IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-07-2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

WP No. 10711 of 2022
&
WMP Nos.10348 & 10350 of 2022

M/s. Ennore Tank Terminals Private Limited
Represented by its Director Mr Umesh Gajananrao
Shedde Neeladri, 3rd Floor No. 9 Cenotaph Road,
Alwarpet, Chennai 600 018

..Petitioner(s)

Vs

The Additional /Joint /Deputy / Assistant
Commissioner of Income Tax / Income Tax
Officer National Faceless -Assessment Cenre,
Delhi.

..Respondent(s)

PRAYER: This writ petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari to call for the records on the file of the Respondent and quash the impugned order in ITBA /PNL / F /270A /2021-22/1040918356(1) dated 16.03.2022 under Section 270A of the Income Tax Act 1961 for the Assessment year 2018-19 passed by the Respondent as illegal and not in accordance with law.

For Petitioner(s): Mr.R.Sivaraman

For Respondent(s): Mr.B.Ramana Kumar, Senior Standing Counsel

ORDER

An order dated 16.03.2022 imposing penalty under Section 270 A of the Income-Tax Act, 1961 (the I-T Act) for under-reporting of the income as a consequence of misreporting is challenged in this writ petition.

2. Learned counsel for the petitioner submits that the petitioner had claimed deduction of the total income under Section 80-IA of the I-T Act in its return of income. In the intimation under Section 143(1), he submits that the deduction was accepted to the extent of Rs.93,96,28,729/-. Thereafter, in the order under subsection (3) of Section 143, he submits that the deduction was accepted to the extent of Rs.90,79,32,021/-. On this basis, he points out that the assessed normal income, as per the intimation, was Rs.16,30,70,190/- and the assessed normal income as per the order under subsection (3) of Section 143 was Rs.19,47,66,901/-. He adds that the petitioner's book profits were so large in comparison to the taxable income that the case falls with the scope of Section 115JB of the I-T Act. He points out that the deemed income on such basis is Rs.1,11,01,54,585/- not only as per the return of income but also as per the intimation and the order under Section 143(1). Hence, he contends that no tax liability has arisen as a result of the alleged under-reporting.

3. After referring to the show cause notices and the petitioner's replies thereto, learned counsel contends that the case does not fall within the scope of misreporting. In support of this contention, the judgment of this Court in *Verizon Data Services India Private Limited v. Deputy Commissioner of Income Tax,* W.P.No.18377 of 2024, order dated 06.02.2026 (*Verizon Data Services*), is relied upon. In particular, he places reliance on paragraph-53 of the said judgment.

4. Without prejudice, learned counsel submits that tax liability should have been computed on the basis of the difference in assessed normal income, as between the intimation and the order under Section 143(3). By contrast, he points out that the amount of tax has been computed by reckoning the entire assessed normal income of Rs.19,47,66,901/-. He also submits that the application for immunity under Section 270 AA of the I-T Act was not disposed of and that the reference to the response of the JAO does not qualify as an order disposing of said application.

5. In response to these contentions, by adverting to the petitioner's reply dated 16.02.2022, Mr.Ramana Kumar, learned senior standing counsel, points out that the deductions claimed therein fall outside the scope of Section 80-IA

and claiming such deductions amounts to misreporting. He also submits that the application under Section 270AA(2) was filed much beyond the time limit of one month and, therefore, such application was not liable to be considered.

6. Section 270A of the I-T Act deals with under-reporting of income. Section 270AA deals with immunity from imposition of penalty. Said provisions are set out, in relevant part, below:

> "270A*(1) The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.*
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> ….
>
> *(7) The penalty referred to in sub-section (1) shall be a sum equal to fifty per cent of the amount of tax payable on under-reported income.*
>
> *(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income.*
>
> *(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—*
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> *(a) misrepresentation or suppression of facts;*
>
> *(b) failure to record investments in the books of account;*
>
> *(c) claim of expenditure not substantiated by any evidence;*
>
> *(d)recording of any false entry in the books of account;*
>
> *(e) failure to record any receipt in books of account having a bearing on total income; and*

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

….

270AA. *(1) An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under Section 270 A and initiation of proceedings under section 276C or Section 276CC, if he fulfils the following conditions, namely:—*

(a) the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of section 143 or section 147, as the case may be, has been paid within the period specified in such notice of demand; and

(b) no appeal against the order referred to in clause (a) has been filed.

(2) 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.

(3) The Assessing Officer shall, subject to fulfilment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC0, where the proceedings for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A."

7. Misreporting of income is a species of under-reporting, albeit misreporting is always accompanied by bad faith. On perusal of subsection (8)

of Section 270A and subsection (3) of Section 270AA, it follows that there are two consequences to the characterisation of under-reporting as misreporting. The first consequence is that the penalty for misreporting shall be equal to 200% of the amount of tax payable on the under-reported income. The second consequence is that an application for immunity from the imposition of penalty is not maintainable.

8. Given these two drastic consequences, it is necessary that the show cause notice relating to the penalty proceedings indicates the basis on which the assessee is called upon to show cause as to why there is misreporting. Subsection (9) of Section 270A appears to exhaustively list the categories of misreporting of income. Unless the basis on which the assessee is called upon to show cause is indicated in the show cause notice, it is not possible for the assessee to respond meaningfully to the show cause notice and endeavour to avert the drastic consequences of misreporting. In this regard, I endorse the principle laid down in *Verizon Data Services* to the effect that there should be misrepresentation or any other form of bad faith to justify proceedings for misreporting. In light of these principles, the show cause notices preceding the impugned order warrant attention.

9. The first show cause notice was issued to the petitioner on 15.02.2021. This notice states that it appears to the income tax officer that the petitioner had

under-reported income in consequence of misreporting. No further particulars are contained therein. The subsequent show cause notice dated 09.06.2021 refers to Section 270A, but does not even use the expression 'misreporting'. The show cause notice dated 02.08.2021 follows the same pattern as show cause notice dated 09.06.2021. In the impugned order, at paragraph 4 thereof, a finding is recorded that the assessee was found to have misreported its income. Even in the impugned order, no reasons are specified in support of the conclusion that there was misreporting of income.

10. Said order records that the amount of tax sought to be evaded was Rs.6,74,04,928/-. On that basis, penalty of Rs.13,48,09,856/- was imposed. On perusal of the petitioner's reply dated 16.02.2022, it appears that the assessed normal income as per the intimation under Section 143(1) was Rs.16,30,70,190/- and the assessed normal income as per the order under Section 143(3) was Rs.19,47,66,901/-. In these circumstances, the conclusion that the amount of tax sought to be evaded was Rs.6,74,04,928/- also warrants reconsideration.

11. For reasons aforesaid, the impugned order is unsustainable and is hereby set aside. It is, however, open to the respondents to initiate fresh proceedings in accordance with law. All contentions are left open to the petitioner in this regard.

12. The writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

20-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

KAL

To

The Additional /Joint /Deputy /
Assistant Commissioner
of Income Tax / Income Tax officer
National Faceless -Assessment Cenre,
Delhi

SENTHILKUMAR RAMAMOORTHY, J.

KAL

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