at the time of appeal hearing, it is prayed that the disallowance/additions made by the Assessing Officer be restored.

3. The learned DR has submitted that the assessee claimed Foreign Tax Credit amounting to Rs.37,63,898/- in the return of income without filing Form-67 within the due date of filing the return. Therefore, the claim of the assessee on Foreign Tax Credit was in contravention of the provisions of Rule 128(9) of the Income Tax Rules, 1961 r.w.s. 90/90A of the I.T. Act, 1961 and amounts to mis-representation of the facts as contemplated in section 270A(9) of the I.T. Act, 1961. The learned DR has relied upon the order of the Additional/Jt. Commissioner of Income Tax passed u/s 270A of the Act and submitted that the claim of the for Foreign Tax Credit was disallowed by the Assessing Officer while passing the assessment order u/s 143(3) r.w.s. 143(3A)(3B) of the I.T. Act, 1961 which has been confirmed by the learned CIT (A) as well as by this Tribunal in the quantum appeal. Thus, the learned DR has submitted that when the claim of the assessee is found to be contrary to the provisions of the Act and not permissible, then it amounts to mis-reporting of tax relief to the sextent of Rs.37,63,898/- and liable to levy of penalty u/s 270A of the I.T. Act, 1961.

4. On the other hand, the learned AR of the assessee has submitted that the case of the assessee does not fall in the category of mis-reporting of income or facts as contemplated u/s 270A(2)(9) of the I.T. Act, 1961. The claim of Foreign Tax Credit has been denied by the Assessing Officer only due to the delay in filing the Form-67 and therefore, there is no mis-reporting of income on the part of the assessee by making a claim of Foreign Tax Credit which is factually correct. He has supported the impugned order of the learned CIT (A).

5. We have considered the rival submission as well as relevant material available on record. The Assessing Officer while passing the assessment order u/s 143(3) of the Act denied the claim of Foreign Tax Credit of Rs.37,63,898/-. The Assessing Officer noted that for the year under consideration, the assessee filed Form-67 on 10/02/2021 after the due date of filing the ITR, therefore, as per Rule 128 of the I.T. Rules, the credit of foreign tax shall be allowed only on furnishing the details and documents in Form 67 before the due date of filing the return u/s 139(1) of the I.T. Act, 1961. Accordingly, the Assessing Officer has disallowed the claim of Foreign Tax Credit and added the same to the total income of the assessee. The concluding part of the assessment order is as under:

“Therefore, the assessee claimed tax relief u/s 90/90A (2 of schedule TR) amounting to Rs.37,63,898/- is added to the total tax of the assessee because the assessee filed Form-67 after due date of filing the Income Tax Return and the penalty u/s 270A(9) of the I.T. Act, 1961 is initiated”.

6. The Assessing Officer then initiated the proceedings to levy the penalty u/s 270A of the Act which contemplates a penalty

in addition to tax, if any, on under reported income. Sub-section (2) of section 270A envisage the situation under which a person shall be considered to have under reported his income as under:

Section 270(A)...

“(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.”

7. Sub-section (9) of section 270A of the Act enumerates the instances of misreporting of income as under:

“(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.”

8. Therefore, the conjoint reading of sub-section (2) & (9) of section 270A leads to the inference that if the income is assessed greater than the income reported in the return of income or determined in the return processed u/s 143(1)(a) and the addition in the total income of the assessee is due to the reason of misrepresenting or suppressing of facts, failure to record the investment in the books of account, unsubstantiated claim of expenditure disallowed, recording false entries in the books of account, failure to record any receipt in the books of account having bearing on the total income and failure to report any international transaction or specified domestic transactions. In the case in hand, though the Assessing Officer has not enhanced the total income of the assessee while passing the assessment order, but the tax liability of the assessee was increased due to the reason that the claim of credit of foreign tax was denied by the Assessing Officer due to the reason of delay in filing Form-67. Thus, it is clear from the facts that the case of the assessee does not fall in the category of misreporting of income as envisaged in sub-section (2) and (9) of section 270A of the I.T. Act, 1961. The

learned CIT (A) has deleted the penalty levied by the Assessing Officer in para 5 as under:

5. Decision:

All the grounds of appeal are related to levy of penalty u/s 270 of the Act. Issue is related to late filing of Form No. 67 for claiming foreign Tax credit of Rs. 37,63,898/- by the AO in order dated 18.03.2021. Assessee preferred appeal before CIT(A). CIT(A) vide order dated 01.11.2021 confirmed the order of AO. Accordingly AO imposed Penalty u/s 270 @200% of the foreign Tax credit disallowance.

In the present case it is an undisputed fact that appellant has paid taxes amounting to Rs. 37,63,898/- in USA, only mistake on part of assessee that Form-67 was filed late. The said technical order cannot be concealed as "misreporting or under reporting. Accordingly question of levy of Penalty does not arise. Therefore Appeal allowed in favour of Assessee.

9. Accordingly, in the facts and circumstances as discussed above, we do not find any error or illegality in the impugned order of the learned CIT (A) deleting the penalty u/s 270A of the I.T. Act, 1961.

10. In the result, the appeal of the Revenue is dismissed .
Order pronounced in the Open Court on 28th April, 2025.

Sd/-

Sd/=-

(BALAKRISHNAN, S) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 28th April, 2025

Vinodan/sps

Copy to:

S.No	Addresses
1	Dy. Commissioner of Income Tax, Circle 3(1) Visakhapatnam
2	Shri Muralikrishna Vaddi, 35, 50-92-35, Sankara Matam Road, Opp: Reliance Fresh, Beside Reliance Fresh, Nearby Main Road, Madhuranagar, Dwaraka Nagar, Visakhapatnam, A.P 530016
3	Pr. CIT -Visakhapatnam
4	DR, ITAT Visakhapatnam Bench
5	Guard File

By Order