

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE HON’BLE JUSTICE (RETD.) C V BHADANG, PRESIDENT &  
MS PADMAVATHY S, AM**

**I.T.A. No. 5304/Mum/2024  
(Assessment Year: 2020-21)**

<b>Godfrey Lloyd Vaz,</b> C/704 Rimsim Apartment, Kondivita Road, Andheri (East), Mumbai-400059. <b>PAN: AGJPV2829B</b>	Vs.	<b>Office of the Commissioner of Income Tax (Appeals), Mumbai-400021.</b>
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : Shri Pranab Mitra, AR

**Revenue / Respondent by** : Shri Bhangepatil Pushkaraj  
Ramesh – Sr. DR

**Date of Hearing** : 29.04.2025

**Date of Pronouncement** : 05.05.2025

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)-58, Mumbai [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 27.05.2024 for AY 2020-21. The assessee raised the following grounds of appeal:

*“1. The order of the Income tax officer and CIT Appeal is against facts and law of the case. Penalty is always levied on deliberate misreporting in the form of underreporting of income or overstating of losses to evade taxes. Here all the*

*incomes of the assessee is tax free and carried forward of interest could have been disallowed but instead it is alleged that figures have been misreported which is wrong. The learned officer would have seen from the records that the assessee is an NRI and all his income are exempted front Taxes. Issue is about carrying forward of losses from House property which at the most could have been disallowed to be carried forward without deeming it as misreported losses and penalty imposed of Rs.607848/- under section 270A The appellant, therefore, prays that the appeal may be admitted, and orders may be passed rendering justice to the appellant.”*

2. The assessee is a non-resident individual and filed the return of income for AY 2020-21 on 10.01.2021 declaring a total income of Nil. The assessee's case was selected for scrutiny under CASS for the reason that the assessee has claimed large amount as loss under the head "Income from House Property". The AO during the course of assessment proceedings noticed that the assessee has offered a rental income of Rs.1,20,000/- against which the assessee has claimed the interest on loans borrowed to the extent of Rs. 16,80,532/-. The assessee has submitted before the AO that a loan from HDFC Bank was taken for the purchase of flat and that the interest paid towards the loan has been claimed as a deduction against the rental income. The assessee further submitted that since he was working in a ship and was on sail no formal rental agreement was entered into with the tenant. The AO did not accept the submissions of the assessee and denied the benefit of carry forward of loss in "House Property" for a reason that the assessee was not able to prove that the property was actually rented out with any documentary evidence. The AO further held that the loan is borrowed by the assessee along with his parents and therefore the assessee is not right in claiming the entire deduction towards interest on housing loan. Aggrieved, the assessee filed further appeal before the CIT(A) who upheld the denial of carry forward of loss. It is relevant to mention here that the Id. AR during the course of hearing submitted that the assessee has not preferred any further appeal against the order of the CIT(A).

3. Subsequently the AO initiated penalty proceedings under section 270A of the Act for misreporting of income by the assessee. The AO issued a show-cause notice to the assessee asking the assessee to file the explanations in this regard. The assessee in response to the notice submitted that all information has been provided during the course of assessment and that the acquisition of property was entirely made out of the funds belonging to the assessee. The assessee further submitted that his parents are added in the document only for name sake. The assessee also submitted that the AO has not doubted the genuineness of the interest claim made by the assessee but has denied the carry forward for the reason that interest certificate is having three names and not in assessee's name only. Accordingly, the assessee submitted that there is no misreporting on the part of assessee which warrant penalty under section 270A of the Act. The AO did not accept the submissions of the assessee and that the assessee did not bring any new material on record to substantiate the carry forward of loss under the head "Income from House Property". Accordingly, the AO levied a penalty of Rs. 6,07,848/- being 200% of tax on the income allegedly misrepresented by the assessee.

4. There is a delay of 75 days in filing the appeal before the Tribunal and the ld. AR filed application for condoning the delay. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 75 days in filing the appeal and admit the appeal for adjudication.

5. The ld. AR submitted that the assessee has actually rented out the property from January 2020 to April 2020 for a rent of Rs. 40,000/- p.m. and that the assessee could not enter into any formal rental agreement since he was on sail. The ld. AR

further submitted that the assessee's parents are super senior citizens and therefore are not in a position to understand the compliance requirement with regard to entering into rental agreement. The ld. AR also submitted that mere fact that the rental agreement was not made available was only reason for denial of carry forward of loss under the head "Income from House Property" and that the same cannot be treated as misreporting of income by the assessee. The ld. AR also pointed out that another reason for denial of carry forward of loss is that the entire interest has been claimed by the assessee whereas certificate is in the name of three persons. The ld AR submitted that claim was made on the basis that the entire funding is done by the assessee and the parent's are added for name sake since the assessee works in ships. The ld AR argued that the claim based on factual position does not amount to misreporting of income. The ld. AR also submitted that the assessee has furnished all the details before the AO during the course of hearing and therefore, no wilful non-compliance on the part of the assessee warranting levy of penalty.

6. The ld. DR on the other hand vehemently argued that the assessee has offered the nominal rental income in order to claim the deduction of the substantial interest paid towards the loan. The ld. DR further submitted that the assessee has not substantiated the fact that the property was actually rented out deriving rental income and therefore the AO has correctly held that the assessee has misreported the income. The ld. DR further submitted that the property purchased in the name of the assessee along with his parents and therefore the assessee could not claim the entire interest as a deduction from the rental income which also amounts to misreporting of income. With regard to the argument of the ld. AR that there is no intentional violation on the part of the assessee, the ld. DR submitted that *mens rea* is not a requirement in penalty proceedings which is civil in nature. The ld. DR also made a detailed written submission which is taken on record.

7. We heard the parties and perused the material on record. The assessee is a non resident working in ship and has no taxable income in India. For the year under consideration, the assessee has claimed interest on housing loan to the tune of Rs. 16,80,532/- against a rental income of Rs.1,20,000/-. The AO while completing the assessment denied the benefit of carry forward of the loss for two reasons. One the assessee has not substantiated that the property was actually let out and the second reason is that the assessee owns the property with his parents and therefore cannot claim the entire interest. It is submitted that the impugned property is being self occupied by the parents of the assessee and only for 4 months i.e. from 01.04.2020 to 30.04.2020 i.e. during the Covid period the property was used by the chartered accountant of the assessee who was paying Rs.40,000 p.m. The ld AR during the hearing submitted that the property was purchased mainly for assessee's parents who are senior citizens to stay and that the assessee is not deriving any benefit from the claim of loss since he does not have any income in India. The assessee during the year under consideration filed the return declaring Nil income and the loss under the head Income from House Property was not set off against any income resulting in any benefit to the assessee. The carry forward loss under the head Income from House Property can be set off only against the income under the head Income from House property. Therefore, there is merit in the argument of the ld AR that the assessee has not derived any benefit by the alleged non-genuine rental income to claim huge loss. It is also relevant to mention here that the assessee has not preferred any further appeal against the denial of carry forward of loss. Mere fact that there exists a provision for levy of penalty it does not mean that the levy of penalty is mandatory. Whether penalty should be imposed is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances as has been held by the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v. State of Orissa [(1972) 83 ITR 26 (SC)]. The discretionary

power under the penalty provisions is not arbitrary and has to be guided by well-established principles depending upon the facts and circumstances of each case. Considering the overall facts and circumstances of the present case, we find that this is a fit case where the AO could have exercised the discretion not to impose penalty. Before parting 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 view of these discussions we direct the AO to delete the penalty levied under section 270A of the Act.

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

*Order pronounced in the open court on 05-05-2025.*

*Sd/-*  
**(JUSTICE (RETD.) C V BHADANG)**  
**President**

*Sd/-*  
**(PADMAVATHY S)**  
**Accountant Member**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**