

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM “DIVISION” BENCH, VISAKHAPATNAM
(HYBRID HEARING)

श्री रवीश सूद ,न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON’BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER

आईटीए. नं. / ITA No. 99/VIZ/2025
निर्धारणवर्ष/ Assessment Year:2018-19)

Asst. CIT – Circle – 2(1) Central Revenue Buildings Mahatma Gandhi Road Governorpet, Vijayawada – 520002 Andhra Pradesh	v.	Eswara Prasad Nadipalli D.No. 5-163, Kanuru Vijayawada – 520007 Andhra Pradesh [PAN:ABFPN7692D]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri CR. Hemanth Kumar, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	06.08.2025
घोषणा की तारीख/Date of Pronouncement	:	22.08.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the revenue against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1071418559(1) dated 20.12.2024 for the

A.Y.2018-19 arising out of penalty order passed under section 270A of Income Tax Act, 1961 (in short 'Act') dated 21.09.2023.

2. Brief facts of the case are, assessee being an individual did not file the return of income for the A.Y. 2018-19. According to the information available with the department with regard to income of Rs.1,00,80,000/- from house property during the F.Y. 2017-18, the Ld. Assessing Officer [in short "Ld. AO"] initiated proceedings under section 147 of the Act and issued notice under section 148 of the Act. In response to the notice under section 148 of the Act, assessee filed his return of income on 23.05.2022 admitting a total income of Rs.1,00,80,000/-. After issuing the statutory notices under section 142(1) of the Act along with the questionnaire the Ld. AO assessed the income as per the return of income filed by the assessee. Subsequently, Ld. AO also initiated penalty proceedings under section 270A of the Act citing that assessee has not voluntarily has filed return of income under section 139(1) of the Act but has only filed in response to notice under section 148 of the Act and hence i.e., under reporting of income attracting the provisions of section 270A of the Act. He therefore proceeded to impose penalty of Rs.65,37,926/- under section 270A of the Act for under report of income form the impugned assessment year.

3. On being aggrieved by the penalty order, assessee filed an appeal before Ld. CIT(A). Ld. CIT(A) in its detailed order considering the various judicial

pronouncements allowed the appeal of the assessee directing the Ld. AO to delete the penalty of Rs.65,37,926/-.

4. On being aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising following grounds in its appeal: -

“1. The order of the Ld. CIT(A) is erroneous on facts and in circumstances of the case.

2. The Ld. CIT(A) erred in deleting the penalty of Rs.65,37,926/- levied u/s.270A of the Income Tax Act, 1961, as the penalty levied is justified when the assessee failed to file the return of income under section 139(1) of the I.T.Act, 1961 leading to the escapement of income.

3. The Ld. CIT(A) erred in ignoring the fact that the return of income was not filed voluntarily u/s. 139(1) of the I.T.Act, 1961 for the A.Y.2018-19

4.. The Ld. CIT(A) erred in not appreciating the fact that if the notice u/s. 148 of the Income Tax Act, 1961 had not been issued to the assessee for the A.Y. 2018-19, the escapement of income by the assessee would not have been unearthed causing revenue loss.

5. The Ld.CIT(A) erred in ignoring the fact that the income assessed was based on the information available with the department which is greater than the maximum amount not chargeable to tax, which leads to levy of Penalty u/s.270A of the I.T.Act, where no return of income has been furnished as per provisions of section 139(1) of the I.T. Act, 1961.

6. The Ld. CIT(A) erred in allowing the assessee's grounds of appeal and holding that the Assessing Officer is not justified in imposing the penalty imposed u/s.270A of the Income-tax Act, 1961.

7. Any other ground that may be urged at the time of appeal hearing.”

5. The only issue contested by the revenue is with respect to the deletion of penalty by the Ld. CIT(A). On this issue, Ld. Departmental Representative (hereinafter in short “Ld. DR”) heavily relied on the orders of the Ld. AO and argued that, if notice under section 148 of the Act was not issued assessee

would not have filed return of income and hence to that extent there is under reporting of income by the assessee and therefore the penalty levied by the Ld.AO is justified.

6. Per contra, Ld. Authorized Representative (hereinafter in short “Ld.AR”) submitted that the rental income was duly captured in Form 26AS available with the department and there is no under reporting of income by the assessee. Further, he also stated that the bank account of the assessee was attached towards non-payment of PF by the assessee for the earlier years. Assessee could not file the return of income as he could not make the payment for tax, since the bank accounts are attached by the Government on account of non-payment of PF arrears. However, the assessee filed his return of income under section 148 of the Act duly disclosing the rental income as available in Form 26AS and the Assessment Order was passed without making any additions. Ld.AR therefore submitted that the penalty levied is not justifiable and hence prayed for its deletion and upholding the order of the Ld. CIT(A).

7. We have heard both the sides and perused the material available on record. It is an admitted fact that the assessee has not filed his return of income voluntarily under section 139(1) of the Act but has filed in response to notice under section 148 of the Act by disclosing the rental income available in Form 26AS. It is also not disputed that there is no variation between the returned income and the assessed income. The only contention of the revenue is that if

the notice under section 148 of the Act not been issued, assessee would not have declared the rental income and filed return of income. However, as submitted by the Ld.AR, the assessee's bank account was frozen due to non-payment of PF for earlier years and hence assessee was not having funds to discharge payment of income tax arising out of the rental income for the impugned assessment year deserves consideration. Ld. CIT(A) in his detailed order by relying on various judicial pronouncement has held that the Ld. AO is not justified in imposing penalty under section 270A of the Act since the assessee was prevented with bonafide cause for non-filing return of income under section 139(1) of the Act. Further it is also observed that there is no difference between returned income and the assessed income attracting the provisions of levying penalty under section 270A for under-reporting of income. We are in agreement with the findings of the Ld. CIT(A) and hence no interference in the order of the Ld. CIT(A) is required. This ground raised by the revenue are dismissed.

8. In the result appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22nd August, 2025.

Sd/-

(रवीश सूद)

(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 22.08.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Eswara Prasad Nadipalli**
D.No. 5-163, Kanuru
Vijayawada – 520007
Andhra Pradesh
2. राजस्व/ The Revenue : **Asst. CIT – Circle – 2(1)**
Central Revenue Buildings
Mahatma Gandhi Road
Governorpet, Vijayawada – 520002
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam