

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 962/SRT/2024
(Assessment Year: 2020-21)

Jayantibhai Jivabhai Patel, D-802, Radharaman Tower, Shreeji Sadan Villa, Opp. Narmad Bridge, Zadeshwar, Zadeshwar S.O., Bharuch, Gujarat-392011	Vs.	Income Tax Officer, Ward-1(1), Bharuch
[PAN No.ABXPP1585H]		
(Appellant)	..	(Respondent)

Appellant by :	None for Assessee
Respondent by:	Ms. Jayshree Thakur, Sr. DR

Date of Hearing	24.04.2025
Date of Pronouncement	28.04.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 30.07.2024 passed for A.Y. 2020-21.

2. The assessee has raised the following grounds of appeal:

“1. The Assessing Officer erred in imposed penalty of Rs. 8,48,378/- @ 200% u/s 270A of Income Tax Act 1956. The CIT (A) appeal partly allowed and erred in imposed penalty of Rs. 2,12,095/- @50% for under reporting u/s 270A of the Act.

2. The Appellant contended that levy of penalty under section 270A of the Act is not mandatory as the section gives the AO discretion to levy or not levy penalty, given that the word used in the section is 'may' and not 'shall'. A bare reading of the section 270A reveals that the AO 'may' direct the assessee to pay penalty in addition to tax on the under-reported income. According to the Ld. AR therefore its gives discretion to the AO to levy penalty or

not to levy the penalty in as much as the Parliament has not used 'shall'; and by using the word 'may' in sub-section (i) of section 270A of the Act, it conveys the intention of the Parliament that levy of penalty u/s 270A of the Act is not mandatory

3. *Section 270A(9) says, what is under-reported income and section 270A(7) says that such income is liable for penalty equal to 50% of the amount of tax payable on under-reported income. Similarly, section 270A(8) says misreporting of income is liable for penalty equal to 200% of the amount of tax payable on such misreported income while section 270A(9) says what all are to be treated as misreporting of income.*

Section 270A(9) has six instances where the income added to the returned income would be treated as misreporting of income viz. "(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", (emphasis supplied)

4. *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.*

5. *The Appellant state that the AO 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 AO had passed the impugned penalty order in an arbitrary and whimsical manner and with a pre-determined mindset.*

6. *The imposition of penalty under section 270A(9) of the Income Tax Act without specifying the limb within which the penalty is imposed is unsustainable. Failure of AO to quote any of the six sub-limbs as prescribed u/s 270A(9) makes imposition of penalty unsustainable..”*

3. The brief facts of the case are that the assessee filed original return of income on 06.10.2020 declaring total taxable income of Rs. 63,09,830/- and claiming refund of Rs. 11,260/-. The assessee is a salaried employee and was under the employment of Gujarat Mineral Development Corporation Ltd. during the impugned assessment year. The assessee had opted for voluntary retirement under the VRS scheme formulated by the company and received retirement benefits. Subsequently, the assessee filed revised return on 20.12.2020 reducing the taxable income to Rs. 51,55,620/- and claiming refund of Rs. 4,35,450/-.

The Assessing Officer issued several notices of hearing to the assessee, but no compliance was made by the assessee in response to notices issued by the Assessing Officer. While completing the assessment, the Assessing Officer made addition of Rs. 11,54,210/- by comparing the original return of income filed by the assessee with the revised return and thereafter taking the income figures declared by the assessee in the original return of income, as the taxable income of the assessee. Further, penalty proceedings under Section 270A(9) of the Act was also imposed @ 200% on the assessee.

4. In appeal, Ld. CIT(A) reduced the penalty to 50% of the under-reported income of Rs. 11,54,210/- with the following observations:

“The income has been reduced on account of salary income revised to Rs. 54,78,950/- in revised return as against Rs. 65,30,005/- offered in original income. The appellant has also revised income from house property from Rs. (-)73,845/- to Rs. (-)1,77,000/- on account of interest payable on borrowed capital. The gross total income reduced by Rs. 11,54,210/- due to these two reasons. The AO has assessed the income as per original return. There is no detection of any concealed or misreporting from the appellant found by AO. This is a case of purely under reporting of income by the appellant which is liable for penalty u/s 270A(7) at the rate of 50% of under reporting of income. Misreporting clause will be attracted only when there is misrepresentation of facts or figures by the appellant. In this case there is no submission from the appellant during the assessment proceedings as there was no compliance from the appellant due to non receipt of notices. The income of the assessee was under reported in the revised return compare to original return. Therefore it is held that the appellant is liable for penalty at the rate of 50% of under reported income of Rs.11,54,210/-. The AO has worked out the penalty of Rs.4,24,189/- being tax including surcharge and HEC. The 50% of the same will be Rs 2,12,095/-. Accordingly the penalty of Rs.2,12,095/- u/s 270A(7) is leviable and upheld. The penalty levied is sustained to the extent of Rs 2,12,095/- as against penalty levied of Rs.8,48,378/-. This ground partly allowed.”

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) upholding levy of penalty @ 50% of the under-reported income of Rs. 11,54,210/-. On going through the contents of the order passed by Ld. CIT(A), we observe that Ld. CIT(A) has specifically observed that there is no detection of any concealment or misreporting on the part of the assessee which

was pointed out by the Assessing Officer. Ld. CIT(A) specifically observed that there is no misrepresentation of the facts and figures by the assessee. However, we note that the only reason why penalty was levied by Ld. CIT(A) was on the ground that there was a variation between the original return of income and revised return of income filed by the assessee, for the impugned assessment year. The case of the assessee is that he could not appear before the Assessing Officer since there was non-receipt of notices by the assessee. However, we also note that assessee had filed revised return of income much prior to initiation of assessment proceedings against the assessee. It is not the case of the Department that the assessee had revised the return of income after the issuance of notices initiating the assessment proceedings. We note that first notice of hearing under Section 143(2) of the Act was issued on the assessee on 29.06.2021, whereas the assessee had filed revised return on 20.12.2020, much prior to issuance of first notice of hearing, initiating assessment proceeding on the assessee. Interestingly, the only reason why the addition was made by the assessee was that the Assessing Officer took the original figure of income declared by the assessee in the original return of income and did not take into consideration the income declared by the assessee in the revised return of income. It is a well settled law that once an assessee files revised return of income within the stipulated time frame, the revised return substitutes the original return of income and is deemed to be a valid return of income in the eyes of law. The Assessing Officer has not pointed out to any misreporting or furnishing of inaccurate particulars in respect of it's income declared by the assessee in the revised return of income. The only reason for making the variation in income was that the Assessing Officer took the figure of original return filed by the assessee as the taxable income of the assessee, instead of the income reported by the assessee in the revised return of income. In the instant case, we find no plausible basis

why the income filed by the assessee in the revised return of income was assessed at a higher figure and the only basis for upward revision was on account of figures of income declared by the assessee in the original return of income. Further, we also note that while upholding levy of penalty @ 50% of the under-reported income under Section 270A(7) of the Act, Ld. CIT(A) has not specified under which specific limb of Section 270A(2) of the Act (which deals with specific instances of under-reporting of income) does the case of the assessee fall into. It is a well settled law that in order to levy of penalty under Section 270A of the Act, the Tax Authorities are required to mention the specific clause / limb of Section 270A of the Act, in which the assessee's case is falling. In the instant facts we note that Ld. CIT(A) has not pointed out to which specific limb of Section 270A(2) of the Act relating to under-reporting of income, in which the assessee's case is falling. As noted in the preceding paragraphs, the only basis for the variation made by the Assessing Officer was due to difference between the original return of income and revised return of income filed by the assessee. Accordingly, in light of the aforesaid observations, we are of the considered view that this is not a fit case for levy of penalty under Section 270A of the Act.

6. In the result, the penalty imposed under Section 270A of the Act is directed to be deleted and the appeal of the assessee succeeds.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 28/04/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 28/04/2025

TANMAY, Sr. PS

TRUE COPY

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat