

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD
(Through virtual hearing)**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.238/Hyd/2024		
Assessment Year: 2018-19		
Mohd. Sarwar, 2-8-306/12, Raghavendra Nagar, Waddepalle, Hanamkonda, Warangal, Telangana - 506370. PAN : AOUPS2364F.	Vs.	The Income Tax Officer, Ward - 2, Karimnagar.
(Appellant)		(Respondent)
Assessee by:		Shri A. Vamseedhar, C.A.
Revenue by:		Shri Mookambikeyan, Sr.AR
Date of hearing:		02.04.2024
Date of pronouncement:		02.04.2024

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2018-19 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.12.01.2024 invoking proceedings under section 270A of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“ 1. The Ld. CIT(A) erred in law and on facts in confirming the penalty amounting to Rs. 4,44,844/- u/s. 270A of the Income Tax Act, 1961 (the Act) for the assessment year 2018-19.

2. The Ld. CIT(A) is not justified in dismissing the appeal without giving a reasonable opportunity to the appellant.

3. The Ld. A.O erred in issuing the notice of demand u/s.156 of the Income Tax Act, 1961, Dt:21stJanuary'2022 in consequence of penalty order passed u/s.270A of the Income Tax Act, 1961, Dt: 22nd January'2022 which is void and the Id. CIT(A) erred in confirming the validity of notice of demand u/s. 156 issued before the passing of penalty order u/s.270A of the Act is totally null and void and Against the Principles of Natural Justice.

4. That the Ld. CIT(A) further gravely erred in upholding the action of Id. A.O in issuing the invalid notice of demand under section 156 of the Act, dated:21.01.2022 which is prior to the passing of penalty order u/s.270A of the Act, dated:22.01.2022, which is in contravention to the provisions of section 156(1) of the Act and hence the notice of demand u/s.156 is null and void, hence the same needs to be quashed and which is against the Principles of Natural Justice.

5. The Ld. A.O had specified penalty in the show-cause notice dt.2nd January, 2021 and dt. 15th march, 2021 that penalty is imposed for under-reporting of income and at the time of passing the impugned penalty order u/s.270A of the Income Tax Act, 1961, Id. A.O stated as mis-reported his income in order to collect penalty @200% instead of @ 50% of the amount of tax payable and the Id. CIT(A) erred in confirming the same without any proper finding in his order passed u/s.250 of the Act is against the principles of natural Justice.

6. Without prejudice to the above ground no.3 and 4, the Ld. A.O erred in law on not issuing notice of demand u/s. 156 of the Act and which needs to be issued in consequence of any passed under this Act and in appellant's case non-issue of notice of demand u/s.156 leads to invalidate the Penalty order passed u/s.270A of the Act and the Ld. CIT(A) erred in confirming the same without following the principles of natural justice and hence penalty order needs to be quashed.”

3. The brief facts of the case are that assessee had claimed refund of Rs.2,21,980/- by filing revised return of income on 26.07.2018 declaring reduced income of Rs.6,46,520/- as against original return filed on 12.07.2018 declaring total income of Rs.14,34,180/. In the present case, Assessing Officer noticed that the total T.D.S. claimed as per revised return was Rs.2,65,037 as against Rs.2,50,037/- claimed in original return. Hence, notice u/s.142(1) was issued to the assessee on 26.10.2020 along with a detailed questionnaire.

3.1. During the course of assessment proceedings, the assessee has again filed a revised computation of income declaring total income of Rs.14,84,160/- as against income of Rs.14,34,180/- as per original return and Rs.6,46,520/- as per revised return. In response to the notice u/s.142(1) dt.21.11.2020, the assessee has explained that his tax consultant filed the revised return without his knowledge and that he revised the income again to Rs.14,84,160/-, claiming that he has overlooked rental income of Rs.33,600/- in the original return. He also submitted that the tax consultant erroneously claimed housing loan benefits, despite of not having any such loan. Consequently, the assessee declared his revised taxable income as Rs.14,84,160/- with a total tax payable of Rs.2,65,480/-. Assessing Officer opined that the revised return claiming large refund was filed with the knowledge of the assessee as it was held that the assessee himself was responsible for filing of any return under his name and PAN and concluded that assessee has made an

attempt to reduce his tax liability by concealment of true particulars of income. The assessee has under reported on account of misreporting of his income. As the assessee has clearly reduced his taxable income to claim excessive refund, the amount of Rs.8,37,640/- (being difference of income between revised/reduced income of 6,46,520/- and actual income of Rs.14,84,160/-) was treated as under reported income of the assessee. In response to the show cause notice dt.07.12.2020, the assessee has submitted his response accepting the proposed modification. As the assessee has agreed to the addition of Rs.8,37,640/-, Assessing Officer has computed the total income of the assessee at Rs.14,84,160/- and accordingly completed the assessment u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act.

3.2. Consequent to the assessment order, a penalty order was passed against the assessee u/s 270A of the Act dt.22.01.2022 levying the penalty of Rs.4,44,844/- for misreporting of income to be paid as per demand notice.

4. Feeling aggrieved with the order of Assessing Officer assessee filed an appeal before the ld.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Before me, ld.AR primarily contended that the tax consultant of the assessee had filed the revised return for the assessment year under consideration and had wrongly claimed the deduction under Chapter VI A under house loan and thereby, the tax liability of the assessee has substantiated. However, when the

assessee during the assessment proceedings came to know about the above stated facts, then the assessee before the Assessing Officer has submitted that the fraud has been played by the Tax Consultant, who has used his own e-mail ID and mobile number for filing the revised return of income and it was not done by the assessee. The contention of the assessee was examined by the Assessing Officer and the Assessing Officer in Para 3 and 3.1 of the assessment order has held as under :

“3. The submission made by the assessee in response to the statutory notices issued during the course of assessment proceedings has been perused. The assessee has claimed that the action of claiming large refund by filing revised return with reduced income was committed by his Tax Consultant without his knowledge. However, the contention of the assessee is not found acceptable or tenable. The assessee claims that the mobile number and email-id of the Tax Consultant was used for filing revised return of income, and therefore, he was not responsible for filing revised return. However, the fact remains that the refund amount claimed under revised return was to be credited to the bank account held by the assessee only. This fact cannot be ignored. Therefore, it is observed that the revised return claiming large refund was filed with the knowledge of the assessee as it is held that the assessee himself is responsible for filing of any return under his name and PAN.

*3.1 In view of the above, it is clear that the assessee has made an attempt to reduce his tax liability by concealment of true particulars of income. The assessee has under reported on account of misreporting of his income. The assessee has clearly reduced his taxable income to claim excessive refund. Therefore, the amount of **Rs.8,37,640/-** (being difference of income between revised/reduced income of 6,46,520/- and actual income of Rs.14,84,160/-) is hereby treated as under reported income of the assessee.”*

5.1. On the basis of the above, it was concluded by the Assessing Officer that the contention of the assessee that the fraud has been played on the assessee was rejected by the Assessing Officer, however, the Assessing Officer has accepted the revised

statement of return of income filed before the Assessing Officer and has determined the taxable income of the assessee by not allowing the deduction claimed by the assessee under Chapter VI A and housing loan. Assessing Officer had added the amount of Rs.8,37,640/- as accepted by the assessee in the revised statement before Assessing Officer. Thereafter, Assessing Officer has mentioned that the assessee had under-reported the income. The Assessing Officer has also issued a notice u/s 270A of the Act, (Page 40 of the paper book in Volume 4) is to the following effect :

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



To, MOHD SARWAR ST2-719, CENTANARY COLONY KAMANPUR KARIMNAGAR 505212, Andhra Pradesh	
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PAN: AOUPS2364F	Assessment Year: 2018-19	Date : 02/01/2021	DIN : ITBA/PNL/S/270A/2020- 21/1029438597(1)
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Notice for Penalty under section 274 read with section 270A of Income-tax Act, 1961

Ms/Mr/M/s,

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

- You are required to show cause why an order imposing penalty u/s 270A of Income-tax Act, 1961 should not be passed.
- 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 31/01/2020.
- 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

5.2. The contention of the assessee that the Assessing Officer has issued show cause notice for under reporting of income. It is also the contention of the assessee that prior to the issuance of penalty notice, the demand was made one day prior to the penalty notice. It is the contention of the assessee that the assessee has failed to appear before the Id.CIT(A) as the notices have not been served upon the assessee.

6. Per contra, the Id. DR has submitted that the contention of the assessee that the assessee has made a claim before the Assessing Officer and the Assessing Officer has not accepted vis-a-vis- the fraud aspect is concerned, further the Id. DR has submitted that the notice dt.15.03.2021 is also placed which is not specific either for under-reporting or misreporting of income. It is the case of the Id. DR that the penalty levied by the Assessing Officer and confirmed by the Id.CIT(A) is in accordance with law.

7. In rebuttal, Id. AR has submitted that the submissions were made before the Ld.CIT(A) but he has failed to consider the same. It is also the submission of the assessee that no amount has been credited in the bank account of the assessee as mentioned in the assessment order.

8. I have heard the rival contentions of the parties and perused the material available on record. The asst order in Para 3 and 3.1 reproduced hereinabove, categorically mentioned that the assessee was involved into **under reporting** of income. Likewise, when the first notice vide page 40 was issued by the Assessing

Officer, it was only for **under reporting** of income. I failed to understand under what circumstances the initial violation which was **under-reporting** of income was converted to **misreporting** of income. If at all, the Revenue authorities are intending to charge the assessee for **misreporting** of income, the specific notice is required to be issued, which has not been done in the present case. In the present case, admittedly, the revised return of income was filed claiming the huge deduction which in the estimation of the Assessing Officer was nothing but under-reporting of income and for which the notice was also issued. In my view, once the assessee himself admitted the fact that there was under-reporting of income which was also accepted by the Assessing Officer then the penalty should have been levied only on account of **under reporting** of income and not for mis-reporting of income. Accordingly, I deem it appropriate to modify the order passed by the Assessing Officer and the confirmed the Id.CIT(A) and direct the Revenue to take to revise the demand of levying the penalty by taking the violation as **under-reporting** of income under section 270A of the Act and not mis-reporting of income. Accordingly, the penalty shall be levied for under reporting of income. Assessing Officer is directed to revise the demand by applying the applicable rate for under reporting of income. In the light of the above, the appeal of the assessee is partly allowed.

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

Order pronounced in the Open Court on 2nd April, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 2nd April, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Mohd. Sarwar, 2-8-306/12, Raghavendra Nagar, Waddepalle, Hanamkonda, Warangal, Telangana-506370.
2	The Income Tax Officer, Ward – 2, Karimnagar.
3	Prl.CIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order