

Tax Insights

13 June 2023

200% penalty leviable only in case of specific misreporting instances prescribed under section 270A(9) of the Act – Mumbai bench of the Tribunal

In brief

The Mumbai bench of the Income-tax Appellate Tribunal (Tribunal), in its recent ruling¹, has held that 200% penalty can only be levied in case misreporting of income is covered under the six specific instances prescribed under section 270A(9) of the Income-tax Act, 1961 (the Act). The Tribunal observed that the Tax Officer (TO) is given discretionary, but not mandatory, power to levy penalty under section 270A of the Act, as the Parliament has used 'may' instead of 'shall' under section 270A of the Act.

In detail

Facts

- The taxpayer's case was selected for scrutiny under Computer Assisted Scrutiny Selection and an order under section 143(3) of the Act was passed making certain additions.
- The taxpayer filed an appeal before the Commissioner of Income-tax (Appeals) [CIT(A)], whereby the additions made by the TO were confirmed. Thereafter, the taxpayer filed an appeal before the Tribunal.
- The Tribunal granted partial relief to the taxpayer, directing the TO to delete the part additions made in his order, and confirmed the additions in respect of which the taxpayer had not pressed the grounds raised in the appeal before the Tribunal.
- The TO, however, passed a penalty order to levy penalty at the rate of 200% of tax on the entire additions made in the assessment order, which was further confirmed by the CIT(A).

Taxpayer's contentions

- The taxpayer contended that levy of penalty under section 270A of the Act is not mandatory as the section gives the TO discretion to levy or not levy penalty, given that the word used in the section is 'may' and not 'shall'.

¹ ITA No. 13/Mum/2023

- The taxpayer highlighted that there are two types of penalties levied under section 270(A) of the Act – (a) 50% of tax payable for under-reporting of income as per sub-sections (2) and (7) of section 270A of the Act; and (b) 200% of tax payable if such under reporting of income is on account of misreporting of income as per sub-sections (8) and (9) of section 270A of the Act.
- Considering that the provisions are discretionary and that section 270A(6) of the Act specifically provides the cases where income will not be considered to be under reported, the taxpayer submitted that it is not necessary that all the additions made in the assessment order culminate into charging of penalty under section 270A of the Act.
- The taxpayer submitted that the provisions of section 270A(9) of the Act would apply only in a case where there is mens-rea, as can be interpreted from the specific instances mentioned therein.
- The taxpayer argued that the TO had passed the order levying penalty at the rate of 200% without even specifically bringing out which of the instances as specified in section 270(9) of the Act were triggered, which further corroborated the fact that the TO had passed the impugned penalty order in an arbitrary and whimsical manner and with a pre-determined mindset.

Tribunal's ruling

- The Tribunal, at the outset, noted that the taxpayer's quantum appeal had been partly allowed and accordingly held that the penalty, even if leviable, could only be confined to the additions sustained and not on the entire additions made by the TO.
- The Tribunal endorsed the taxpayer's argument that the levy of penalty under section 270A of the Act is not mandatory but discretionary.
- The Tribunal noted the findings of the TO and CIT(A), and considering the same, observed that the TO as well as the CIT(A) have failed to spell out how the taxpayer's case is covered within the specific instances as provided under clauses (a) to (f) of section 270A(9) of the Act. The Tribunal was of the view that in the absence of the same, the penalty levied for misreporting cannot be sustained.
- Considering the above, the Tribunal concluded that the levy of penalty at the rate of 200% by the TO in the instant case on the additions sustained in the quantum proceedings depicts non-application of mind and violates the principles of natural justice, and accordingly, cannot survive.

The takeaways

The Tribunal's ruling in the instant case holds that the penalty at the rate of 200% under section 270A of the Act could be levied only in case of specific instances specified under section 270A(9) of the Act. This further supports the settled position of law² that to expose a taxpayer to the penalty provisions, the taxpayer's case should be strictly covered by the provisions. This means that to trigger the provisions of section 270A of the Act for imposing penalty at the rate of 200%, it is mandatory for the authorities to ascertain the specific clause under section 270A(9) of the Act in which the taxpayer's case is covered. The Tribunal, in its ruling, further highlights that the provisions of section 270A of the Act are not mandatory but discretionary in nature and that these need to be invoked by the TO based on the facts and circumstances of each case.

² CIT v. Reliance Petroproducts Private Limited [2010] 322 ITR 158 (SC); K.P. Madhusudhanan v. CIT [2001] 251 ITR 99 (SC)

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 156 countries with over 295,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

© 2023 PwC. All rights reserved.

Follow us on

[Facebook](#), [LinkedIn](#), [Twitter](#) and [YouTube](#).

pwc.in

In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.

©2023 PricewaterhouseCoopers Private Limited. All rights reserved.