

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI
BEFORE SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GD PADMAHSHALI, ACCOUNTANT MEMBER
ITA No.204/PAN/2023
(A.Y: 2017-18)

Appayya Karveerappa Kottarshetty, CTS 4822,III rd Cross, Sadashivnagar, Belagavi-590001, Karnataka.	Vs.	ACIT.Circle-1,, Civil Hospital Road, Belagavi-590001. Karnataka.
PAN/GIR No. AGRPK9450F		
Appellant	..	Respondent

Appellant by :	Shri.Anil I Ramdurg. AR
Respondent by :	Shri.DeshmukhSPrakash.Sr.DR

Date of Hearing	05.06.2025
Date of Pronouncement	29.07.2025

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC) Delhi /CIT (A) passed U/sec 270A and u/sec 250 of the Act. The assessee has raised the grounds of appeal challenging the order of the CIT(A) sustaining the levy of penalty u/sec270A of the Act.

2. The brief facts of the case are that, the assessee is a super senior person and has filed the return of income for the A.Y.2017-18 on 29.07.2017 disclosing a total income of Rs.15,51,370/-. Whereas in the A.Y 2014-15, the assessee in the return of income has declared the long term capital gains and inadvertently claimed deduction u/sec54EC of the Act instead of claiming deduction u/sec54F of the Act. The Assessing Officer (A.O) has rejected the assessee claim by taxing long-term capital gains without considering the exemption u/sec54F of the Act. On further appeal, the CIT(A) has granted exemption u/sec54F of the act, since the construction of house was not completed within the time limit, the CIT(A) has directed the Assessing Officer to tax the capital gains in the A.Y.2017-18. In compliance to the directions of the CIT(A), the A.O has issued notice u/sec148 of the Act through ITBA and the assessee has filed the return of income on 27.01.2020 disclosing a total income of Rs.15,51,370/-.Further notice u/sec143(2) and u/sec142(1) of the Act are issued. The assessee has filed the details as called for in the proceedings. Finally the A.O. was not satisfied

with the explanations and taxed the long term capital gains exemption claimed in the earlier year as additional income and assessed the total income of Rs.1,90,01,808/- and passed the order u/sec143(3) r.w.s147 of the Act dated 31.01.2020.

3. Subsequently, the A.O. has initiated penalty proceedings u/sec 270A of the Act for under reporting of income and the A.O has issued show cause notice. The assessee has complied with the information and explanations vide letter dated 09-04-2021 and the assessee has requested the A.O to process the OGE for A.Y.2014-15 which would give rise to refund of taxes paid and can be adjusted against the tax liability of A.Y.2017-18. Whereas, the AO was not satisfied with the submissions and levied a penalty of Rs.20,87,508/- for under reporting of income and passed the order u/s 270A of the Act dated 14-12-2021.

4. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings, the CIT(A) has considered the grounds of appeal, finding of the proceedings, submissions but has confirmed the penalty levied by the A.O and

dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the A.O in levying of penalty overlooking the facts and submissions that there is no under reporting of income and does not satisfy the conditions necessary for imposition of penalty. Further the Ld.AR emphasized that the assessee in response to notice under Section 270A of the Act dated 25-03-2021 has submitted the explanations along with the details on 09-04-2021 through E-Portal of the ITBA and the Assessing Officer has overlooked the submissions . The Ld.AR also submitted that the penalty provisions shall not be attracted as the tax liability due to Long term Capital gains of A.Y.2014-15 in this assessment year was discharged after receiving the refund amount determined by the A.O in the OGE. The Ld.AR mentioned that the assessee has claimed the exemption in the earlier year under a bonafide belief which was denied for non compliance of conditions and there is no under reporting of income. The Ld.AR

substantiated the submissions with factual paper book and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld.DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The Ld.AR submitted that the CIT(A) has erred in sustaining the levy of penalty overlooking the submissions and the judicial decisions. The penalty was levied for under reporting on income, though the assessee has filed the return of income for the A.Y.2017-18 disclosing a total income of Rs.15,51,370/-.Whereas in the A.Y 2014-15, the assessee in the return of income has declared the long term capital gains and inadvertently claimed deduction u/sec54EC of the Act instead of claiming deduction u/sec54F of the Act. The Assessing Officer (A.O) has rejected the assessee claim by taxing long-term capital gains without considering the exemption u/sec54F of the Act. On further appeal, the CIT(A) has granted exemption u/sec54F of the act, since the construction of house was not completed within the specified time limit, the CIT(A) has directed the Assessing Officer to tax the capital gains in the

A.Y.2017-18 and the A.O has taxed the long term capital gains claimed in the earlier year and assessed the total income of Rs.1,90,01,808/- and passed the order u/sec143(3) r.w.s147 of the Act dated 31.01.2020.Subsequently, the A.O. has initiated penalty proceedings u/sec 270A of the Act for under reporting of income and the A.O has issued show cause notice. The assessee has complied with the information and explanations vide letter dated 09-04-2021 and efforts made to pay tax liability.But the AO was not satisfied with the submissions and levied a penalty of Rs.20,87,508/- for under reporting of income. Whereas the assessee has accepted the taxation of Long term capital gains in the assessment proceedings and paid the taxes which is not disputed and no further appeal was filed.

7. We have considered the facts that the assessee is a super senior citizen and has paid the taxes on the income determined for A.Y.2017-18. The additional income taxed by the assessing officer relate to claim of long term capital gains pertaining to the A.Y. 2014-15 , which was taxed based on the directions of the appellate authorities as the assessee has not

fulfilled the conditions of purchase /construction of the house within the specified time limit. We are of the view that penalty cannot be automatic and every addition in the assessment proceedings cannot be gate way for levy of penalty and relay on the decision of Hon'ble Karnataka High Court in the case of the CIT Vs. Manjunatha Cotton and Ginning factory, [2013] 359 ITR 564 (Kar). Similarly the penalty cannot be levied in case of adhoc addition. Whereas the assessee has made a claim under the bona fide belief in the A.Y.2014-15 in respect of capital gains as allowable under the law and due to noncompliance of conditions, the claim was denied and was taxed in A.Y.2017-18 and relied on the ratio of decision of Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroleum Products Ltd.322 ITR 158(SC). The Ld.AR submitted that the case does not fall under clause (b)and (c) of section 270A(10) of the Act. Whereas the long term capital gains could not be offered in the return of income of A.Y.2017-18, since the appeal for A.Y.2014-15 was pending before the CIT(A) at time of filling the return of income.Further there is no intention to under report the income or to avoid the

payment of taxes and the assessee has paid the entire tax liability, which is not disputed by the revenue. We considering the facts, circumstances, submissions and the ratio of the judicial decisions are of the opinion that the penalty cannot be sustained. Accordingly, we set aside the order of the CIT(A) and direct the assessing officer to delete the penalty. And we allow the grounds of appeal in favour of the assessee.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 29.07.2025

Sd/-

(GD PADMAHSHALI)
ACCOUNTANT MEMBER

Panaji Dated: 29/07/2025

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//()

(Asst. Registrar)
ITAT,Panaji

		Date	<u>Initial</u>	
1.	Draft dictated on			PS
2.	Draft placed before author			PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			