

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 1104/Bang/2024
Assessment Years: 2017-18

Sekhon Jagtar Singh, Flat No.10162 PSN, ITPL Main Road, Hoodi, Bengaluru.  <b>PAN – AOPPS 7244 M</b>	Vs.	The Income Tax Officer, Ward - 5(3)(5), Bengaluru.  .
APPELLANT		RESPONDENT

Assessee by	:	Shri Sharankantha, C.A
Revenue by	:	Ms. Neha Sahay, JCIT (DR)

Date of hearing	:	09.07.2024
Date of Pronouncement	:	21.08.2024

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 08/12/2023 in DIN No. ITBA/NFAC/S/250/2023-24/1058571721(1) for the assessment year 2017-18.

2. The only issue raised by the assessee is that the Id. CIT(A) erred by confirming the penalty levied by the AO u/s 270A of the Act amounting to Rs. 8,16,895/- only.

3. The necessary facts are that the assessee in the present case is an individual who has not filed return of income u/s 139 of the Act for the year under consideration. As such, the assessee disclosed the income under the head 'salary' in response to the notices issued u/s 148 of the Act by furnishing form 16. Likewise, the AO during the assessment proceedings found that the assessee has claimed excessive deduction in Form – 16 u/s 24 of the Act for Rs. 74,951/- representing the interest on housing loan, which was added to the total income of the assessee. As such, the income was determined in the assessment framed u/s 147 of the Act at Rs. 58,70,680/- only. As the assessee did not file original return of income, the AO initiated penalty proceedings for underreporting of income, which came to be confirmed at Rs. 8,16,895/- being 50% of the amount of tax sought to be evaded by the assessee. On appeal, the Id. CIT-A confirmed the order of the AO.

4. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

5. The Id. AR before us submitted that all the due tax on the income earned by the assessee under the head 'salary' were already deducted by the employer and, therefore, there was bona-fide belief on the part of the assessee that he has not underreported the income in pursuance to the provisions of sec. 270A(6) of the Act. Therefore, the penalty u/s 270A of the Act cannot be levied.

6. On the other hand, the Id. DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee, earning income under the head salary, did not file his return of income under section 139 of the Act. As such, the assessee was subject to income escapement proceedings under section 148/147 of the Act. The assessee during the proceedings furnished copy of form 16 issued by the employer and as per form 16, the total income of the assessee was at ₹ 57,95,730/- only. However, the AO while framing the assessment has disallowed the deduction claimed under section 24 of the Act amounting to ₹ 74,951/- on account of excessive deduction over and above the sum of ₹ 2 lakhs allowed under the Act. Thus, the assessment was framed by the AO at ₹ 58,70680/- after making the addition of the disallowance of ₹ 74,951/- under section 24 of the Act representing the excessive interest claimed by the assessee. As per the AO, the income assessed under section 147 r.w.s. 144 of the Act represents the underreporting of income in pursuance to the provisions of section 270A(2) of the Act. Accordingly, the AO proposed to levy the penalty under section 270A of the Act on account of underreporting of income by issuing a show cause notice under section 274 of the Act. The assessee in response to show cause notice submitted that he has been filing the return of income under section 139 of the Act regularly for the last many years. Even for the year under consideration, the assessee claimed having been given the necessary details to the tax consultant for filing the return of income and therefore he was under the bona fides impression that the return has been filed. Furthermore, the assessee has switched his job in the year under consideration and all the tax liabilities were duly deducted by the employer and deposited with the government exchequer. Thus, the assessee under the bona fides belief failed to file the return of income under section 139 of the Act. Accordingly, the

assessee contended that there cannot be any penalty on account of underreporting of income in the given facts and circumstances.

7.1 However, the AO was not satisfied with the reasoning of the assessee on the ground that the assessee was required to file the return of income under section 139 of the Act, but he failed to do so. As such, the form 16 along with computation of income was furnished in response to the show cause notice issued during assessment proceeding under section 147 of the Act. As per the AO, there was underreporting of income by the assessee in pursuance to the provisions of section sub 2 of section 270A of the Act. Accordingly, the AO levied the penalty of ₹ 8,16,895/- being 50% of the tax liability on account of under reporting of income, which was subsequently confirmed by the learned CIT(A).

7.2 Undisputedly the income of the assessee was subject to the tax liabilities on which tax at source was duly deducted by the employer and deposited with the government exchequer on behalf of the assessee which was also reflecting in the record of the department. Accordingly, there was no loss to the revenue as far as the tax liability is concerned. The provisions of clause (a) of subsection 6 of section 270A of the Act provides that there will not be any under reporting of income if the assessee furnish explanation with respect to the income and discloses all the material facts regarding such income and the AO is satisfied that the explanation offered is bona fide. In the present case, the income of the assessee was subject to TDS and almost entire tax liability was already paid by way of TDS and the same was duly reflecting in the record of the department. Hence there was no reason for the assessee to underreport his income by not furnishing return of income. Further, the assessee has been filing return of income for the last many years.

Therefore, we find that the explanation furnished by the assessee for failing to file return of income was bona fides as the assessee never intended to underreport the income.

7.3 Likewise, as far as the addition of ₹ 74,951/- is concerned, we reiterate that the assessee under the bona fides belief has claimed a higher amount of deduction under section 24 of the Act. Therefore, in the given fact and circumstances no penalty under the provision of section 270A of the Act shall be levied. In holding so, we draw support and guidance from the order of Ahmedabad Tribunal in the case of Parulben Vijaykumar Patel vs ITO reported in 163 taxmann.com 191 where it was held as under:

*14. Now the issue for consideration before us is that in view of the assessee's particular set of facts, as applied to the relevant statutory provisions are reproduced above, whether firstly the case of the assessee is one of underreporting of income or one of misreporting of income. Secondly, can the assessee claim the benefit of sub-Section (6) of the Act which is to the effect that the assessee has been able to provide the reasonable explanation for such non-disclosure regarding sale of property by not filing of return of income.*

*15. In our considered view, the case of the assessee does not fall under any of the specific provision content in Section 270A(2) of the Act which deals with various circumstances relating to "under reporting of income". Therefore, since the assessee's case does not fall under sub-Section (2) of Section 270A, then the benefit of sub-Section (6) to Section 270A is also not available to the assessee. Therefore, the next issue for consideration is whether the assessee's case is one of misreporting of income and whether the case of assessee falls specifically under sub-Section (a) to Section 9 dealing with "misrepresentation or suppression of facts". Further, since sub-Section (a) to Section 270A specifically provides that "notwithstanding anything content in sub-Section (6)", where underreported income is in consequence of misreporting thereof by any person, the penalty shall be equal to 200% of the amount of tax payable on such under reported income. In the instant facts, certain facts are noteworthy. The first fact is that the purchaser, at the time of sale of property, property taxes had been effectively deducted at source at approximately 50% of the amount of taxes payable on such sale consideration. Secondly, the assessee was, in the instant facts, under*

*a bona fide believe that she was not liable to pay taxes on sale of property, when taxes had been withheld at source at the time of purchase by the purchaser of such property. Thirdly, the assessee was under the genuine belief that there is no misrepresentation or suppression of facts, since the purchaser of property had deducted taxes at the time of purchase and the entire transaction was duly reflecting in Form No. 26AS on the portal of the Department, which was within the knowledge of the Income Tax Department, therefore, there is no question as regards to any misrepresentation or suppression of facts, since the Department has not disputed the actual amount of sale consideration, which has been reported in Form No. 26AS. In our view, it would be a different matter if the Department would have alleged that there was a difference / mismatch between the sale consideration as reflecting in Form No. 26AS on which TDS has been deducted under Section 194-IA of the Act and the actual sale consideration which had been received by the assessee on such sale of land. That, in our view, it would have been a case of misrepresentation or suppression of facts. However, once the sale consideration is reported in Form No. 26AS on the Government website and the amount of sale consideration has not been challenged / disputed by the Department and taxes has been withheld on such sale consideration by the purchaser of property under Section 194-IA of the Act, then, in our view, this is not case of misrepresentation or suppression of facts. In the instant case, the assessee was under a bona fide believe that once the correct income flowing from sale of property is duly reflecting in Form No. 26AS on the Government website and taxes have been deducted at source by the purchaser of such property under Section 194-IA of the Act, the assessee was under no further obligation to file return of income disclosing sale of aforesaid property and pay any further taxes thereon. Looking into the instant facts, the intention of the assessee was not to misrepresent or suppress any facts and the return of income had not been filed under a bona fide belief that since the entire transaction has been correctly reported in Form No. 26AS on the website, there is no further requirement to file return of income and disclose such transaction in the return of income.*

7.4 In view of the above, we can safely hold that the assessee due to bona fide belief failed to file the return of income. Therefore, no penalty shall be levied under section 270A of the Act on account of underreporting of income. Accordingly, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the penalty levied by him. Hence, the ground of appeal raised by the assessee is hereby allowed.

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

Order pronounced in court on 21<sup>st</sup> day of August, 2024

Sd/-

**(KESHAV DUBEY)**

Judicial Member

Bangalore

Dated, 21<sup>st</sup> August, 2024

Sd/-

**(WASEEM AHMED)**

Accountant Member

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore