

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.669/PUN/2022  
निर्धारण वर्ष / Assessment Year :2017-18

Rajendra Sadashiv Patil, C/o. Sanjay Vhanbatte and Company, CTS No.245, C/1, First Floor Mahalaxmi Bank Building, Near Kelvkar Hospital, Tarabai Park, Kolhapur – 416003.  PAN: ABLPP 1605 Q	V s	The Assistant Commissioner of Income Tax, Central Circle, Kolhapur.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Pramod Shingte – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	09/03/2023
Date of pronouncement	31/03/2023

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Assessee is directed against the order of ld.Commissioner of Income Tax(Appeals), Pune-11 dated 10.08.2022 emanating from penalty order dated 20.01.2021 for the A.Y.2017-18. The Assessee has raised the following grounds of appeal:

“1. On the facts and circumstances of the case and in law the Ld. CIT(A)-11, Pune erred in confirming the levy of penalty under section 270A (9) levied by the ACIT, Central Circle Kolhapur on

*the disallowance of interest u/s 36(1)(iii) though:*

- a. *The notice initiating the penalty proceedings being not clear as to the default committed by the appellant.*
- b. *There is no clear finding as to the default committed by the appellant in the assessment order.*
- c. *The disallowance was treated by the same AO in the immediate succeeding year to be 'underreporting of income' and not misreporting of income'.*
- d. *The disallowance being on estimation and on an agreed basis the penalty levied on account of 'misrepresentation of facts' is incorrect.*

*The appellant craves leave to add to, amend, alter, modify, delete or add a new ground of appeal before or at the time of hearing."*

**Brief facts of the case :**

2. The brief facts of the case are that assessee filed his return of income for the A.Y. 2017-18 electronically on 14.02.2018 declaring total income at Rs.23,25,390/-. The case was selected for scrutiny through CASS. Accordingly, a notice dated 18.08.2018 under section 143(2) of the I.T.Act, 1961 was served to assessee on 18.08.2018. The Assessing Officer(AO) passed assessment order under section 143(3) on 29.11.2019. During the assessment proceedings, AO observed that assessee had given following advances without charging interest as below :

Sl.no.	Nature of asset	Amount advanced	Since when
1	Agricultural land	18,00,000	Opening balance
2	Atharva builders	10,26,852	Opening balance
3	Hemant kulkarni	15,00,000	Opening balance
4	Sagar mahali	1,00,000	Opening balance
6	Surekha shintre	6,00,000	Opening balance
7	Sanjay shintre	5,00,000	Opening balance
8	Suraj patil	2,00,000	Opening balance
	Total	57,26,852	

3. The AO asked assessee to explain why the interest expenses shall not be proportionately disallowed as these were non-business advances. The AO also observed in the assessment order that assessee had paid total interest of Rs.26,59,606/-. The AO has mentioned in the assessment order that assessee failed to submit the details and merely claimed that the said advances were given out of capital, non-interest bearing funds. However, the AO held that since assessee failed to establish that non-interest bearing funds were utilized for the above mentioned advances, the AO disallowed interest amount of Rs.6,87,222/- out of the total interest expenses of Rs.26,59,606/- on the basis of interest charged by State Bank of India(SBI) which was 13.05%. The AO had initiated penalty under

section 270A of the Act for mis-representation of the fact. Accordingly, after giving opportunity to the assessee, AO levied penalty under section 270A of the Act of Rs.4,30,700/- invoking section 270A(9) and 270A(2) of the Act. The AO levied penalty under section 270A of the Act for under reporting of income which is in consequences of mis-reporting. Aggrieved by the order of the AO, the assessee filed appeal before the Id.CIT(A).

4. The Id.CIT(A) upheld the order passed by the AO.

5. Aggrieved by the order of the Id.CIT(A), the assessee filed appeal before this Tribunal.

**Submission of Id.Authorised Representative(Id.AR) :**

6. The Id.AR submitted that AO had levied penalty on the disallowance of interest expenditure which was made on the basis of estimation. No penalty can be levied where expenditure has been disallowed on the basis of estimation. The Id.AR submitted that there was no under reporting of income by the Assessee. Assessee had disclosed all the facts.

7. The Id.Departmental Representative(Id.DR) for the Revenue relied on the orders of the Lower Authorities.

**Findings and Analysis:**

8. In this case one fact is established that the expenses were disallowed on estimate basis. Penalty has been levied on these disallowance of estimated expenses. Section 270A of the Act provides for imposition of penalty for under-reporting and misreporting of income. Sub-section (2) enlists certain circumstances of under-reporting of income. Sub-section (3) deals with the determination of under-reported income, which, in our context, is by reducing the income returned by the assessee from the amount of income finally assessed. Sub-section (6) is relevant for our purpose which states that under-reported income for the purpose of this section shall not include certain items. Clause (b) of subsection (6) refers to: "the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer ....". It is ostensible from the language of sub-section (6) that an addition made on the basis of estimation cannot provide foundation for under-reported income for the purpose of imposition of penalty u/s 270A of the Act. In this case, the penalty has been levied on estimated disallowance. Hence, penalty is not sustainable. Accordingly, the AO is directed to delete the penalty levied under section 270A of the Act. Accordingly, grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open Court on 31<sup>st</sup> March, 2023.

Sd/-  
(S.S.GODARA)  
JUDICIAL MEMBER

Sd/-  
(DR. DIPAK P. RIPOTE)  
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> Mar, 2023/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.