

INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "B": NEW DELHI

BEFORE

DR. BRR KUMAR, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 609/Del/2023

Asstt. Year: 2018-19

Greenwoods Govt. Officers Welfare Society, Phase-1, Plot No. 10, Pocket-P2, Sector Omega 1, Greater Noida Gautam Budh Nagar, Noida Uttar Pradesh 201315 PAN AAATG2745C	Vs.	DCIT, Circle 52(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri S.D. Srivastava, Advocate Shri Amol Sinha, Advocate
Department by:	Shri Vivek Kumar Upadhyay, Sr. DR
Date of Hearing:	29.08.2023
Date of pronouncement:	26.10.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 10.01.2023 of the Ld. Commissioner of Income Tax (Appeals) NFAC, Delhi ("**CIT(A)**") whereby he sustained the penalty of Rs. 58,88,954/- imposed by the National Faceless Assessment Centre ("**AO**") upon the assessee under

section 270A of the Income Tax Act, 1961 (**the “Act”**) pertaining to Assessment year (**“AY”**) 2018-19.

2. The assessee has raised the following grounds of appeal:-

- “1. That on the given facts and circumstances of the case the Ld. CIT(A) erred in not appreciating the fact that Assessee suo motu during the course of Asstt. proceedings paid both the additional tax and interest of Rs.51,64,570/- vide challan no 25008 dated 25/03/2021 even before the issue of show cause notice by AO thereby qualifying for relief u/s 270AA of IT Act.
2. That on the given facts and circumstances of the case the Ld. CIT(A) further erred in not applying the beneficial provisions of Section 270AA of IT Act for a mere technical and venial breach which is only procedural and inadvertent lapse.
3. That on the given facts and circumstances of the case the Ld. CIT(A) erred in confirming the order of AO imposing the penalty especially when the Assessee was under bona fide belief of having complied substantively with requirements of Section 270AA of IT Act as instructed by his CA and the inadvertent procedural mistake occurring by oversight, the order of AO and CIT(A) deserves to be quashed.
4. The Ld. CIT(A) has erred on facts and in law in upholding the decision of learned Assessing Officer of imposing penalty of Rs.58,88,954/- for under reporting of income in consequence of misreporting under the provisions of sec. 270A of the Act.
5. That the Ld. CIT(A) has erred on facts and in law in rejecting the appellant contention regarding the validity of penalty order as the notice of demand has been prepared on 4/3/2022 and the penalty order has been passed on 15/3/2022 thereby making the penalty order null and void.
6. The appellant denies its liability to penalty as upheld by the Id. CIT(A), as determined and computed by the learned Assessing Officer and the manner in which it has been so determined or computed.
7. The appellant craves leave and sanction of the Hon'ble ITAT to file additional evidence, if so, required for proper prosecution of the case, based on facts and circumstances, which has not been or could not be produced or filed before lower authorities either because proper and sufficient opportunity was not provided or because it was not solicited or its need was not appreciated.”

3. Briefly stated, the assessee is a Society registered under the Society Registration Act, 1860 incorporated on 26.02.1987. It filed its return online on 30.10.2018 for AY 2018-19 declaring income at Rs. Nil. Its case was selected for scrutiny under CASS. Statutory notice(s) were issued / served upon the assessee in response to which requisite details were submitted. During assessment proceedings the Ld. AO observed that the assessee earned interest of Rs. 90,02,345/- during the year which it claimed as exempt. On query, the assessee vide submission dated 26.02.2021 stated that it had initially filed ITR with Nil income. Now the assessee is offering interest income for tax and filed revised computation. The assessee also stated that it has opted for DTVSV Scheme which was announced in the Budget 2020 as 'No Dispute but Trust Scheme' to settle pending disputes relating to direct taxes. It is further stated that the assessee made declaration under scheme by filing Form 1 & 2 on 27.11.2020 for getting relief from pending dispute cases and furnished details thereof. The assessee stated that it has revised its return for AY 2018-19 and offered interest of Rs. 91,05,439/- for tax and accordingly deposited tax of Rs. 51,06,900/-.The Ld. AO added the said interest of Rs. 91,05,439/- to the income of the assessee with the observation that assessee offered said interest to tax after notice under section 142(1) was issued to it. The Ld. AO further added Rs. 1,82,338/- being miscellaneous and other income, thus completing the assessment on total income of Rs. 92,87,780/- on 21.04.2021 under section 143(3)/144B of the Act. The Ld. AO initiated penalty proceedings under section 270A of the Act for under-reporting of income.

4. In response to show cause notice, the assessee vide letter dated 16.02.2022 stated that it is a regular tax payer and was unaware that interest income earned by is not exempt till assessment in its case for AY 2013-14 was completed wherein the same was disallowed. The assessee opted for DTVSV Scheme for 3 years to wind up the tax liability. It has not intentionally under reported, or misreported income and had voluntarily

revised the return during the assessment proceedings and paid taxes of Rs. 51,06,900/-

5. The explanation of the assessee was not acceptable to the Ld. AO who calculated tax payable in respect of the under-reported income at Rs. 29,44,477/- and levied penalty of Rs. 58,88,954/- being 200% of tax payable on under reported income.

6. Aggrieved, the assessee appealed before the Ld. CIT(A). It was contended that there was genuine dispute on the taxability of interest. The assessee voluntarily revised the income during the course of assessment proceedings and paid tax thereon. It cannot, therefore, be said that the assessee under-reported or misreported its income. It was also submitted that “penalty” and “assessment” are two independent proceedings. There could be genuine difference of opinion between the assessee and the Revenue and hence finding in assessment proceedings cannot be regarded as conclusive for the purpose of penalty proceedings. It is therefore, necessary to re-appreciate and reconsider the matter so as to find out as to whether addition made in the quantum proceedings actually represents under-reporting of income on the part of the assessee and whether it is a fit case to impose the penalty. The decision of Hon’ble Supreme Court in Hindustan Steel vs. State of Orissa, 83 ITR 26 (SC) was relied upon. It was emphasised that the assessee surrendered and offered interest income after paying tax by filing revised return. Several decisions in support were cited. It was urged that the impugned penalty on account of under reporting of income in consequence of misreporting is unlawful and liable to be quashed.

7. On the issue raised by the assessee that notice of demand was prepared on 4.3.2022 and penalty order was passed on 15.3.2022, hence the penalty order is null & void, the Ld. CIT(A) held that it was due to technical glitch or typographical error which shall not vitiate the proceedings. This view of the Ld. CIT(A) is not legally tenable. The order is followed by the demand notice and not the vice-versa.

7.1 The Ld. CIT(A) thereafter extracted the relevant portion of the provisions of section 270A and observed that the role of the Ld. AO is only to check whether there is under-reporting / misreporting of income or not once there is under-reporting / misrepresenting, the Ld. AO does not have any discretion but to compute the penalty. The Ld. CIT(A) rejected all the decisions relied upon by the assessee saying that they were rendered in the context of section 271(1)(c). Since the assessee had not filed application under section 270AA to seek immunity from imposition of penalty, the Ld. CIT(A) did not consider the contention of the assessee regarding filing of revised return including therein interest income voluntarily during the course of assessment proceedings and payment of taxes thereon. He, therefore, confirmed the impugned penalty.

8. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds relate thereto.

9. Vide application dated 21.08.2023 the assessee sought permission to file the following additional ground:-

“Without prejudice to the other grounds of appeal and in the facts and circumstances of the present case, the order of the Ld. CIT(A) confirming the order of the Ld. AO imposing the penalty u/s 270A of the Income tax Act, 1961 is erroneous both on facts and in law because of failure of Ld. AO to specify the specific clause of section 270A(9) of I.T Act for initiating the penalty proceedings and further initiating the penalty proceedings without even discussing the relevant provision/clause under which penalty is being levied.”

10. It is stated in the application that it is purely a question of law which may be admitted in the light of judgment of NTPC vs. CIT 229 ITR 383(SC).

11. We have heard the Ld. Representative of the parties. We have admitted the aforementioned additional ground keeping in view the mandate of the Hon'ble Supreme Court that where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. Presently we are to determine whether the assessee is liable to pay the impugned penalty.

12. The Ld. AR drew our attention to the notice dated 21.04.2021 (copy at page 1 of the Paper Book) for penalty under section 274 r.w. section 270A of the Act and submitted that the notice does not mention which limb of section 270A(9) is attracted. Placing reliance on the decision of Hon'ble Delhi High Court in Prem Brothers Infrastructure LLP V. NFAC rendered on 31.05.2022 and the decision of Mumbai Tribunal in Alrameez Construction (P) Ltd. vs. CIT/NFAC, Delhi (2023) 152 taxmann. Com 382 (Mum.-Trib.) the Ld. AR submitted that if the penalty notice does not mention which limb of section 270A of the Act is attracted and how the ingredient of sub section (9) of section 270A is satisfied, mere reference to the word "misreporting" in the assessment order for imposition of penalty is manifestly arbitrary and deserves to be quashed.

13. The Ld. DR supported the order of the Ld. CIT(A) but could not bring to our notice any contrary decision.

14. We have given careful thought to the rival submission of the parties and perused the records. It is a matter of fact that the penalty notice issued by the Ld. AO (reproduced below) does not mention which limb of section 270A(9) of the Act is attracted.



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National e-Assessment Centre
Delhi



To, GREENWOOD GOVT. OFFICERS WELFARE SOCIETY C1 124, LAJPAT NAGAR NEW DELHI 110024, Delhi India	
--	--

PAN: AAATG2745C	Assessment Year: 2018-19	Date: 21/04/2021	DIN: ITBA/PNL/S/270A/2021- 22/1032572885(1)
--------------------	-----------------------------	---------------------	---

Notice for Penalty under section 274 read with section 270A of Income-tax Act, 1961

Ma/Mr/Ms,

Whereas in the course of proceedings before me for the Assessment Year 2018-19, it appears to me that you have under-reported income which is in consequence of misreporting thereof.

2. You are required to show cause why an order imposing penalty u/s 270A of Income-tax Act, 1961 should not be passed.

3. You are required to submit your reply online electronically in 'e-Proceeding' facility through your account in e-filing website (www.incometaxindiaefiling.gov.in) by the midnight (23:59 hours) of 10/05/2021.

4. In case reply is not submitted, the order shall be passed without the benefit of your explanation.

Additional / Joint / Deputy / Assistant Commissioner of Income Tax
Income-tax Officer,
National e-Assessment Centre,
Delhi

Signature Not Verified
Digitally signed by Vishesh
Prakash
Date: 2021.04.21 13:20:52 IST

TRUE COPY

If that be so, the decisions (supra) in Prem Brothers Infrastructure LLP and Alrameez Construction (P) Ltd. squarely apply to the facts of the assessee's case.

15. Moreover, we are of the view that the case of the assessee is neither that of "under-reporting" nor "misreporting" of income. Sub-section (8) of section 270A specifies the quantum of penalty leviable and in this context refers to under-reported income in consequence of any misreporting thereof. Sub-section (9) of section 270A enumerates what constitutes 'misreporting' of income. These are –

- (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 of 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.

None of the above ingredients of misreporting of income is present in the case of the assessee.

15. It is an admitted position that in its original return in its Income & Expenditure Account the assessee disclosed that during the year it earned interest income and miscellaneous/other incomes aggregating to Rs. 92,23,957/- and complete details thereof were brought on record. On the face of these facts it cannot be alleged that the assessee is guilty of under-reporting and/or misreporting of income. It is not the case of the Revenue that anything more than what was declared by the assessee was found by the Revenue. The case of the assessee all along has been that it was under bonafide belief that the impugned interest and miscellaneous income was

exempt from tax on ground of “principle of mutuality” and therefore in its original return it claimed the same as exempt. As soon as the assessee became aware that the said income is taxable, it opted for DTVSV Scheme and revised its return for AY 2018-19 and 2019-20 offering the said income to tax and paid tax of Rs. 51,06,900/- which has not been disputed by the Revenue. It may be emphasised that the fact of earning the impugned interest and miscellaneous income has duly been disclosed in its accounts and in the original return with full details. However, due to ongoing litigation about the taxability of the said income and misconception of law, the assessee claimed it as exempt. Nonetheless, the fact remains that the assessee filed revised return, offered the said income to tax during the course of assessment proceedings itself.

16. On the aforesaid facts and in the circumstances of the case and following the decisions (supra) in Prem Brothers Infrastructure LLP and Alrameez Construction (P) Ltd., we hold that the impugned penalty is not exigible which we hereby vacate.

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

Order pronounced in the open court on 26th October, 2023.

sd/-

(DR. BRR KUMAR)
ACCOUNTANT MEMBER

sd/-

(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 26/10/2023

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

Taxpundit.org