IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JM &
MS PADMAVATHY S, AM

I.T.A. No. 3747/Mum/2024
(Assessment Year: 2015-16)

I.T.A. No. 3751/Mum/2024
(Assessment Year: 2016-17)

I.T.A. No. 3753/Mum/2024
(Assessment Year: 2017-18)

I.T.A. No. 3752/Mum/2024
(Assessment Year: 2018-19)

I.T.A. No. 5677/Mum/2024
(Assessment Year: 2019-20)

Cornerstone Ondemand Limited, 14th Floor, The Ruby, 29 Senapati Bapat Marg, Dadar (West), Mumbai-400028. **PAN: AAGCC3428B**	Vs.	**ACIT (IT)-2(1)(1),** 17th Floor, Air India Building, Nariman Point, Mumbai-400021.
Appellant)	:	**Respondent**)

Appellant /Assessee by	:	Shri Hiten Thakkar, AR
Revenue / Respondent by	:	Shri Krishna Kumar, Sr. DR
Date of Hearing	:	20.03.2025
Date of Pronouncement	:	28.03.2025

O R D E R

Per Bench:

These appeals by the assessee are against the separate orders of the Commissioner of income tax (appeals)-56, Mumbai (in short "CIT(A)") dated 29.05.2024 for Assessment Year (AY) 2015-16, 2016-17, 2017-18 & 2018-19 and dated 03.09.2024 for AY 2019-20. The common issues contended by the assessee in all the appeals pertain to levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 (the Act) for AY 2015-16 & 2016-17 and levy of penalty under section 270A of the Act for AY 2017-18 to 2019-20.

2. The assessee is a company incorporated and registered in United Kingdom (UK) and is a cloud-based learning and talent management solutions provider. Cornerstone Ondemand Services India Pvt. Ltd. (CSOD India) is company incorporated in India and is the Authorized Distributor of the assessee's Cloud-based Software Products in India through Intercompany Service Agreement. The assessee enters into a separate agreement for sale of software products to a customer in India (Page 73 of the Factual paper book) wherein different terms and conditions of sale like granting license, pricing, payment terms, various obligations of assessee in connection with the sale of software like software implementation, after sale technical support, retain and maintaining all proprietary and intellectual property are agreed by the parties. CSOD India is also a party to the sale agreement which defines the role of CSOD India to be restricted to receiving a Purchase Order from a customer in India, raising invoices and collecting payments on behalf of the assessee in India. The assessee earns income from distribution of Cloud-based Software to CSOD India.

ITA No.3747/Mum/2024 - AY 2015-16

3. For the purpose of adjudicating the levy of penalty under section 271(1)(c) of the Act we will consider the appeal filed by the assessee for AY 2015-16 as a lead case. For the AY 2015-16 the assessee filed the return of income on 31.03.2017 declaring Nil income and claiming a refund of Rs. 1,30,15,030/- out of the TDS deducted. The income was reported as Nil by the assessee as the income earned from distribution of its cloud-based software to CSOD India according to the assessee is not Royalty or fees for technical services or business profits to be taxed in India as per the DTAA between India and UK. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The AO during the course of assessment proceedings held that CSOD India is the Dependent Agency Permanent Establishment (DAPE) of the assessee and that the payments received by the assessee are in the nature of Royalty. Accordingly the AO attributed 80% of the total receipts from CSOD India as taxable in the hands of the assessee. The assessee being aggrieved by the draft assessment order filed its objections before the DRP. The DRP issued directions upholding that CSOD India is the DAPE of the assessee but reduced the attribution of income to 30% of the total receipts. The assessee did not file further appeal against the final order of assessment passed by the AO pursuant to the directions of the DRP considering the smallness of the amount.

4. The AO subsequently initiated penalty proceedings mentioning that the assessee has furnished inaccurate particulars in the return of income under section 271(1)(c) r.w.s. 274 of the Act. The assessee submitted that there is no concealment of income or filing of inaccurate particulars by the assessee and that the assessee has not wilfully and consciously attempted to furnish the incorrect

particulars or to conceal. The assessee relied on various judicial precedents in this regard. However, the AO did not accept the submissions of the assessee and proceeded to levy the penalty under section 271(1)(c) of the Act. On further appeal the CIT(A) confirmed the penalty. Assessee is in appeal before the Tribunal against the order of the CIT(A).

5. The ld. AR submitted that the assessee has made true and full disclosure of all the facts before the AO and hence there is no furnishing of inaccurate particulars of income. The ld. AR further submitted that as per the provisions of section 271(1)(c) of the Act the assessee should have concealed the particulars of income or furnished inaccurate particulars and in assessee's case both these conditions are not satisfied. The ld. AR also submitted that it is a settled legal position that furnishing of inaccurate particulars for levy of penalty under section 271(1)(c) of the Act would arise only when the assessee has wilfully and consciously attempted to prevent demonstrating the correct position. The ld. AR argued that making a claim which is held to be not sustainable in law does not amount to furnishing of inaccurate particulars and that making of additions / disallowance does not necessarily mean that the additions / disallowances attract penalty under section 271(1)(c). The ld AR further argued that accepting the additions made in the assessment order does not automatically invite the penalty under section 271(1)(c) of the Act. The ld AR also argued that additions by attributing a percentage of receipts as income is done on an adhoc basis and that when it is accepted by the revenue that CSOD India is remunerated at arm's length no further addition as DAPE can be made. The ld. AR placed reliance on various judicial precedents in this regard. It is also brought to our attention that the assessee has suffered global losses for A.Y. 2015-16 and 2016-17 therefore, no further income was attributable to the DAPE in India. The ld AR also made

detailed submission on why CSOD India cannot be considered as DAPE of the assessee.

6. The ld. DR on the other hand relied on the order of lower authorities.

7. We heard the parties and perused the material on record. The assessee is distributing its cloud based software through CSOD India and has entered into an agreement in this regard. The assessee receives payment from CSOD India towards the distribution of software to its Indian customers. The assessee did not offer the said receipts to tax for the reason that according to the assessee, the receipts do not fall within the definition of Royalty or FTS or Business profits as per the DTAA between India and UK. However the AO held that CSOD India is the DAPE of the assessee and accordingly attributed 80% of the receipts as taxable in India. The DRP reduced the attribution to 30% and the assessee did not contend the attribution further in appeal. The AO for the year under consideration initiated penalty proceedings under section 271(1)(c) for the reason that the assessee has furnished inaccurate particulars. The AO did not accept the submission of the assessee that an incorrect claim does not tantamount to furnishing of inaccurate particulars and that there is no wilful concealment of facts. Before proceeding further we will look at the relevant provisions of the Act with respect to penalty –

> ***271.*** *(1) If the Assessing Officer or the Commissioner (Appeals) or the* [83]*[Principal Commissioner or] Commissioner in the course of any proceedings under this Act, is satisfied that any person—*
>
> *(a) & (b)* ****
>
> *(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or*

8. The Hon'ble Supreme Court in the case in the case of CIT vs Reliance Petro Products Ltd [(2010) 322 ITR 158 (SC)] has elaborated the meaning of the words,

'furnish inaccurate particulars of income'. The relevant observations of the Hon'ble Supreme Court is extracted as under –

> ***7.*** *As against this, learned Counsel appearing on behalf of the respondent pointed out that the language of section 271(1)(c) had to be strictly construed, this being a taxing statute and more particularly the one providing for penalty. It was pointed out that unless the wording directly covered the assessee and the fact situation herein, there could not be any penalty under the Act. It was pointed out that there was no concealment or any inaccurate particulars regarding the income were submitted in the Return. Section 271(1)(c) is as under :—*
>
> > *"271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person—*
> >
> > *(c)has concealed the particulars of his income or furnished inaccurate particulars of such income."*
>
> *A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the learned Counsel for revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In CIT v. Atul Mohan Bindal [2009] 9 SCC 589, where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished*

inaccurate particulars of such income. This Court referred to another decision of this Court in Union of India v. Dharamendra Textile Processors [2008] 13 SCC 369, as also, the decision in Union of India v. Rajasthan Spg. & Wvg. Mills [2009] 13 SCC 448 and reiterated in para 13 that :—

"13. It goes without saying that for applicability of section 271(1)(c), conditions stated therein must exist."

***8.** Therefore, it is obvious that it must be shown that the conditions under section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the Return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In Dilip N. Shroff v. Jt. CIT [2007] 6 SCC 329, this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of section 271(1) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff's case (supra) was upset. In Dharamendra Textile Processors' case (supra), after quoting from section 271 extensively and also considering section 271(1)(c), the Court came to the conclusion that since section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of section 271(1)(c) read with Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, wilful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under section 276C of the Act. The basic reason why decision in Dilip N. Shroff's case (supra) was overruled by*

this Court in Dharamendra Textile Processors' case (supra), was that according to this Court the effect and difference between section 271(1)(c) and section 276C of the Act was lost sight of in case of Dilip N. Shroff (supra). However, it must be pointed out that in Dharamendra Textile Processors' case (supra), no fault was found with the reasoning in the decision in Dilip N. Shroff's case (supra), where the Court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in Dilip N. Shroff's case (supra) to the effect that mens rea was an essential ingredient for the penalty under section 271(1)(c) that the decision in Dilip N. Shroff's case (supra) was overruled.

9. *We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as :—*

"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

10. *It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its*

expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.

11. *In this behalf the observations of this Court made in Sree Krishna Electricals v. State of Tamil Nadu[2009] 23 VST 249 as regards the penalty are apposite. In the aforementioned decision which pertained to the penalty proceedings in Tamil Nadu General Sales Tax Act, the Court had found that the authorities below had found that there were some incorrect statements made in the Return. However, the said transactions were reflected in the accounts of the assessee. This Court, therefore, observed :*

"So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities include these items in the dealer's turnover disallowing the exemption, penalty cannot be imposed. The penalty levied stands set aside."

The situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its Return.

12. *The Tribunal, as well as, the Commissioner of Income-tax (Appeals) and the High Court have correctly reached this conclusion and, therefore, the appeal filed by the revenue has no merits and is dismissed.*

9. From the above observations it is clear that merely making a claim in the return of income, which is not sustainable under the Act cannot amount to furnishing inaccurate particulars regarding the assessee's income and that mere non-acceptance of claim by the revenue cannot attract any penalty. In assessee's case, the claim of the assessee that the receipts from CSOD India towards sale of software is not taxable in India is not accepted by the revenue, and when we apply the above ratio of Apex Court the same cannot be the sole reason for levy of

penalty. Further the assessee during the course of assessment has furnished all the details as has been called for with regard to the impugned receipts which substantiate the contention that there is no wilful intention to provide inaccurate particulars and that during assessment proceedings the assessee has fully cooperated.

10. In view of the above discussion and considering facts in assessee's case for the year under consideration, we are of the view that the AO is not correct in levying the penalty under section 271(1)(c) on the ground of furnishing inaccurate particulars whereas the assessee has merely made a claim which according to the revenue is not allowed. Accordingly we direct the AO to delete the penalty.

ITA No.3751/Mum/2024 – AY 2016-17

11. The facts in AY 2016-17 are identical where the AO has levied penalty under section 271(1)(c) on the same ground. Therefore our decision in AY 2015-

16 is mutatis mutandis applicable to AY 2016-17 also. Accordingly we direct the AO to delete the penalty for AY 2016-17.

ITA No.3753/Mum/2024 – AY 2017-18

12. For AY 2017-18 the assessee filed the return of income on 22.11.2017 declaring Nil income and claiming refund of Rs. 1,84,56,026/-. The AO treated the CSOD India as DAPE of the assessee and accordingly attributed 80% of the total receipts as income in the hands of the assessee taxable in India. The DRP reduced the attribution of income to 30%. The AO subsequently initiated penalty proceedings under section 270A r.w.s. 274 of the Act requiring the assessee to show-cause as to why penalty should not be levied for under reporting of income. The assessee submitted before the AO that all the necessary details including the agreement with CSOD India have been submitted from time to time and that explanations in relation to the nature and the taxability of the transactions undertaken by the assessee in support of its position on non-taxability before the AO. The assessee further submitted that as per section 270A(6)(a) of the Act under reporting of income shall not include any amount of income in respect of which the assessee offers an explanation and the AO is satisfied that the explanations is bonafide and that the assessee has disclosed all material facts to substantiate the explanation offered. Considering these facts the assessee submitted that no penalty is leviable under section 270A of the Act. The AO however did not accept the submissions of the assessee and levied penalty of 50% of the tax under section 270A of the Act. On further appeal the CIT(A) confirmed the penalty.

13. The ld. AR submitted that there is no under reporting of income where the assessee has provided bonafide explanations and that there is disclosure of all the material facts. The ld. AR further submitted that mere addition not contended by

the assessee in the quantum proceedings cannot automatically result in levy of penalty and that penalty cannot be levied by a mere difference of opinion. The ld. AR also submitted that culpable mental state (i.e. *mens rea*) is pre-requisite for levy of penalty. The ld. AR argued that the assessee has not preferred further appeal against the final order of assessment considering the quantum of addition made and the same cannot be the reason for levy of penalty on the ground that the assessee himself has accepted the addition. The ld AR also raised similar contentions on the merits of the addition made in the assessment proceedings. Accordingly the ld. AR argued that the levy of penalty by the AO under section 270A is not justified.

14. The ld. DR on the other hand supported the orders of the lower authorities.

15. For AY 2017-18, the AO initiated the penalty proceedings under section 270A on the ground that assessee has under reported income. The provisions pertaining penalty for under reporting of income under section 270A reads as under –

> **270A - Penalty for under-reporting and misreporting of income.**
>
> *(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.*
>
> *(2) A person shall be considered to have under-reported his income, if—*
>
> *(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;*
>
> *(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;*
>
> *(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;*

(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;

(e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;

(f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;

(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

*(3) to (5)*****

(6) The under-reported income, for the purposes of this section, shall not include the following, namely:—

(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;

(b) the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;

(c) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;

(d) the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D*, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and*

(e) the amount of undisclosed income referred to in section 271AAB.

16. The argument of the ld AR is that the assessee's case would get covered under the exception provided under section 270A(6)(a) of the Act since the assessee has made full disclosure and has offered explanation which is bonafide. It is also relevant to consider the argument of the ld AR that in the hands of CSOD the revenue has accepted that the compensation received from the assessee towards services rendered is at Arm's length and no TP adjustments are made (page 342, 369 and 343 of PB). Accordingly it was argued that once the dependant agent i.e. CSOD India's remuneration is accepted there cannot be any attribution of income and that the addition made is not sustainable on merits. In this regard we notice that during the course assessment, the AO issued a show cause notice as to why the impugned receipts from CSOD India cannot be assessed to tax in India, the assessee has furnished details such as the agreement with CSOD India, Tri-parte agreement with the customer application made before Authority for Advance Ruling with regard to the taxability of the impugned receipts etc., before the AO. We further notice that the application made before the AAR contains the elaborate details pertaining to the receipts from CSOD and explanations of the assessee as to why the same is not taxable in India. We also notice that the AO while completing the assessment has relied on these documents submitted to make addition and has not recorded any adverse finding alleging any material facts or evidence have concealed by the assessee. It is noticed that the addition is arising due to the fact that the explanation provided by the assessee are not acceptable to the revenue. Therefore we see merit in the submission of the ld AR that the exception under section 270A(6)(a) is applicable to assessee's case. The coordinate bench in the case of D.C.Polyester vs DCIT ([(2023) 157 taxmann.com 753 (Mum-Trib)] has considered the issue of levy of penalty under section 270A and held that –

> ***10.*** *We heard rival contentions and perused the record. We notice that section 270A of the Act uses the expression "the Assessing Officer 'may direct". Hence*

there is merit in the contention of the assessee that levying of penalty is not automatic and discretion is given to the Assessing Officer not to initiate penalty proceedings under section 270A of the Act. From the facts discussed earlier, it can be noticed that the addition came to be made on account of change in the head of income for assessing the rental income. We noticed that the assessee had offered rental income under the head "Income from House Property", but the assessing officer has assessed the same under the head "Income from business." The standard deduction @ 30% allowable u/s 24(a) while computing income under the head Income from house property will not be available when it is assessed under the Income from business. Thus, it is not a case that the assessee has suppressed or under reported any income. The addition came to be made to the total income returned by the assessee, due to change in the head of income, i.e., the addition has arisen on account of computational methodology prescribed in the Act. In our view, this kind of addition will not give rise to under reporting of income. Accordingly, we are of the view that the AO should have exercised his discretion not to initiate penalty proceedings u/s 270A of the Act in the facts and circumstances of the case.

11. *As submitted by Ld A.R that sub. Sec. (2) of sec. 270A lists out the instances which are considered to be "under reporting" of income and clause (g) of it covers the case, when loss is converted into income. However, subsection (6) of section 270A lists out exceptions to sub. Sec (2), i.e., the instances which will not be considered as cases of 'under reporting' of income. Clause (a) of sub. Sec. (6) specifically states that the amount of income in respect of which the assessee offers an explanation and the Assessing Officer is satisfied that the explanation is bonafide and the assessee has disclosed all material facts to substantiate explanation so offered will not be considered as under reporting of income. In the instant case, as noticed earlier, the assessee has not under reported any income. The addition has arisen on account of change in head of income. We notice that the assessee has offered an explanation as to why it reported the rental income under the head Income from House property and the said explanation is not found to be false. Accordingly, we are of the view that the case of the assessee is covered by clause (a) of sub.sec. (6) of sec. 270A of the Act. We notice that the Chennai bench of Tribunal has held in the case of S Saroja (supra) that bonafide mistake committed while computing total income, the penalty u/s 270A of the Act should not be levied.*

17. The ratio laid down in the above decision is that the levy of penalty under section 270A is not automatic and that the AO's powers to levy penalty is

discretionary. We have already quoted in the earlier part of this order the observations of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd (supra) that "*Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances."* Further the assessee for the year under consideration has disclosed all the material facts and the AO/CIT(A) has not held that the explanation offered is not bonafide. Therefore we are of the view that the exception under section 270A(6)(a) is applicable to assessee's case and accordingly we direct the AO delete the penalty levied.

ITA No.3752/Mum/2024 – AY 2018-19

18. The facts in AY 2018-19 are identical where the AO has levied penalty under section 270A on the same ground. Therefore our decision in AY 2017-18 is mutatis mutandis applicable to AY 2018-19 also. Accordingly we direct the AO to delete the penalty for AY 2018-19.

ITA No.5677/Mum/2024 – AY 2019-20

19. For the year under consideration though the AO initiated the penalty proceedings for the reason that there is misreporting of income, in the order under section 270A, the AO has levied penalty for under reporting income. The ld AR during the course of hearing also raised an additional contention that when penalty is initiated for the reason of misreporting the penalty could not have been levied for under reporting by the AO. In this regard the ld AR placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT vs. Samson Perinchery [(392 ITR 4) (Bom.)]. We have while considering the appeal for AY 2017-18 and AY 2018-19 have already held that the penalty under section 270A for under

reporting is not sustainable in assessee's case. In our considered view our decision is mutatis mutandis applicable for AY 2019-20 also given that there is no change to the facts. Accordingly we direct the AO to delete the penalty levied for AY 2019-20. In view of our decision the alternate contentions of the ld AR on the legal issue have become academic and are left open.

20. In result the appeal of the assessee for AY 2015-16 to AY 2019-20 are allowed.

Order pronounced in the open court on 28-03-2025.

Sd/-	***Sd/-***
(AMIT SHUKLA)	**(PADMAVATHY S)**
Judicial Member	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai