

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' NEW DELHI)
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No. 2773/Del/2023 (A.Y. 2017-18)

ITA No. 2774/Del/2023 (A.Y. 2018-19)

ITA No. 2775/Del/2023 (A.Y. 2019-20)

ITA No. 2776/Del/2023 (A.Y. 2020-21)

DD Target PMT Ltd. A-1/169, Janakpuri West, Janakpuri A-3, New Delhi PAN: AAECD2745A	Vs.	DCIT Central Circle-5, ARA Centre, Jhandewalan Extension, New Delhi
Appellant		Respondent

Assessee by	Shri Ved Jain, Adv and Sh. Ayush Garg, CA
Revenue by	Sh. Rajesh Kumar Dhanesta, Sr. Dr

Date of Hearing	13/01/2025
Date of Pronouncement	17/01/2025

ORDER

PER BENCH:

The above captioned four appeals are filed by the Assessee against the orders of the Commissioner of Income Tax (Appeals)-24 dated 07/08/2023 for Assessment Year 2017-18 to 2020-21 respectively.

2. Brief facts of the case are that, a search and seizure action u/s 132 of the Income Tax, 1961 carried out at the premises of the Assessee on 14/06/2019 and 15/06/2019. Consequent to the said search and seizure, the assessment proceedings have been initiated and the assessment orders came to be passed u/s 153A r.w. Section 143(3) of the Act for the Assessment Years 2017-18 to 2020-21 by disallowing the business expenditure. The details of the same are as under:-

Particulars	ITR u/s 139(1)	Additional Income in ITR u/s 153A	ITR u/s 153A	Disallowance of Donation	Income assessed
AY 2017-18	3,63,55,710	2,25,05,980	5,88,61,690	12,000	5,88,73,690
AY 2018-19	6,35,69,500	53,34,050	6,89,03,550	3,62,470	6,92,66,020
AY 2019-20	7,43,63,410	62,77,220	8,06,40,630	5,60,560	8,12,01,190
AY 2020-21	3,11,79,500	-	-	3,29,775	3,15,09,275

3. Consequent to the above assessment orders, the penalty proceedings have been initiated against the Assessee and orders of penalty came to be passed on 29/03/2022 and 30/03/2022 respectively by levying 200% penalty on the Assessee u/s 270A(9) (a) of the Act. Aggrieved by the orders of the penalty for the Assessment Years 2017-18 to 2020-21, the Assessee preferred the Appeals before the Ld. CIT(A). The Ld. CIT(A) vide order dated 07/08/2023, dismissed the Appeals filed by the Assessee.

4. As against the orders of the Ld. CIT(A) dated 07/08/2023 for the Assessment Year 2017-18 to 2020-21, the Assessee preferred the captioned Appeals. The Assessee has raised identical Grounds of appeal in all the four Appeals except variation in the amounts. For the sake of convenience, the Grounds of Appeals for Assessment Year 2017-18 is reproduced as under: -

"1. On the facts and circumstances of the case, the order passed by the Learned Commissioner of Income Tax (Appeals) {CIT(A)} is bad both in the eyes of law and on facts.

2. On the facts and circumstance of the case, the Learned CIT(A) has erred both on facts and in laws in confirming the action of the AO levying penalty of Rs.1,48,90,238/- invoking the provision of section 270A read with section 274 of the Income-tax Act.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty on the amount of Rs.2,25,05,980/- despite the fact that the alleged amount has already been declared by the assessee in the return of income filed in response to notice under section 153A of the Act and the same was accepted by the AO in the assessment order passed under section 153A of the Act and no adverse inference or variation has been made by the AO in the amount disclosed by the assessee.

4. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty on the disallowance of donation amounting to Rs. 12,000/- made by the AO while computing the assessed income of the assessee.

(ii) That the above said penalty has been confirmed ignoring the fact that there is no malafide intention of the assessee for not making the disallowance and hence, no penalty is leviable.

5. *On the facts and circumstance of the case, the Learned CIT(A) has erred both on facts and in laws in confirming the action of the AO despite the fact that the penalty order passed by the AO is illegal, invalid and liable to be quashed.*

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty order passed by the AO despite the fact that the same has been passed in consequence of the assessment order passed under section 153A read with the section 143(3) of the Act which itself is invalid, illegal and void ab initio and liable to be quashed in the absence of any valid DIN (Documentary Identification Number) mentioned in the body of the assessment order as specified in the CBDT Circular No. 19/2019.*

On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty levied by the AD for misreporting of income despite the fact that the penalty was levied without recording any satisfaction as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied

8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty levied despite the fact that the notice issued by AO under section 270A read with section 274 of the Act does not specify the charge mentioned under specified clauses of section 270A(9) of the Act.*

9. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty despite the fact that there is neither misreporting of income nor under-reporting of income.*

10. *On the facts and circumstances of the case the learned CIT (A) has erred both on facts and in law in confirming the penalty levied by the AO ignoring the contention of the assessee that the penalty proceedings are independent proceedings, as such mere addition/disallowance does not lead to levy of penalty.*

11. *On the facts and circumstances of the case the learned CIT (A) has erred both on facts and in law in confirming the penalty*

levied u/s 270A of the Act despite the fact that no finding has been given on merit regarding underreporting of income in the order passed by the AO.

12. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

5. Though the Assessee has raised as many as 12 Grounds of Appeal, the Ld. Assessee's Representative restricted his arguments only on Ground No.7 & 8 and not pressed the Ground No. 1 to 6 and 9 to 12. The Ld. Counsel for the Assessee canvassing on Ground No. 7 & 8 submitted that the A.O. has not mentioned under which Sub Clauses (a) to (f) in Sub Section (9) of Section 270A has been initiated in the show cause notice. Further submitted that neither in the assessment order nor in the show cause notice dated 30/09/2021 and 17/02/2021, specified on which instances the provision of Section 270A(9) has been intended to be applied by the A.O. The Ld. Counsel of the Assessee relied on following judicial pronouncements and sought for deletion of the penalty.

- *ITAT Delhi in the case of Ujala Credit Co-Operative Society Ltd. Vs. NFAC, Delhi, 2024 (6) TMI 600, dated 12.06.2024*
- *Delhi High Court in the case of Schneider Electric South East Asia (HQ) Pte Ltd vs ACIT in W.P.(C) 5111/2022 & C.M. Nos. 15165-15166/2022 dated 28.3.2022*
- *Delhi High Court in the case of Prem Brothers Infrastructure LLP vs NFAC reported in 288 Taxman 768 (Del)*
- *ITAT Mumbai in the case of Saltwater Studio LLP Vs. NFAC, 2023 (6) TMI 430, dated 22.05.2023*
- *Rajasthan High Court in the case of G.R. Infraprojects Limited Vs. ACIT, PCCIT, CBDT 2024 (1) TMI 163, dated 02.01.2023*

- *ITAT Pune in the case of Kishor Digambar Patil Vs. ITD, 2023 (3) TMI 1472, dated 30.03.2023*
- *ITAT Pune in the case of Shri Shivaji Dattatray Sonawan Vs. ITO, 2024 (3) TMI 1097, dated 02.02.2024*
- *ITAT Pune in the case of Deepak Bhika Suryawanshi Vs. ITO, Nashik, 2024 (6) TMI 985 dated 19.06.2024*
- *ITAT Pune in the case of Sagar Subhash Wedhane Vs. ITO, Nashik, 2024 (7) TMI 398, dated 03.07.2024*
- *ITAT Pune in the case of Smita Virendra Lodha Vs. ITO, 2024 (11) TMI 686, dated 12 11.2024*
- *ITAT Chennai in the case of Shri Melekandy Puthalath Farook Vs. ACIT, 2024 (12) TMI 1419 dated 05.11.2024*

6. Per contra, the Ld. Departmental Representative submitted that disclosure of the income has been taken place due to the search carried out on the Assessee and the subsequent assessment proceedings. The Assessee has clearly under reported his income due to misrepresentation or suppression of facts, therefore, the provision of Section 270A(9)(a) of the Act has been rightly invoked. Further submitted that, the Judgments relied by the Assessee has been challenged before the Hon'ble Supreme Court which is pending for consideration, therefore, sought for dismissal of the Appeals.

7. We have heard both the parties and perused the material available on record. The only issue for consideration in the above appeals are that whether the non-mentioning of the specific instance of misreported u/s 270A(9) in the show cause notice or in the assessment order will vitiate the order of penalty or not. The Jurisdictional High Court in the case of Schneider Electric South Asia (HQ) PTE. Ltd. Vs. ACIT, International Taxation, Circle-3 (1)(2), New Delhi and ors reported in 2022 (3) TMI 1295-Delhi held that, there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the assessment order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary. The relevant portion of the Judgment are as under:-

"7. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act it attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the assessment order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary.

8. This Court is of the opinion that the entire edifice of the assessment order framed by Respondent No.1 was actually voluntary computation of income filed by the Petitioner to buy peace and avoid litigation, which fact has been duly noted and accepted in the assessment order as well and consequently, there is no question of any misreporting.

9. This Court is further of the view that the impugned action of Respondent No.1 is contrary to the avowed Legislative intent of Section 270AA of the Act to encourage/incentivize a taxpayer to (i) fast-track settlement of issue, (ii) recover tax demand; and (iii) reduce protracted litigation.

10. Consequently, the impugned order dated 09th March, 2022 passed by Respondent No.1 under Section 270AA (4) of the Act is set aside and Respondent No.1 is directed to grant immunity under Section 270AA of the Act to the Petitioner.

11. With the aforesaid directions, the present writ petition along with pending applications stand disposed of.”

8. By respectfully following the Judgment of Jurisdictional High Court in the case of Schneider Electric South Asia (HQ) PTE. Ltd. (supra), we allow the Ground No. 7 & 8 of the Appeals and delete the levy of penalty u/s 270A(9)(a) of the Act in respect of Assessment Years 2017-18 to 2020-21.

9. In the result, Appeal of the Assessee in ITA No. 2773/Del/2023, 2774/Del/2023, 2775/Del/2023 and 2776/Del/2023 are allowed.

Order pronounced in the open court on 17th January, 2025

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER
Date:- 17.01.2025
R.N, Sr.P.S*

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI