

**आयकर अपीलिय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri Manjunatha, G. Accountant Member**  
**and**  
**Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.604 & 605/Hyd/2022**  
(निर्धारण वर्ष / Assessment Year: 2017-18 & 2018-19)

ACIT Central Circle-2(4) Hyderabad	Vs.	Incredible India Projects Private Limited Secunderabad [PAN : AABCI9355A]
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Sandeep Goel, AR	
राजस्व द्वारा / Revenue by:	Shri B.Bala Krishna, CIT, DR	
सुनवाई की तारीख / Date of hearing:	19/09/2024	
घोषणा की तारीख / Pronouncement:	14/11/2024	

**आदेश / ORDER**

**PER. MANJUNATHA G., A.M:**

These two appeals filed by the Revenue are directed against the separate, but identical orders of the learned Commissioner of Income Tax (Appeals) [Learned CIT(A)]-12, Hyderabad, both dated 30/08/2022, pertaining to A.Y.2017-18 and 2018-19. Since the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed of by this consolidated order.

2. The Revenue has raised more or less common grounds of appeal for both the assessment years, therefore, for the sake of brevity, grounds of appeal raised for the A.Y.2017-18 are reproduced as under :

*1. The Ld.CIT(Appeals) erred both in law and on facts of the case in granting relief to the assessee.*

*2. The Ld.CIT(A) ought to have upheld the Assessing Officer's treatment of the assessee's case as that of recording of false in the books of accounts u/s 270A(9)(d) of the Act as the assessee admitted to disallow cash payments of Rs.65,28,28,100/- made to M/s Aurora Educational Society vide his statement recorded during search proceedings.*

*3. The Ld.CIT(A) ought to have appreciated the fact that in order to escape from the penal provisions of dealing in cash the assessee disguised and camouflaged the cash payments of Rs.4,83,51,191/- under the head "Development Expenses" and "Site Salaries" in the books of accounts.*

*4. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.*

3. Brief facts of the case are that a search and seizure operation u/s 132 of the Income tax Act, 1961 ("the Act") was conducted in the case of M/s Aurora Educational Society & Other groups, in which assessee was also covered. During the course of search at the premises of M/s Incredible India Projects Pvt. Ltd., certain cash receipts and cash vouchers in respect of cash payments made to M/s Aurora Educational Society for purchase of immovable properties were found and seized vide Annexure A/IIPPL/01. The assessee was called upon to explain the nature of payment and treatment given in its books of accounts for which, it was stated that the cash payments are debited to Profit & Loss account for the F.Y.2016-17 relevant to A.Y.2017-18 under the

heads, "Site Salaries" and "Development Expenses". The assessee further stated that the entire amount of cash payment made for purchase of immovable property has been voluntarily admitted as income for the A.Y.2017-18 and 2018-19. Consequent to search, notice u/s 153A of the Act was issued and served on the assessee. In response, the assessee filed return of income, admitting total income of Rs.6,84,95,860/-, which includes additional income declared towards cash payments made for purchase of immovable properties. Thereafter, assessment has been completed u/s 143(3) r.w.s.153A and total income was assessed at Rs.6,84,95,860/- as filed by the assessee in compliance with the notice u/s 153A of the Act.

4. Subsequently, penalty proceedings u/s 270A of the Act has been initiated for the A.Y.2017-18 for under reporting of income, which is in consequence of mis-reporting thereof and notice u/s 274 r.w.s. 270A was served on the assessee on 31/12/2019. Similarly, penalty proceedings u/s 271AAB of the Act has been initiated in respect of income admitted during the course of search and seizure proceedings and notice u/s 274 r.w.s 271AAB dated 31/12/2019 was issued and served on the assessee. In response, the assessee submitted that the provisions of section 270A(2) is not applicable, because as per said provision, penalty is leviable, only if, income assessed is greater than income determined in the return processed under section 143(1(a) or income assessed u/s 143(3), whereas, in the present case there is no difference between the income returned and income assessed and consequently, no penalty can be levied. The assessee had also filed submissions for the A.Y.2018-19 and submitted that the additional income offered

towards cash payment does not fall in the ambit of undisclosed income as per Explanation 3 of section 271AAB of the Act. The Assessing Officer after considering the relevant submissions, levied penalty u/s 270A of the Act for the A.Y.2017-18 for under reporting of income which in consequence of mis-reporting thereof. Similarly, the Assessing Officer levied penalty u/s 271AAB of the Act @30% of the undisclosed income as per provisions of 271AAB (1A) of the Act.

5. Aggrieved by the penalty orders, assessee preferred appeal before the CIT(A) and challenged the penalty levied by the Assessing Officer on additional income offered towards cash payments made for purchase of immovable property and admitted in the return of income filed in response to notice u/s 153A of the Act. The assessee had also filed detailed written submission on the issue which has been reproduced at para 6.1 of the order of the Ld.CIT(A) for both the assessment years. Ld.CIT(A) after considering the submissions of the assessee and also by following certain judicial precedents held that cash paid towards purchase of immovable properties and debited under the heads "Development Expenses" and "Site Expenses" has been admitted as additional income while filing the return of income u/s 153A of the Act. Therefore, it is not a case of recording any false entry in the books of accounts and further the Assessing Officer has not made out a case that these expenses were not actually incurred and were falsely claimed by the appellant. Further, it is only the case of admitting income on the basis of deeming provision of section 40A(3) of the Act and not on account of recording a false entry in the books of account. An entry is said to be a false entry,

if it is patently incorrect or untrue or wrongly made especially made with an intention to deceive or mislead. This was not the case here. Therefore, held that the appellant's case is not covered under the provisions of mis-reporting of income as listed in Section 270A(9)(d) of the Act and hence directed the Assessing Officer to delete the penalty levied u/s 270A of the Act for the A.Y.2017-18.

6. Similarly, Ld.CIT(A) deleted the penalty levied u/s 271AAB of the Act for the A.Y.2018-19 by holding that the additional income offered by the assessee towards cash payment does not fall under the definition of 'undisclosed income'. Therefore, cash payment recorded in the books of accounts of the assessee shown under the head "Advances" in the balance sheet cannot be read as undisclosed income, which falls under the definition of undisclosed income. Therefore, deleted the penalty levied by the Assessing Officer u/s 271AAB of the Act for the A.Y.2018-19.

7. Aggrieved by the order of the Ld.CIT(A), Revenue is in appeal before the Tribunal.

8. Learned Counsel for the assessee referring to application filed under Rule 27 of ITAT Rules, 1963 for both the assessment years submitted that, the Assessing Officer levied penalty u/s 270A and 271AAB of the Act for the A.Y.2017-18 and 2018-19 respectively on the basis of vague show cause notice issued u/s 274 r.w.s. 2701A / 271AAB, without specifying the limb under which, he proposed to initiate penalty proceedings under relevant sections. Learned Counsel for the assessee submitted that though the assessee has not filed appeal or cross objection on above issue

before the Tribunal, yet it is entitled to raise this issue in terms of Rule 27 of ITAT Rules 1963 as laid down in number of decisions including in Sanjay Sawhney Vs PCIT in ITA No.834/2019 (Del.HC). Learned counsel for the assessee further referred the decision of Hon'ble Madras High Court in the case of CIT Vs. India Cement Ltd. (424 ITR 410) and other judicial precedents and submitted that, it was open to a respondent in appeal, who had not filed a cross objection with regard to the portion of the decree or order which had gone against him to urge in opposition to the appellant. Since the assessee has raised the issue of vague notice before the Ld.CIT(A) by way of written submission, although the Ld.CIT(A) has not decided the issue while adjudicating the appeal, but the appellant can very well support the order of the Ld.CIT(A) on the points which has been decided against the assessee. Therefore, submitted that the penalty levied by the Ld.AO on the basis of vague notice without specifying any limb under which the said penalty is attracted cannot be sustained under law and needs to be deleted.

9. Learned Counsel for the assessee further submitted that even otherwise penalty levied by the Assessing Officer u/s 270A of the Act, in respect of additional income offered by the assessee in the return of income u/s 153A does not fall under the category of under reporting of income which is in consequence of mis reporting, because the assessee has accounted cash payments in its books of account before the date of search, however, offered additional income under deeming provisions of section 40A(3) of the Act. Further penalty u/s 271AAB of the Act is also not applicable for the A.Y.2018-19, because additions made by the

Assessing Officer does not fall under the definition of undisclosed income. Therefore, Ld.CIT(A) has rightly deleted penalty levied by the Assessing Officer and the order should be upheld.

10. Ld.DR on the other hand opposing the application filed by the assessee under Rule 27 of ITAT Rules, 1963 submitted that as per Rule 27 of ITAT Rules, respondent, though, he may not have appealed may support the order appealed against on any of the ground decided against him. In the present case, the grounds taken by the assessee in the application filed under Rule 27 on the issue of notice issued u/s 274 r.w.s 270A/271AAB is not at all raised before the CIT(A) and the Ld.CIT(A) has not decided the said issue against the assessee. Therefore, the application filed by the assessee under Rule 27 of ITAT Rules 1963 is not maintainable.

11. Ld.DR further submitted that the Ld.CIT(A) deleted penalty levied by the Assessing Officer u/s 270A and 271AAB without appreciating the fact that recording of false entry in the books of account towards cash payment made for purchase of property come under sub clause (d) of section 9 of section 270 of the Act. Further additional income offered towards cash payment for the A.Y.2018-19 also comes under the definition of undisclosed income. Ld.CIT(A) without considering relevant provisions, simply deleted the penalty levied by the Assessing Officer, therefore, the order of the Assessing Officer should be upheld.

12. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. We have also carefully considered the application filed under Rule 27 of ITAT Rules, 1963 for both the assessment years and issues

challenged therein. Admittedly, grounds taken by the appellant in application filed under Rule 27 of ITAT Rules, 1963 are purely a legal issue which can be challenged at any time of proceedings, including proceedings before the appellate authorities. There is no dispute on this legal position. In so far as the application filed by the assessee under Rule 27 of ITAT Rules, 1963 is concerned, we find that the issue challenged by the assessee by way of said application is not decided by the Ld.CIT(A) against the assessee. Therefore, in principle, the application filed by the assessee under Rule 27 of ITAT Rules, 1963 is not maintainable. However, going by the averments made by the appellant in their application coupled with written submissions filed by the assessee before the Ld.CIT(A), it has been reproduced at para 6.1 of the order of the Ld.CIT(A), we find that, although there is no specific grounds of appeal before the Ld.CIT(A) on this issue, but in the written submissions, the assessee has challenged the penalty levied by the Assessing Officer on the basis of vague notice, without specifying the limb under which the said penalty is levied. From the above, it is clear that the assessee has raised the issue of notice u/s 274 r.w.s. 270A/271AAB and the validity of said notice in light of certain judicial precedents and argued that in the absence of specific limb under which penalty is levied whole penalty proceedings becomes vitiated and liable to be quashed.

13. There is no dispute, Ld.CIT(A) has not adjudicated the legal issue raised by way of written submission. However, the question before us is whether the assessee can raise the said plea before the Tribunal by way of application under Rule 27 of ITAT Rules, 1963 or not. This issue is no longer res-integra. Hon'ble Madras



High Court in the case of CIT Vs. India Cement Ltd. (supra) had considered identical issue and held that, once the assessee raised an issue before the CIT(A), which was not adjudicated by the first appellate authority can be deemed to be decided against the assessee and that the assessee was entitled to canvass the said issue before the Tribunal without independently filing the appeal in the light of Rule 27 of ITAT Rules, 1963. Hon'ble Bombay High Court in Peter Vaz and Others Vs. CIT [2021] 436 ITR 616 (Bom.) also considered very similar issue and held that Rule 27 of ITAT Rules, 1963 gives a right to the respondent in an appeal before the Tribunal to support the order appealed against on any of the grounds decided against him, even though he may not have appealed against the order. For supporting the order, it is not necessary for the respondent in the appeal to file a memorandum of cross objection challenging a particular finding that is rendered by the trial court against him, when the ultimate decree itself is in his favour. The sum and substance of ratio laid down by various courts is that the respondent can support the order appealed against on any points which has been decided against him by way of application under Rule 27 of ITAT Rules, 1963. Since the question raised by the assessee by way of application under Rule 27 of ITAT Rules, 1963 is purely a legal issue and further, the assessee has taken an argument before the Ld.CIT(A) on this issue by way of written submission, in our considered view, although the Ld.CIT(A) has not decided the issue against the assessee, application filed by the assessee under Rule 27 of ITAT Rules, 1963 is maintainable and thus admitted.

14. Having admitted the application filed by the assessee under Rule 27 of ITAT Rules, 1963, we find that the assessee has challenged the issue of legality of notice issued u/s 274 r.w.s. 270A / 271AAB for both the assessment years for the first time before the Tribunal and the facts with regard to said legal issue are not on record. Further, the assessee had also raised the above issue before the Ld.CIT(A) by way of written submission for both the assessment years and challenged the validity of order passed by the Assessing Officer, imposing penalty u/s 2701/271AAB of the Act. Since the Ld.CIT(A) has not discussed the issue or decided the issue raised by the assessee and further the assessee has raised the issue for the first time before the Tribunal, in our considered view, first appellate authority should get an opportunity to consider the legal issue raised by the assessee from his perspective and thus, we are of the considered view that, the issue needs to go back to the file of the Ld.CIT(A) for considering the preliminary legal issue raised by the assessee on validity of penalty proceedings initiated on the basis of vague notice issued u/s 274 r.w.s.270A/271AAB of the Act. Thus, we set aside the orders passed by the Ld.CIT(A) for both the assessment years and restore the issue to the file of the Ld.CIT(A) and also direct the Ld.CIT(A) to decide the preliminary issue raised by the assessee by way of application under Rule 27 of ITAT Rules 1963 and also written submissions filed before the first appellate authority as reproduced in para 6.1 of the order of the Ld.CIT(A). Ld.CIT(A) is also directed to consider the issue on merits after deciding the preliminary legal issue raised by the assessee for both the assessment years.

15. In the result, appeals filed by the Revenue for the assessment years 2017-18 and 2018-19 are allowed for statistical purpose.

Order pronounced in the Open Court on 14<sup>th</sup> November, 2024.

Sd/-

Sd/-

<b>(K. NARASIMHA CHARY) JUDICIAL MEMBER</b>	<b>(MANJUNATHA, G.) ACCOUNTANT MEMBER</b>
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Hyderabad, dated 14<sup>th</sup> November, 2024

*L.Rama, SPS*

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3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*