

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.579/Hyd/2022		
Assessment Year: 2017-18		
Nirajita Mitra, Plot No.10, Aparna County, New Hafeezpet, Miyapur, Hyderabad – 500 049. PAN : AMEPM8259R.	Vs.	The Income Tax Officer, Ward – 12(4), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Sri C.S. Subrahmanyam.
Revenue by:		Sri Rajendra Kumar, CIT-DR
Date of hearing:		18.04.2023
Date of pronouncement:		19.04.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.25.08.2022 invoking proceedings under section 270A of the Income Tax Act, 1961 (in short, “the Act”).

“1. The order of the ld.CIT(A) is erroneous in law and on the facts of the case.

2. The ld.CIT(A) erred in sustaining the levy of penalty of Rs.31,300/- under section 270A(7) for under reporting of income by the learned Assessing Officer.

3. The ld.CIT(A) ought to have condoned the small delay of four days in filing Form No.68 as mandated by section 270AA for grant of immunity from levy of penalty u/s 270A.

2. The brief facts of the case are that assessee is an individual has filed her return of income on 17.07.2017 for A.Y. 2017-18 admitting a total taxable income of Rs.95,01,860/-. Subsequently, the case was selected for scrutiny under CASS to verify the 'Foreign Asset'. Notices u/s 143(2) dt.17.08.2018 and notice(s) u/s 142(1) dt.25.03.2019, 19.09.2019 were issued through ITBA calling for certain information i.e., In response to the notices, assessee uploaded the information as called for electronically and explained the details of total foreign assets / foreign bank accounts maintained by the assessee. After verification of the information furnished by the assessee, Assessing Officer had made certain additions and completed the assessment u/s 143(3) of the Act and passed assessment order dt.13.11.2019. Further, as the assessee had underreported the income for the year under consideration, Assessing Officer had initiated penalty proceedings by issuing notice u/s 274 r.w.s 270A of the Act on 13.11.2019 and thereafter, levied penalty of Rs.31,301/- u/s 270A of the Act.

3. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A) / NFAC, who granted partial relief to the assessee.

4. Feeling aggrieved with the order of ld.CIT(A)/NFAC, assessee is now in appeal before us.

5. In this case, there was mistake on the part of the assessee in disclosing the foreign income in return of income, which was duly mentioned in para 2 of the order of Assessing Officer. During the course of assessment, the assessee had admitted the mistake. As per the opinion of the Assessing Officer,

the assessee had under reported the foreign income in the return of income and hence, he had initiated penalty proceedings u/s 270A of the Act. The assessee had filed an application to the Assessing Officer to grant immunity as contemplated u/s 270AA of the Act and filed Form No.68 with a delay of 4 days from the time provided for those purposes. Neither the Assessing Officer nor the Id.CIT(A) had agreed to the contention of the assessee and condoned the delay and therefore, no order was passed by the Assessing Officer condoning the delay of 4 days in filing the requisite form as required u/s 270AA of the Act and granting the immunity to the assessee. Hence, the assessee is in appeal before us.

6. The Id. AR for the assessee has drawn our attention to Para 4.4. of the order passed by the Id.CIT(A) which is to the following effect :

“4.4 I have duly considered the penalty order and the written submission of the appellant. In this case the appellant has filed the signed Form No. 68 dated 03.01.2020 which was delay of 4 days. However, it is clearly mentioned in u/s 270AA sub section 2 that - "An application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in clause (a) of sub section- (1) has been received and shall be made in such form and verified in such manner as may be prescribed." Considering the above facts of the case, I find that the penalty of Rs.31,300/- has correctly been imposed u/s 270A as under reporting of income. Accordingly, ground nos.1 to 6 are dismissed.”

7. It was the contention of the Id. AR that the Id.CIT(A) has not condoned the delay of 4 days and dismissed the application for grant of immunity and confirmed the penalty. It was further submitted by the Id. AR that the matter may kindly be remitted back to the Id.CIT(A) with a direction to consider the request for condonation of delay in filing the application for granting immunity u/s 270AA of the Act.

8. Per contra, the ld. DR had vehemently opposed and submitted that the authorities below have no power to condone the delay.

9. We have heard the rival submissions and perused the material on record. U/s 270AA of the Act, the assessee is required to make an application to the Assessing Officer to grant an immunity for imposition of penalty u/s 270AA of the Act and the said application is required to be filed within one month in the end of the month, in which the order has been received by the assessee. Admittedly, the assessee after receipt of the order, assessee had filed an application for grant of immunity with a delay of 4 days. As the application was not moved within the period of 30 days, the Assessing Officer had passed the order against the assessee without granting the immunity u/s 270AA of the Act. From the reading of section 270AA of the Act, it is clear that nowhere it is mentioned that in case the assessee filed Form 68 after a period of 30 days, then the Assessing Officer / ld.CIT(A) was not empowered to condone the delay in filing the requisite form. As per clause 4 of section 270AA of the Act, it casts a duty on the Assessing Officer to mandatorily pass order accepting or rejecting such application, if filed by the assessee.

10. In the present case, though, it is required by law for the assessee to move an application within one month as per clause 2 of section 270AA, however, there is no provision which prohibits the assessee to move an application thereafter whereby he was prevented from filing the application within a period of limitation. Even if the assessee had filed the application belatedly, the Assessing Officer was duty bound to pass an order as per clause 4 of section 270AA of the Act either accepting or rejecting the

application of the assessee. In our view, the power of condoning the delay vests with all the quasi judicial authorities and judicial authorities in case a reasonable cause has shown by the assessee or the plaintiff or person(s) for not filing the requisite application within the period provided under the Act. Similar powers are also available with the Id.CIT(A) while adjudicating the appeal or to condone the delay as mentioned in section 249(3) of the Act.

11. Nonetheless, the whole purpose of granting immunity to the assessee is to give quits to the litigation in case assessee accepts and pays due taxes. In light of the above said observation, we deem it appropriate to remand back the matter to the file of Id.CIT(A) with a direction to consider and condone the delay in filing the application for grant of immunity u/s 270AA of the Act, if Id.CIT(A) considered that the assessee has a reasonable cause for not filing the application for grant of immunity within the period as provided under the Act. In light of the above, the appeal of the assessee is allowed for statistical purposes.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 19th April, 2023.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 19th April, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Nirajita Mitra, Plot No.10, Aparna Country, New Hafeezpet, Miyapur, Hyderabad – 500 049.
2	The Income Tax Officer, Ward – 12(4), Hyderabad.
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order