

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI VIKAS AWASTHY, JM
AND
SHRI PRASHANT MAHARISHI, AM

ITA No. 2602/Mum/2023

(Assessment Year: 2017-18)

Prathamesh Vivek Khot
1502-1503 Dreams 1-A Wing,
LBS Marg Bhandup (W),
Mumbai-400 078

Vs.

Income Tax Officer,
National e-Assessment
Centre, Delhi
Maharashtra-400 078

(Appellant)

(Respondent)

PAN No. BSBPK6695K

Assessee by : Shri Mandar Vaidya, AR
Revenue by : Shri H.M. Bhatt, DR

Date of hearing: 18.12.2023
Date of pronouncement : 31.01.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against the appellate order passed by the National faceless appeal Centre, Delhi (the learned CIT (A)) for assessment year 2018 - 19 dated 25/5/2023 wherein the appeal filed by the assessee against the order passed under section 270A of the act by the National e-Assessment Centre, Delhi (the learned AO) leaving the penalty under section 270A (9) at ₹ 757,438/- ,was dismissed.
02. Assessee aggrieved with the same raised following grounds in this appeal: -

"1. The learned CIT (A) misdirected himself in not appreciating that the Appellant's case did not amount

to 'misreporting' since it is beyond the scope & ambit of Sec.270A(9) of the Act.

2. The learned CIT (A) failed to note that the appellant had a meritorious case in quantum proceedings and hence the question of levy of penalty u/s 270A did not arise.

2. The learned CIT (A) fell in error of law in not appreciating that, the Appellant was holding one residential house jointly along with his father and hence clause(a)(i) of the proviso to section 54F of the Act, had no application to such house.

3. Without prejudice to the above it is submitted that the learned CIT (A) failed to appreciate that there was no question of underreporting of income, since there was no suppression of facts by the Appellant and there was only a difference in interpretation of the section, on fully disclosed facts.

4. The learned CIT (A) was not justify din not addressing the contentions raised by the Appellant.”

03. Brief facts of the case shows that assessee is an individual, mechanical engineer by profession engaged as a consultant. Assessee was issued notice under section 142 (1) of the Act. It was noted that assessee has claimed exemption of ₹ 1,838,442/- under section 54F of the income tax act. The assessee was asked to produce the copies of the sale deed and purchase deed of the properties as well as purchase deed of new asset to substantiate the claim of the deduction under section 54F

of the act. During examination, it was found that assessee owns two residential house properties and has offered rental income in his return. Therefore, in terms of section 54F the assessee is not entitled for the above exemption. Assessee explained that property at flat number 1501 dream wings is received by the assessee on death of his mother through will and is not purchased. Another property is purchased by the assessee on 27/2/2015 as joint owner with his father. Therefore, assessee is having only one property other than the property transferred by the assessee hence exemptions is available. The AO denied the exemption holding that assessee owns more than one residential house other than the new asset on the date of transfer of the original asset and therefore is not entitled to deduction/exemption under section 54F of the act. Thus, the addition of ₹ 1,838,442 was made. It was further held that assessee has misreported his income under section 270A (1) read with subsection 9 (1) of the act and therefore penalty proceedings under section 270A (1) and subsection 9 (a) of the act was initiated. The assessment order was passed on 7/4/2021 at ₹ 4,805,332/-.

04. In response to penalty notice assessee filed his reply on 26/4/2021 wherein it was stated that
 - i. Flat number 1502 was received through inheritance from his mother on her demise which is not purchased by the assessee and the other houses purchased by the assessee along

with his father. An exemption is denied due to interpretation of law with regard to deduction under section 54F and there is no misreporting or underreporting of income.

- ii. The assessee has accepted the stand taken by the AO and has paid the necessary tax along with the interest. It was further stated that as per section 270AA assessee could apply for immunity for imposition of penalty under section 270A as assessee has paid the due tax thereon accepting the demand and assessee does not want to file an appeal against the said order. Therefore, assessee requested to granting immunity from imposition of penalty and to drop the penalty proceedings under section 270A of the act.
05. The learned AO held that assessee has not filed a formal application for immunity from levy of penalty in the prescribed form number 68 before the AO as per the provisions of section 270AA of the act within the time limit and therefore assessee is not entitled to the immunity. Assessing officer further served to him notices but assessee did not respond. Therefore AO held that assessee has underreported as income which is in consequence of misreporting and levied penalty under section 270A (9) of ₹ 757,438 by order under section 270A of the act dated 11/1/2022.

06. Assessee preferred an appeal before the CIT appeal, who passed an order on 25/5/2023. With respect to the claim of the immunity, assessee claimed that delay in filing form number 68 is unintentional as it was a period of Covid 19 second wave (April 21 to August 2021) and further income tax portal was revamped on 7 June 2021 and many forms and functionalities could not be accessed due to technical glitches on the portal. There is no intentional delay and the delay has happened due to oversight. The learned CIT – A held that immunity can be granted only if the appellant made an application within one month from the end of the month in which the order passed by the AO is received by the assessee. The assessee did not fulfill the condition for claiming exemption under section 54F of the act findings of the AO that the appellant has underreported his income of ₹ 1338,442/- consequence of misreporting and the penalty has been rightly levied under section 270A (9) of the act of ₹ 757,438/-, therefore he did not interfere and dismiss the appeal of the assessee.
07. The learned authorized representative vehemently submitted that
- i. Even on the merits, the claim of the assessee under section 50 4F is maintainable as assessee is joint owner along with his father in one of the house property and therefore it cannot be said that assessee is owner of the property where he is a joint owner. For this proposition he relied on the decision of the coordinate bench in

case of income tax Officer versus Rasiklal N Satra (2006) 98 ITD 335 (MuM). He also submitted the copy of the purchase date of the property where the assessee and his father are the joint owners.

- ii. It was further submitted that the assessment order was passed on 7/4/2021 and in penalty proceedings on 26/4/2021 assessee sought an immunity. He referred to paragraph number 4 of the penalty order wherein the last paragraph of the submission the assessee has sought immunity and stated that assessee has not filed any appeal and paid the due tax thereon. This issue has not been decided by the learned assessing officer.
- iii. With respect to filing of form number 68 it was specifically stated before the learned CIT – A in paragraph number 4. It was further stated that delay in filing form number 68 is merely due to. Of Covid 19 second wave from April 2021 to August 2021 and further the income tax portal was revamped on 7 June 2021 where forms and functionality could not be accessed due to technical glitches on the portal and delay has happened due to oversight.
- iv. It was also claimed that assessee has tried to file the form number 68 however getting an error while filing the same. Before CIT appeal



assessee enclosed form number 68 and error acknowledgement also. Therefore he submitted that levy of penalty would cause a genuine hardship.

08. The learned departmental representative relied upon the orders of the lower authorities. It was further stated that assessee has not filed form number 68 in time and therefore could not be granted immunity from penalty. Therefore it is correctly rejected by the learned CIT – A.
09. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, the assessee was denied benefit of exemption of section 54F of the act. Assessee has accepted the addition and did not file any appeal. Assessee has also paid the due tax thereon. Assessee submitted before the assessing officer within one month of the assessment order that he would like to apply for immunity from the penalty by applying the provisions of section 270AA of the act as he has paid the complete tax and does not want to pursue the addition in further appeal. However, instead of considering the same, the learned assessing officer levied penalty under section 270A of the act. Undisputedly the learned assessing officer has also noted that assessee has paid the tax due as well as has not filed an appeal before the learned CIT – A. Before the learned CIT – A assessee has given a reason why he could not file form number 68 in time but intimated to the assessing officer about the immunity provision and complying with those conditions in



time. He referred that those period was Covid 19 second phase and further he also produced before the learned CIT – A about the error report in filing form number 68. No doubt, that assessee has complied with provisions of subsection (1) of section 270AA of the act. However, assessee has not made such an application in form number 68 as provided according to rule 129 within one month from the end of the month in which the order referred to was received. However the assessment order was passed on 7/4/2021, the assessee on 26/4/2021 has categorically stated that he has complied with the provisions of section 270AA (1) of the act. Even in filing form number 68 the error report received was produced before the lower authorities. Even then, the claim of immunity was rejected by the learned CIT – A and the learned assessing officer did not consider it at all. No fault can be found with the assessee if on filing of form number 68 error reports are generated. Further, according to provisions of 270AA (4) assessing officer shall pass an order accepting or rejecting the application of the assessee for granting of immunity after giving an assessee and opportunity of hearing. In this case, no such opportunity was provided to the assessee. Therefore, we set-aside the whole issue back to the file of the learned assessing officer to decide the issue of availability of immunity from imposition of penalty under section 270AA of the act first. The assessee shall also provide the evidences of filing of form number 68, which could not be uploaded due to the error. Needless to say that an opportunity of hearing be



provided to the assessee before rejecting application for immunity. If the learned assessing officer still rejects the immunity application, he may proceed in accordance with the law.

010. In the result, appeal of the assessee is allowed as indicated above for statistical purposes.

Order pronounced in the open court on 31.01.2024.

Sd/-
(VIKAS AWASTHY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.01.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai