IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2024

C O R A M

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

W.P No.29829 of 2023
&
WMP Nos.29433 & 29435 of 2023

Natarajan Anandh Kumar ... Petitioner

vs.

1. Deputy Commissioner of Income Tax
Non Corporate Ward 3(1)
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

2. Assessment Unit
Income Tax Department
Ministry of Finance
Government of India
New Delhi. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records of the impugned proceedings of the 1st respondent in ITBA/PNL/F/270AA/2023-24/1055376433(1) dt. 24.08.2023 culminating in the impugned proceedings of the 2nd respondent in ITBA/PNL/F/270A/2023-24/055882564(1) dt.02.09.2023 and quash the same and further direct the 1st respondent to grant immunity from imposition of penalty u/s.270A of the Act to the petitioner herein.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondents : Mr.V.Mahalingam,
Senior Standing Counsel (Tax)

ORDER

The petitioner challenges an order rejecting the application for immunity from imposition of penalty and the consequential order of the second respondent dated 02.09.2023, imposing penalty. A consequential direction is also prayed for for grant of immunity from imposing penalty.

2. The petitioner carries on business under the name and style of M/s.ITEK Informatic. The petitioner is an authorised dealer of Tally software. For the financial order 2017-2018, corresponding to Assessment Year 2018-19, the petitioner's taxable income was Rs.18,18,870/-. The entire income of the petitioner was subject to deduction of tax at source. On account of ill health between August

and October, 2018, it is stated that the petitioner was unable to file his return of income. After proceedings were initiated by the respondents by issuing a show cause notice under Section 148 A (b) of the Income Tax Act, 1961, (the Income-tax Act), the petitioner filed his return of income for the Assessment Year 2018-19 by disclosing the gross total income of Rs.19,81,237/-. In such return, the net tax payable was shown as Rs.3,68,906/- and the total tax paid was shown as Rs.3,78,904/-, which comprises TDS at Rs.3,78,864/- and a sum of Rs.40/- paid as self-assessment tax. The petitioner's return was examined and the net tax liability was computed at Rs.3,68,906/- on the gross income of Rs.19,81,237/-. After adding a sum of Rs.10,000/- towards default in filing the return of income, the aggregate tax liability was computed at Rs.3,78,906/-. A sum of Rs.3,78,864/- was credited towards pre-paid taxes and a sum of Rs.42/- was shown as payable by the assessee.

3. In these circumstances, when penalty proceedings were initiated, the petitioner submitted an application under Section 270 AA of the Income-tax Act, requesting for immunity from imposition

of penalty. The said application was rejected on the ground that the assessee paid the amount demanded on 21.04.2023, which is beyond the period specified in the assessment order, and on the ground that the application was not made within one month from the end of the month in which the order fixing the tax liability was issued. Consequent to the refusal to grant immunity from imposition of penalty, a further order dated 02.09.2023 was issued by the second respondent imposing a penalty of Rs.1,84,453/-, which constitutes 50% of the tax payable on under reported income. The present writ petition arises in the above facts and circumstances.

4. By referring to the return filed by the petitioner, learned counsel for the petitioner pointed out that the petitioner disclosed a gross total income of Rs.19,81,237/-. By drawing a comparison between the return of income of the petitioner and the order dated 09.03.2023, learned counsel pointed out that the return of income disclosed by the petitioner was accepted in the said order. As regards the tax liability, learned counsel pointed out that an aggregate sum of Rs.3,78,904/- was paid as TDS and self-assessment tax, whereas the

order dated 09.03.2023 took into consideration only a sum of Rs.3,78,864/-. If the entire sum of Rs.3,78,904/- had been taken into consideration, learned counsel contended that only a sum of Rs.2/- would have been payable by the assessee even after reckoning the fee for default in furnishing the return of income.

5. By taking into account the fact that the gross total income disclosed by the assessee was accepted in order dated 09.03.2023 and the fact that the tax liability was discharged in full both by way of TDS and self assessment tax, learned counsel submitted that this is a fit case for granting immunity from imposition of penalty under Section 270 AA. As regards the delay in filing the application, learned counsel submitted that such delay is for a period of about 30 days and could have been condoned. As regards the consequential order, learned counsel submits that clause (a) of sub section 6 of Section 270 A of the Income-tax Act provides that under reported income for purposes of Section 270 shall not include the amount of income in respect of which the officer concerned is satisfied that the explanation of the petitioner /assessee is *bona fide* and that such assessee has

disclosed all material facts to substantiate the explanation offered by him. Learned counsel submits that the income disclosed by the assessee cannot be construed as under reported income in view of the acceptance of such income by the order issued on 09.03.2023. Therefore, learned counsel submits that the orders impugned herein are liable to be quashed and that the first respondent be directed to grant immunity from imposition of penalty.

6. In response, Mr.V.Mahalingam, learned senior standing counsel for the respondents, submits that sub section 2 of Section 270 AA prescribes that an application for immunity from imposition of penalty shall be filed within one month from the end of the month in which the order was issued. Since the order was issued on 09.03.2023, it is submitted that the application should have been filed on or before 30.04.2023. Since the application was filed on 31.05.2023, it is submitted that the application was barred under sub section 2 of Section 270 AA. Learned counsel also pointed out that the statute does not provide for condonation of delay. With regard to the imposition of penalty, learned counsel referred to sub section 3 of

Section 270 A and, in particular, clause (b) thereof and pointed out that the entire assessed income is required to be treated as under reported income if the return of income is filed for the first time under Section 148. Consequently, he submits that the computation of penalty was also in consonance with statutory prescription . Hence, it is submitted that no interference is warranted.

7. The documents on record disclose that the petitioner filed the return of income for Assessment Year 2018-19 on 27.04.2022. Such return of income was filed after the petitioner received notice under Section 148 A (b) of the Income-tax Act. In the return of income, the gross total income of Rs.19,81,237/- was disclosed; the net tax payable was computed at Rs.3,68,906/-; and the return disclosed payment of the aggregate sum Rs.3,78,904/- by way of TDS and self-assessment tax. The subsequent order dated 09.03.2023 also records that the gross total income of the petitioner is Rs.19,81,237/-. With regard to income-tax liability, the order indicates the net tax liability of Rs.3,68,906/-. This amount also tallies with the amount indicated in the return of income of the petitioner. After levying a fee of

Rs.10,000/- for default in furnishing the return of income, the aggregate tax liability was computed at Rs.3,78,906/-. As correctly contended by learned counsel for the petitioner, it appears that the total tax paid by the petitioner, i.e. Rs.3,78,904/-, has not been taken into consideration and a lower sum of Rs.3,78,864/- is reflected in the order. If the total tax paid by the petitioner had been reckoned, the liability as per the order would have been only Rs.2/-.

8. The follow-on question is whether the facts and circumstances justify exemption from imposition of penalty and whether the application in such regard was filed in time. It is evident from sub section 2 of Section 270 AA that the application is required to be filed within one month from the end of the month in which the order referred to in clause (a) of sub section 1 was issued. Since such order was issued on 09.03.2023, the one month period would run from 31.03.2023. If so computed, the application should have been filed on or before 30.04.2023. Instead, the application was filed on 31.05.2023. The delay is about one month beyond the stipulated period. By taking into account the fact that the gross total income

disclosed by the petitioner in the return of income was accepted in order dated 09.03.2023 and the fact that the total tax liability of Rs.3,68,906/-, as disclosed in the return of income, was also accepted in order dated 09.03.2023, this is a fit case to condone the delay of 30 days in filing the application for immunity from imposition of penalty. Therefore, the delay is condoned.

9. Turning to the order imposing penalty, the said order proceeds on the basis that the assessed income is Rs.18,18,870/-. The under reported income has been computed in terms of clause (b) of sub section 3 of section 270 A. While undertaking this exercise, sub section 6 of section 270 A has not been taken into account. Sub section 6 (a) of Section 270A, in relevant part, is set out below:

> *"6(a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;"*

10. As per clause (a), the amount of income in respect of which the assessee offers an explanation, which is accepted as *bona fide* is liable to be excluded provided all material facts were disclosed. This case appears to fall within the scope of clause (a) of sub-section 6 of Section 270 A. In any event, since the order rejecting the application for immunity from imposition of penalty warrants interference, the consequential order is also liable to be quashed.

11. For reasons set out above, the impugned orders dated 24.08.2023 and 02.09.2023 are quashed. As a consequence, the first respondent is directed to re-consider the application for immunity from imposition of penalty on merits by taking into account the observations set out in this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

23.01.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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