

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

श्री मंजूनाथ जी., माननीय लेखा सदस्य एवं श्री रवीश सूद, माननीय न्यायिक सदस्य
SHRI MANJUNATHA G., HON'BLE ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

आ.अपी.सं / **ITA No.574/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2017-18)

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| Shri Kishan Kumar Agarwal Secunderabad PAN:ABLPA3923C (Appellant) | Vs. | ACIT Central Circle 2(4) Hyderabad (Respondent) |
| निर्धारिती द्वारा / Assessee by: | | Shri A Srinivas, CA |
| राजस्व द्वारा / Revenue by: | | Shri D Praveen, DR |
| सुनवाई की तारीख / Date of hearing: | | 07/05/2025 |
| घोषणा की तारीख / Pronouncement: | | 14/05/2025 |

आदेश/ORDER

Per Ravish Sood, J.M

The present appeal filed by the assessee is directed against the order passed by the CIT (A)-12, Hyderabad dated 17/10/2023, which in turn arises from the order passed by the Assessing Officer u/s 270A of the I.T. Act, 1961 ("Act") dated 26/10/2021 for A.Y A.Y.2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us:

1. The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case.
2. The Appellate Commissioner erred in confirming the order of the A.O initiating penalty u/s.270A, which was without recording of proper satisfaction.
3. The Appellate Commissioner erred in levying a penalty u/s.270A, amounting to Rs.33,48,942/-.
4. The Appellate Commissioner erred in not appreciating the fact that there was no addition made in the Assessment Order.
5. Any other grounds which the Assessee may urge either before or at the time of the hearing.

2. Succinctly stated, the assessee had filed his original return of income for the A.Y 2017-18 on 17/07/2017 declaring an income of Rs.16,26,960/-. Search & seizure operations u/s 132 of the Act were conducted in the case of M/s. Aurora Educational Society and other group entities on 23/03/2018 and the assessee was covered in the said proceedings. Notice u/s 153A of the Act was issued to the assessee in compliance to which he filed his return of income for the A.Y 2017-18 disclosing an income of Rs.70,45,960/-. The Assessing Officer while culminating the assessment, initiated penalty proceedings u/s 270A of the Act.

3. Thereafter, the Assessing Officer vide his order passed u/s 270A of the Act dated 26/10/2021 saddled the assessee with a penalty of Rs. 33,48,942/- for underreporting his income in consequence of misreporting thereof u/s 270A of the Act.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). After necessary deliberations, the CIT(A) though principally concurred with the Assessing Officer in so far the imposition of penalty under clause (c) of sub-section (9) of section 270A of the Act was concerned, i.e. for misreporting of income, but at the same time scaled down the quantum of the penalty that was imposed by the Assessing Officer @ 200% to 50% i.e. to an amount of Rs.16,74,471/-. Accordingly, the CIT (A) based on his aforesaid observation partly allowed the appeal. For the sake of clarity, the observations of the learned CIT (A) are culled out as under:

I have considered the submissions of the appellant and the penalty order of the Assessing Officer. It is seen that the Assessing Officer has levied penalty of Rs.33,48,942/- u/s 270A of the Act on account of under-reported income in consequence of **misreporting**. The relevant sub-sections (8) & (9) of section 270A of the Act are reproduced as under:

"270A. (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.

.....
(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported 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."**

As per above sub-section (9) of section 270A of the Act, any under-reported income is to be considered in consequence to misreporting only if, there is misrepresentation or suppression of facts, failure to record investments & receipts in the books of accounts, claim of expenditure not substantiated by any evidence, recording of any false entry in books of accounts and failure to report any international/ deemed to be an international/ specified domestic transaction.

Applying the above provisions to the facts of the present case, the Assessing Officer has levied penalty of misreporting on the basis of clause(c) of sub-section(9) of section 270A of the Act which states that if an assessee claims any expenditure which is not substantiated by any evidence, then it will result in misreporting of income. However, it is seen that in para no.4 of the assessment order, there is a categorical finding of the Assessing Officer that the incriminating material found during the course of search action related to expenditure of Rs.54.19 lakhs incurred by the appellant was not recorded in the books of accounts. As the appellant could not explain the sources of cash for incurring this unaccounted expenditure, the same was admitted as unaccounted income for the AY 2017-18. Therefore, it is clear that this expenditure was not recorded in the books of accounts of the appellant. Hence, invoking of clause (c) of sub-section (9) of section 270A by the Assessing Officer is not correct. Similarly, other clauses of sub-section (9) also do not apply in the case of the appellant and hence the order of the Assessing Officer for imposing penalty @ 200% for misreporting of income is not correct.

However, it is also fact that the appellant has admitted additional income of Rs.54.19 lakhs only after search proceedings, had no search action been conducted in the case of the appellant, the income of Rs.54,19,000/- would have remained untaxed and would have remained under-reported to that extent. In this case, the original return of income was filed by the appellant on 17.07.2017 by admitting total income of Rs.16,26,960/- and the assessed income in the order passed u/s 153A r.w.s. 143(3) of the Act dated 29.11.2019 is Rs.70,45,960/-. Therefore, in the present case, the assessed income is more than the income determined u/s 143(1)(a) of the Act by the amount of Rs.54,19,000/- and hence the clause (a) of sub-section (2) of section 270A of the Act is applicable in the case of the appellant. Accordingly, the case of the appellant falls under the purview of under-reporting of income and hence, the rate of penalty will be 50% of the tax sought to be evaded. In the present case, tax sought to be evaded is Rs.16,74,471/-.

In view of the above, the appellant is granted relief to the extent of Rs.25,11,706/- (150% of the tax sought to be evaded) and the remaining penalty of Rs.8,37,235/- at the rate of 50% of the tax sought to be evaded on under-reported income of Rs.54,19,000/- is hereby confirmed. Accordingly, the grounds no.2, 4, 6 & 7 of the appeal are **partly allowed**.

In ground no.3, the appellant has contended the satisfaction recorded in the assessment order and stated that the penalty proceedings were initiated for concealment of income and not for under-reporting/ misreporting of income. On perusal of the assessment order, it is seen that the Assessing Officer has recorded the satisfaction for initiation of penalty u/s 270A of the Act by stating "*Penalty proceedings u/s 270A of the Income Tax Act are initiated separately for concealment of income*". In this regard, it is observed that findings in the body of the assessment order are clear about the under-reporting of income wherein it is mentioned that during search, a pocket diary (Parimala- pink colour) was found based on which unaccounted transactions of Rs.54.19 lakhs were noticed and consequently, the admission of Rs.54.19 lakhs was made by the appellant. Therefore, if the assessment order is read comprehensively, it talks about the under-reporting of income.

The penalty notice u/s 274 r.w.s. 270A of the Act, was issued along with the assessment order which clearly mentions "under-reporting of income in consequence of misreporting". When both the assessment order and penalty notice served along with the assessment order are read together, there is no doubt in the Assessing Officer's initiation of penalty for under-reporting of income. On the basis of mere mentioning of word "concealment" in place of "under-reporting", the penalty proceedings cannot be held void. The intent of the Assessing Officer is clear in the assessment order, hence the satisfaction recorded by the Assessing Officer is hereby upheld and accordingly, ground no.3 of the appeal is **dismissed**.

In grounds no.5 & 8, the appellant has contended that the penalty notice issued u/s 270A of the Act does not specify the specific charge under which the penalty was levied, and hence claimed that the notice issued to be defective. However, on perusal of the notice u/s 274 r.w.s. 270A of the Act issued by the Assessing Officer, it is clearly mentioned that "*you have under-reported income which is in consequence of misreporting thereof.*" Since the limb is already mentioned in the penalty notice, the penalty notice is in order. Accordingly, the grounds no.5 & 8 of the appeal are **dismissed**.

Grounds no.1 & 9 are general in nature and need no separate adjudication.

To sum up, the appeal is **partly allowed**.

5. The assessee being aggrieved by the order of the CIT (A) to the extent he had sustained the penalty imposed by the Assessing Officer has carried the matter before us.

6. We have heard AR of both the parties, perused the orders of the lower authorities and the material available on record as well as considered the judicial pronouncements that have been pressed into service by the learned AR to drive home his contentions.

7. Shri A Srinivas, learned Authorized Representative (AR) for the assessee, at the threshold of the hearing, submitted that the Assessing Officer had grossly erred in law and facts of the case in assuming jurisdiction for imposing penalty u/s 270A of

the Act. Elaborating on his contention, the learned AR submitted that the Assessing Officer while framing the assessment had initiated the impugned penalty proceedings u/s 270A of the Act for “concealment of income”. The learned AR to buttress his aforesaid contention had taken us through the assessment order. The learned AR submitted that as the Assessing Officer has initiated penalty proceedings for “concealment of income” but thereafter, had imposed the same for the alleged underreporting of income in consequence of misreporting thereof, it could safely be concluded that there was an absolute lack of satisfaction on his part qua the default for which the impugned penalty had been imposed.

8. Elaborating further on his contention, the learned AR submitted that even otherwise as the case of the assessee was covered by the provisions of section 271AAB(1A) of the Act, therefore, in the backdrop of the exception carved out in section 270A(6) of the Act, the amount of the undisclosed income referred to in section 271AAB was not exigible for imposition of penalty u/s 270A of the Act. The learned AR to fortify his contention has specifically drawn our attention to section 271AAB (1A) of the Act r.w.s. 270A(6)(e) of the Act. The learned AR, submitted that as the assessee was visited with search proceedings u/s 132 of the Act on 23/03/2018, therefore, his case was squarely covered by the penal provisions contemplated u/s 271AAB(1A) of the Act. Accordingly, the learned AR based on his aforesaid contention

had tried to impress upon us that no penalty u/s 270A of the Act was called for in the hands of the assessee.

9. Per contra, the learned Departmental Representative (DR) submitted that as provisions of section 271AAB were applicable only to the undisclosed income of the specified previous year viz, (i) the previous year which has ended before the search but the date of furnishing return of income under sub-section (1) of section 139 for such year had not expired before the date of search and the assessee has not furnished the return of income for the said year before such date; or (ii) the previous year in which the search was conducted; therefore, the case of the assessee for the subject year i.e. 2017-18 did not fall within the meaning of the “specified previous year” as was defined in the “Explanation” to section 271AAB(3) of the Act.

10. Apropos, the learned AR’s contention that the Assessing Officer had in the body of the assessment order without recording any satisfaction imposed penalty in the hands of the assessee u/s 270A of the Act, the learned DR submitted that the said contention was in itself misconceived. The learned DR submitted that unlike section 271(1)(c) of the Act, which placed an obligation on the Assessing Officer to record his satisfaction at the stage of initiating penalty proceedings, no such obligation was cast upon him in so far as the initiation of penalty u/s 270A of

the Act is concerned. The learned AR to buttress his contention had taken us through the aforesaid statutory provisions.

11. We have thoughtfully considered the contentions advanced by the learned representatives of both parties in the backdrop of the orders of the lower authorities.

12. As is discernible from the record a pocket diary (Parimala – Pink colour) consisting of 40 written pages was found and seized in the course of search & seizure proceedings conducted on the assessee u/s 132 of the Act. The diary consisted of handwritten information with dates and amounts mentioned against the same. On being queried, the assessee in his reply to Question No.8 of his statement recorded on oath, dated 17/04/2018, had stated that the scribbling in the diary was related to the payments which were made by him to the labour contractor for providing labour. However, the Assessing Officer observed that the aforesaid payments were not recorded in the books of account of the assessee. On being confronted, the assessee admitted that the aforesaid payments made to the labour contractor were not reflected in his books of account. Also, on being queried about the source of the cash payments, he candidly admitted that he could not produce any evidence in support of the source of the cash payments made to the labour contractor. Thereafter, the assessee had in his return of income filed u/s 153A of the Act offered the source of the aforementioned

cash payments of Rs.54.19 lacs (supra) as his additional income for the subject year.

13. Ostensibly, the Assessing Officer, while framing the assessment, had initiated the penalty proceedings u/s 270A of the Act for concealment of income of Rs.54.19 lacs that was offered by the assessee as his additional income in the return of income filed u/s 153A of the Act. Thereafter, the Assessing Officer had imposed penalty u/s 270A of the Act for underreporting of income in consequence of misreporting of his income in consequence of misreporting thereof of Rs.33,48,942/-. As observed herein above, the CIT (A) has though principally concurred with the penalty imposed by the Assessing Officer, but, had scaled down the same to an amount of Rs.16,74,471/- (supra).

14. Apropos, the learned AR's contention that as the Assessing Officer had in the body of the assessment order initiated the penalty proceedings u/s 270A of the Act for concealment of income, but, thereafter had saddled the assessee with the penalty for underreporting his income in consequence of misreporting thereof, therefore, he had wrongly assumed jurisdiction, we are unable to persuade ourselves to concur with the same. On a careful perusal of section 270A of the Act, it transpires that unlike the erstwhile section 271(1)(c) of the Act which obligated the Assessing Officer to record his satisfaction as

regards the specific default for which the penalty was sought to be initiated in the hands of the assessee, no such obligation can be traced in section 270A of the Act. All that can be gathered from a perusal of section 270A of the Act is that the Assessing Officer, inter alia, during the course of any proceedings under this Act directs that any person who had underreported his income shall be liable to pay a penalty in addition to tax, if any, on the underreported income. We are of a firm conviction as the Assessing Officer while framing the assessment vide his order u/s 143(3) r.w.s. 153A of the Act dated 23/11/2019, had initiated penalty proceedings u/s 270A of the Act, therefore, no infirmity can be related to the validity of the jurisdiction that was assumed by him for imposing the penalty in the hands of the assessee.

15. Apropos, the learned AR's claim that as the assessee was subject to search proceedings on 23/03/2018, therefore, his case would be covered by the penal provisions of section 271AAB (1A) of the Act and thus, would be saved by the exception carved out in clause (iv) of sub-section (6) of section 270A of the Act, we find no substance in the same. We say so, for the reason that as pointed out by the learned DR and rightly so, as the provisions of section 271AAB apply exclusively to the undisclosed income of the "specified previous year" i.e., (i) the previous year which has ended before the search but the date of furnishing the return of income under sub-section (1) of section 139 for such year had not expired before the date of search and the assessee has not

furnished the return of income for the said year before such date; or (ii) the previous year in which the search was conducted, therefore, the case of the assessee who was visited with search proceedings u/s 132 of the Act on 23/03/2018, i.e., for the subject year i.e. 2017-18 would not fall within the meaning of the “specified previous year”. As the subject previous year i.e. financial year 2016-17 had ended before the date of search on 23/03/2018 and also, the “due date” for filing of the return of income under sub-section (1) of section 139 of the Act for the said year had way back expired, therefore, the same takes the case of the assessee beyond the meaning of “specified previous year”. Accordingly, as the case of the assessee does not fall within the scope and gamut of section 271AAB of the Act, therefore, it will not be saved by the exception contemplated in section 270A(6)(e) of the Act.

16. Apropos, the merits of the case, we are of the firm conviction that as the assessee had admitted that the scribblings in the seized diary found in his possession during the course of search proceedings were the unaccounted cash payments made by him to the labour contractor, therefore, we find no infirmity in the order of the CIT (A) who had principally concurred with the penalty imposed by the Assessing Officer u/s 270A of the Act. The **Grounds of appeal No.2 to 4** are dismissed.

17. The **Grounds of appeal Nos.1 & 5** being general in nature are dismissed as being not pressed.

18. Resultantly, the appeal filed by the assessee being devoid of any substance, is dismissed.

Order pronounced in the Open Court on 14th May, 2025.

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| Sd/- (MANJUNATHA G.) ACCOUNTANT MEMBER | Sd/- (RAVISH SOOD) JUDICIAL MEMBER |
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Hyderabad, dated 14th May, 2025

*****Vinodan/sps**

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| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order