

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "D" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 188/Mum/2023 (A.Y. 2017-18)

D.C. Polyester Limited S.V. Industrial Estate Aarey Road, Goregaon-E Mumbai-400 063.  PAN : AAACD3816C (Appellant)	Vs.	DCIT, CC-6(4) Room No. 1925 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai 400 021. (Respondent)
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Assessee by	Shri Ravikant Pathak
Department by	Smt. Mahita Nair
Date of Hearing	07.09.2023
Date of Pronouncement	17.10.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 24.11.2022 passed by the learned CIT(A)-54, Mumbai and it relates to A.Y. 2017-18. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the penalty of Rs. 1,83,550/- levied by the Assessing Officer under section 270A of the I.T. Act.

2. Facts relating to the issue are stated in brief. The assessee herein belongs to D' Decor Group. It is engaged in the business of manufacture and sale of textile products. The original return of income filed by the assessee declaring loss of Rs.72,200/- was processed u/s 143(1) of the Act. Subsequently, the assessee's group was subjected to search on 6.3.2018 and consequent thereto the Assessing Officer initiated assessment proceedings under section 153A of the Act in the hands of the assessee. The assessee e-filed its return of income in response to the notice issued under section 153A of the Act by declaring the very same income, i.e., net loss of Rs. 72,200/-.

3. During the course of scrutiny proceedings, the Assessing Officer noticed that the assessee has offered rental income of Rs.29,60,000/- under the head 'income from house property'. The Assessing Officer noticed that the assessee had declared the rental income from very same property under the head 'income from business' in an earlier year, i.e., in A.Y. 2013-14. However, in the instant year, the assessee has declared rental income under the head 'income from house property' and also claimed various other expenses against its business income. He further noticed that there was no business income during the year under consideration.

4. The assessee submitted that it has reduced its business substantially and all the expenses claimed in the profit and loss accounts are related to the business only. It was submitted that the rental income was rightly offered under the head 'income from house property' during the year under consideration. In the alternative, the assessee submitted that it will not object to assessing rental income under the head 'income from business'. Accordingly, the Assessing Officer assessed the rental income under the head 'income from business'. It is pertinent to note that the assessee would be getting standard deduction u/s 24(a) of the Act towards repairs to the tune of 30% of rental income, if the same is offered under the head "Income from house property". If it is offered under the head "Income from business", the above said standard deduction will not be available. Since the AO assessed the rental income under the head "Income from business", the same resulted in disallowance of standard deduction of 30% claimed by the assessee towards repairs u/s 24(a) of the Act. Accordingly, the total income came to be determined at Rs. 11,15,800/-. It is also pertinent to note that the assessee accepted the assessment order and did not file appeal before the learned CIT(A).

5. Subsequently, the Assessing Officer initiated penalty proceedings under section 270A of the Act for “under reporting” of the income. Before the Assessing Officer, the assessee submitted that it did not under report any income and addition made by the AO pertained to the statutory deduction allowable under section 24(a) of the Act while computing income under the head ‘income from house property’. The Assessing Officer did not accept the explanations of the assessee. He took the view that the furnishing of inaccurate particulars of income would have gone undetected, if the return of income of the assessee was not taken up for scrutiny. He also took the view that the claim of statutory deduction as well as expenses in the Profit and Loss account under two different heads of income would tantamount of under reporting of income under section 270A of the Act. Accordingly, he levied penalty of Rs. 1,83,550/- under section 270A of the Act. The learned CIT(A) also confirmed the same.

6. Learned counsel appearing for the assessee submitted that the assessee did not under report any income, i.e., it has disclosed full details of income both in the profit and loss account and in the return of income. He submitted that it was true that the assessee was declaring rental income earned on letting out of factory premises under the head ‘income from business’. However, during the year under consideration, the business of the assessee has almost been stopped and hence the tax consultant of the assessee advised to offer the rental income under the head ‘income from house property’. Accordingly, the assessee offered the same under the head of House Property. While computing income under the head House Property, the statutory deduction of 30% of the rental income towards repairs is allowed under the provisions of section 24(a) of the Act irrespective of the actual expenses incurred by the assessee. He submitted that the above said statutory deduction is automatically computed by the software once rental income is shown under the head ‘income from house property’. He further submitted that, subsequently when the Assessing Officer questioned about

change in the head of income, the assessee agreed for assessing the rental income under the head 'income from business', against which the statutory deduction claimed under section 24(a) will not be available. Accordingly, the Learned AR submitted that the assessee did not under report any income and ultimately, the addition made by the Assessing Officer is related to statutory deduction prescribed in section 24(a) only. Accordingly, he contended that mere change in head of income will not result in under reporting of income.

7. Inviting our attention to the provisions of section 270A of the Act, the Ld A.R submitted that the said provision uses the expression that "the Assessing Officer 'may direct", meaning thereby, a discretion is given to the Assessing Officer not to initiate penalty proceedings under section 270A of the Act. He submitted that the sub. Sec. (2) of sec. 270A lists out the instances which are considered to be "under reporting" of income and clause (g) of it covers the case, when loss is converted into income. However, sub-section (6) of section 270A lists out exceptions to sub. Sec (2), i.e. the instances which will not be considered as under reporting of income. He submitted that clause (a) of sub. Sec. (6) specifically states that the amount of income in respect of which the assessee offers an explanation and the Assessing Officer is satisfied that the explanation is bonafide and the assessee has disclosed all material facts to substantiate explanation so offered will not be considered as under reporting of income.

8. The Learned AR submitted that the assessee has offered an explanation stating that the tax consultant has advised the assessee to offer rental income under the head 'income from House property', since there was substantial reduction in the business carried on by the assessee. Once rental income is declared under the head income from house property, the software automatically allows statutory deduction towards repairs @ 30%. Accordingly, the Ld A.R submitted that the addition to the total income,

which was related to the Statutory deduction, is covered by the above said bonafide explanation of the assessee. Accordingly, the learned AR pleaded that the penalty levied under section 270A of the Act may kindly be deleted. In support of his contention, learned AR placed reliance on the decision dated 31.5.2023 passed by the Chennai Bench of the Tribunal in the case of S. Saroja Vs. DCIT (ITA No. 418/Chny/2023). In the above said case the assessee had declared annual value of the property at Rs. 5,40,000/- instead of Rs. 8,40,000/-. It was noticed that the above said mistake has occurred on account of mistake committed by the accountant and the Tribunal held that such kind of mistake cannot be considered as under reporting of the income for levying penalty under section 270A of the Act.

9. The Learned DR, on the contrary, submitted that the Assessing Officer has given proper reasoning for levying penalty under section 270A of the Act. She submitted that the assessee has changed the head of income for offering rental income, even though the very same rental income was offered as business income in the earlier years. She submitted that the assessee has claimed expenses in the Profit and loss account and the expenses relating to rental income have not been disallowed. It has offered rental income under the head House property in order to avail statutory deduction @ 30% of rental income, which would not be available if it was offered as business income. She contended that it would amount to under reporting of income. She further submitted that the above said under reporting of income came to the light only because the return of income filed by the assessee was taken up for scrutiny. Accordingly, learned DR contended that the learned CIT(A) was justified in confirming the penalty levied under section 270A of the Act.

10. We heard rival contentions and perused the record. We notice that section 270A of the Act uses the expression "*the Assessing Officer 'may direct'*". Hence there is merit in the contention of the assessee that levying of penalty is not automatic and discretion is given to the Assessing Officer not

to initiate penalty proceedings under section 270A of the Act. From the facts discussed earlier, it can be noticed that the addition came to be made on account of change in the head of income for assessing the rental income. We noticed that the assessee had offered rental income under the head "Income from House Property", but the assessing officer has assessed the same under the head "Income from business." The standard deduction @ 30% allowable u/s 24(a) while computing income under the head Income from house property will not be available when it is assessed under the Income from business. Thus, it is not a case that the assessee has suppressed or under reported any income. The addition came to be made to the total income returned by the assessee, due to change in the head of income, i.e., the addition has arisen on account of computational methodology prescribed in the Act. In our view, this kind of addition will not give rise to under reporting of income. Accordingly, we are of the view that the AO should have exercised his discretion not to initiate penalty proceedings u/s 270A of the Act in the facts and circumstances of the case.

11. As submitted by Ld A.R that sub. Sec. (2) of sec. 270A lists out the instances which are considered to be "under reporting" of income and clause (g) of it covers the case, when loss is converted into income. However, sub-section (6) of section 270A lists out exceptions to sub. Sec (2), i.e., the instances which will not be considered as cases of 'under reporting' of income. Clause (a) of sub. Sec. (6) specifically states that the amount of income in respect of which the assessee offers an explanation and the Assessing Officer is satisfied that the explanation is bonafide and the assessee has disclosed all material facts to substantiate explanation so offered will not be considered as under reporting of income. In the instant case, as noticed earlier, the assessee has not under reported any income. The addition has arisen on account of change in head of income. We notice that the assessee has offered an explanation as to why it reported the rental income under the head Income from House property and the said

explanation is not found to be false. Accordingly, we are of the view that the case of the assessee is covered by clause (a) of sub.sec. (6) of sec. 270A of the Act. We notice that the Chennai bench of Tribunal has held in the case of S Saroja (supra) that bonafide mistake committed while computing total income, the penalty u/s 270A of the Act should not be levied.

12. Accordingly, we are of the view that the impugned penalty levied u/s 270A of the Act is liable to be deleted. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the impugned penalty.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 17.10.2023

Sd/-  
(Pavan Kumar Gadale)  
Judicial Member

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 17/10/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

SA

(Assistant Registrar)  
ITAT, Mumbai