

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2898/MUM/2023
(Assessment Year: 2018-2019)**

Satyam Print House,
Satyam Print House, A-2,
119, Shah & Nahar Industrial,
Dhanraj Mill Compound,
Lower Parel, Mumbai - 400013
[PAN: ABQFS5874B]

..... **Appellant**

**Additional/Joint/Deputy/
Assistant Commissioner of Income
Tax, Income Tax Officer,**
National Faceless Assessment Centre,
Delhi

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Pritesh Mehta
For the Respondent/Department : Shri Prashant Mahajan

Date : 13.12.2023
Conclusion of hearing : 08.03.2024
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 19/06/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Order, dated 30/12/2021, levying penalty of INR 5,40,750/- under Section 270A of the Income Tax Act,

1961 (hereinafter referred to as 'the Act').

2. The Assessee has raised the following grounds of appeal:

- "1. On facts and circumstances of the case, the order passed by the CIT (A) is bad in the eyes of law.*
- 2. The CIT(A) has erred in law and on facts in upholding the levy of penalty u/s 270A in respect of addition made under section 50C.*
- 3. The CIT(A) has erred in law and on facts in upholding the levy of penalty u/s 270A in respect of addition made under section 50C ignoring the fact the transaction of sale has taken place at prevailing market price.*
- 4. The CIT(A) has erred in upholding the levy of penalty u/s 270A rejecting the contention of the assessee that the sale price is the actual price of property and no penalty u/s 270A can be levied on artificial income not earned by the assessee.*
- 5. The CIT(A) failed to appreciate the addition u/s 50C was made on the basis of presumptions and inferences and without any concrete evidence.*
- 6. The CIT(A) failed to appreciate that merely because the appellant agreed for addition, penalty u/s 270A should not be levied unless and until there is a concealment of income or furnishing inaccurate particulars of income.*
- 7. The CIT(A) failed to appreciate that the assessing officer has not questioned the actual sales consideration received by the appellant but the addition is made purely on the basis of deeming provisions u/s 50C. The assessing officer has not given any finding that the actual sale consideration is more than the sale consideration admitted and mentioned in the sale agreement.*
- 8. The CIT(A) has failed to appreciate that in the above circumstance, it does not amount to concealment of income or furnishing inaccurate particulars of income. It is also not the case of the revenue that the appellant has failed to*

furnish the relevant record as called by the assessing officer to disclose the primary facts. The appellant has furnished all the relevant facts, documents/material including the sale agreement and the assessing officer has not doubted the genuineness and validity of the documents produced before him and the sale consideration received by the appellant.

9. *The CIT(A) failed to appreciate that failure to voluntarily apply section 50C does not automatically attract penalty u/s 270A.*
10. *The appellant craves leave to add, amend, modify or alter the above grounds of appeal to any stage of appellate proceedings.*
11. *The appellant humbly prays that the appeal to be allowed in toto."*

3. The relevant facts in brief are that the Assessee filed return of income for the Assessment Year 2018-19 on 23/09/2018. The case of the Assessee was selected for limited scrutiny in relation to issue of investment in immovable property. During the assessment proceedings, the Assessing Officer noted that the Assessee had purchased immovable property for consideration of INR 2,10,00,000/-, whereas the market value of the immovable property for the purpose of levy of stamp duty stood at INR 3,23,55,630/-. The Assessee was asked to show cause why difference of INR 1,13,55,630/- should not be treated as income of the Assessee under Section 56(2)(x) of the Act. In response, the Assessee submitted that the difference in the valuation was on account of the fact that the Assessee had to undertake the demolition of existing factory building/structure. The Assessee had obtained permission to demolish the structure from the concerned authorities. A copy of the approval letter dated 05/06/2018 [DE/MHP/(C)-11/A-49/FMS/B93632/2018] issued by the Deputy

Engineer, Maharashtra Industrial Development Corporation, Mahape was also furnished by the Assessee. In view of the objections raised by the Assessee, the issue of valuation of the immovable property was referred to the Valuation Officer. Vide valuation report dated 12/04/2021, the Valuation Officer determined the value of the immovable property at INR 2,45,00,000/- as against the stamp duty valuation of INR 3,23,55,630/-. Thus, there was a difference of INR 35,00,000/- between the sale consideration of INR 2,10,00,000/- and the aforesaid valuation determined by the Valuation Officer. Accordingly, the Assessing Officer made an addition of INR 35,00,000/- to the returned income and initiated penalty proceedings under Section 270A of the Act for under-reporting of income.

4. During the penalty proceedings, the Assessee was filed reply stating that the demand raised by the Assessee has already been paid and therefore, the penalty be waived. However, the Assessing Officer concluded that merely paying of tax against the assessment order was not sufficient reason to escape from the penalty proceedings. The Assessee had accepted the addition made by the Assessing Officer and therefore, initiation of penalty proceedings was justified. Thereafter, the Assessing Officer, (vide order, dated 30/12/2021, passed under Section 270A of the Act) proceeded to levy penalty of INR 5,40,750/- being 50% of the amount of tax payable (i.e. INR 10,81,500/-) on the under-reported income of INR 35,00,000/-.
5. Against the above levy of penalty, the Assessee preferred appeal before CIT(A). It was submitted on behalf of the Assessee that the

Assessee had accepted the addition of INR 35,00,000/- and agreed to pay tax on the additional income to avoid litigation and to buy peace of mind. Further, all material facts were disclosed in the return as well as during the assessment proceedings. In the present case the addition has been made under Section 56(2)(x) of the Act by invoking the deeming provisions. Therefore, it cannot be said that the Assessee has under-reported income. Further, the Assessee had provided reasons why the immovable property was purchased for consideration lesser than the stamp duty value. However, the Assessing Officer had failed to take into the consideration the explanation offered by the Assessee. Further, in alternative, it was contended on behalf of the Assessee that even as per the provisions of Section 270AA of the Act, the Assessee was entitled to be considered for immunity from the imposition of penalty since the Assessee had accepted the addition and paid the additional tax liability in two installments of INR 9,00,000/- and INR 6,01,860/- on 12/05/2021 and 18/05/2021 which was well within the period of 30 days of the date of the assessment order. Even during the assessment proceedings, the Assessing Officer has accepted the additional income and agreed to pay tax on the same. However, vide order dated 19/06/2023, the CIT(A) reiterated the stand taken by the Assessing Officer and confirmed the levy of penalty under Section 270A of the Act.

6. Being aggrieved, the Assessee is now in appeal before us.
7. We have heard the rival contention and perused the material on record.
8. On perusal of record, we find that the Assessee had agreed to

addition of INR 35,00,000/- and to discharge additional tax liability during the assessment proceedings as recorded by the Assessing Officer in paragraph 11 of the Assessment Order, dated 24/04/2021, passed under Section 143(3) read with Section 144B of the Act which read as under:

"11. In response to the above show cause notice the assessee filed his response on 19/04/2021 which is reproduced below:-

"As we are ready to pay the tax amount on the additional income as shown in the show cause notice and hereby pray to you to request you to waive the interest and penalty amount.

12. Since the assessee has agreed for the proposed addition of INR 35,00,000/- as income from other sources, the assessment is completed as under:

xx xx"

9. Further, the fact that the Assessee had paid the additional tax liability in two installments of INR 9,00,000/- and INR 6,01,860/- on 12/05/2021 and 18/05/2021 was not disputed by the Assessing Officer and the CIT(A). Thus, the additional tax liability on addition of INR 35,00,000/- was paid within the period of 30 days from the passing of the assessment order, dated 21/04/2021.
10. It is the case of the Assessee that formal application for seeking immunity under Section 270AA of the Act was not moved by the Assessee as the Assessee was not aware of the provisions contained in Section 270AA of the Act at the time of penalty proceedings. However, in effect, the Assessee had during the assessment proceedings as well as penalty proceedings brought on record all the relevant facts and had prayed for waiver of penalty. Before the CIT(A), the Assessee had specifically made alternative

prayer seeking setting aside the levy of penalty and seeking directions to the Assessing Officer for consideration of the request for grant of immunity from the imposition of penalty under Section 270AA of the Act. On perusal of record, we find that the aforesaid averments made on behalf of the Assessee to be factually correct. The Assessee was entitled to make application and seek immunity from levy of penalty in terms of Section 270AA of the Act as the Assessee had agreed to the addition and made payment of additional tax liability within the period of 30 days.

11. Further, we note that in the present case, the penalty has been levied for under-reporting of income under Section 270A(7) of the Act. Section 270A(6)(a) of the Act excludes from the ambit of under-reported income, the amount of income (a) in respect of which the Assessee offers explanation and (b) the Assessing Officer is satisfied that explanation offered is bonafide and that the Assessee has disclosed all material facts to substantiate the explanation offered. On going through the facts and circumstances of the present case, we note that explanation was offered by the Assessee. However, neither the Assessing Officer nor the CIT(A) have taken into consideration the explanation offered by the Assessee during the assessment proceedings in relation to the difference in the sale consideration and the stamp duty valuation of immovable property. In our view, the explanation offered by the Assessee was bonafide. Neither the Assessing Officer nor the CIT(A) had disputed the fact that the Assessee had undertaken to demolish factory building/structure after obtaining necessary approval from the concerned authorities which were furnished during the assessment proceedings. All material facts relating to substantiate the explanation were furnished by the Assessee during

the assessment proceedings. In view of the aforesaid, the additional income of INR 35,00,000/- was required to be excluded from the under-reported income in terms of Section 270A(6)(a) of the Act.

12. It is pertinent to note that even the Valuation Officer had determined the fair market value of the immovable property at INR 2,45,00,000/- which was lower than the stamp duty valuation of INR 3,23,55,630/-. The Assessing Officer had determined the amount of under-reported income on the basis of estimate made by the Valuation Officer in respect of the fair market value of the immovable property after comparing the same with the sale consideration of INR 2,10,00,000/-. We note that as per Section 270A(6)(c) of the Act under-reported income does not include the amount of under-reported income determined on the basis of an estimation, where an assessee has estimated a lower amount of addition on the same issue provided all facts material to addition have been disclosed by the Assessee. In the present case the Assessee is on a better footing. While the addition has been made on account of estimation of fair market value by the Valuation Officer, the income has been computed by the Assessee on the basis of sale consideration determined by the Assessee by negotiation/agreement with a third party and not by way of estimation. Thus, our conclusion in paragraph 12 above that additional income of INR 35,00,000/- was to be excluded from the ambit of under-reported income also draw support from the provisions contained in Section 270A(6)(c) of the Act.
13. Thus, in view of the above, we hold that in the facts and circumstances of the present case, penalty under Section 270A(7)

of the Act could not have been levied on the additional income of INR 35,00,000/-. Accordingly, the penalty of INR 5,40,750/- levied under Section 270A of the Act is deleted. Ground No. 1 and 2 raised by the Assessee are allowed while all the other grounds raised by the Assessee are dismissed as being infructuous.

14. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 08.03.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 08.03.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai