

INCOME TAX APPELLATE TRIBUNAL
HYDERABAD "A" BENCH: HYDERABAD

BEFORE SHRI MANJUNATHA G, ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA.No.988/Hyd./2025
Assessment Year 2017-2018

Venkateshwara Dalapathirao Hyderabad - 500 044. Telangana. PAN AECPD2498D	Rao	vs.	The Income Tax Officer, Ward-4(1), Hyderabad – 500 004. Telangana.
(Appellant)			(Respondent)

For Assessee :	CA, B Satyanarayana Murthy
For Revenue :	Sri Madan Mohan Meena, Sr. AR

Date of Hearing :	10.09.2025
Date of Pronouncement :	24.09.2025

ORDER

PER MANJUNATHA G. :

The above appeal has been filed by the assessee against the Order dated 09.04.2025 of the learned CIT(A)-National Faceless Appeal Centre [in short "NFAC], Delhi, relating to the assessment year 2017-2018.

2. Brief facts of the case are that, the assessee is an individual, carrying-on the business of retail trading of

liquor, filed his return of income for the assessment year 2017-2018 on 11.10.2017 declaring total income of Rs. NIL. The case of the assessee was selected for scrutiny and the assessment has been completed under section 143(3) of the Income Tax Act, 1961 [in short "the Act"] on 26.12.2019 and determined total income of the assessee at Rs.19,79,651/- by estimating 3% profit on cost of goods sold amounting to Rs.6,59,88,387/-. Subsequently, the Assessing Officer passed order under section 154 r.w.s.143(3) of the Act on 12.07.2021 and determined the total income of the assessee at Rs.29,67,295/- by making addition of Rs.8,10,535/- towards income from other sources. Further, in view of determination of the total income of the assessee by estimating 3% profit on cost of goods sold, the Assessing Officer initiated penalty proceeding under section 270A(1) of the Act for under reporting of income and accordingly, notice under section 274 r.w.s.270A of the Act dated 26.12.2019 was issued and served on the assessee.

3. Subsequently, the case was transferred to REFAC and again notice under section 270A of the Act dated 03.03.2021 was issued and served on the assessee. In response to the said notice, the assessee has filed his submissions and argued that, estimation of profit on cost of goods sold for determining the total income of the assessee cannot be *per se* being treated as under reporting of income which necessitated levy of penalty under section 270A(1) of the Act. The Assessing Officer after considering the explanation of assessee and also taking note of relevant facts, levied the impugned penalty of Rs.2,40,519/- being 50% of tax payable for under reported income under section 270A(7) r.w.s.270A(1) and 270A(2)(a) of the Act. The relevant findings of the Assessing Officer are as under :

“5. The above explanation of the assessee is not tenable at all because of the reasons noted in detail in the assessment order Para 3, 3.1 and 4 as cited above to during the course of penalty proceeding in spite of given two opportunities thereof Thus, it may be concluded that the assessee is a defaulter in respect of compliance to above penalty notices and he has no tenable explanation against the imposition of penalty u/s.270A(1) read

with section 270A(2)(a) of the Act for under reporting of income, where the income assessed is greater than the income determined in the return processed u/s.143(1)(a) of the Act.

6. *Under the facts and circumstances as above and in view of assessee's case falling in the category of under reporting of income within the meaning of section 270A(2)(a), as the assessee failed to substantiate his case with reasonable cause during the course of assessment and penalty proceedings as well, the assessee is liable to pay penalty u/s.270A(1) read with section 270A(2)(a) of the Act. As such, it is found that this is a fit case for imposition of penalty u/s. 270A(1) r.w.s.270A(7) of the Act. Accordingly, penalty of Rs.2,40,519/-, being 50% of tax payable on under reported income (as 'C' above), is levied against the assessee u/s 270A(7) rws.270A(1) and 270A(2)(a) of the Act for under reporting of income, as discussed in para-5 above."*

4. Being aggrieved by the assessment order. the assessee preferred appeal before the learned CIT(A). Before the CIT(A), the assessee challenged penalty levied by the Assessing Officer in light of certain judicial precedents including decision of Hon'ble Gujarat High Court in the case of CIT vs., Subhash Trading Co. [1996] 221 ITR 110 (Guj.) and submitted that, estimation of income on cost of goods

sold *per se* would not attract penalty under section 270A of the Act for under-reporting of income. The learned CIT(A) after considering the relevant submissions of the assessee and also taking note of relevant reasons given by the Assessing Officer for levy of penalty held that, the Assessing Officer has rightly levied the penalty for under-reporting of income because, there is a difference between returned income reported and income assessed by the Assessing Officer. The relevant findings of the CIT(A) are as under :

“In the light of overall facts of case, on perusal of appellant grounds of appeal, it is noticeable that appellant is contending the penalty order of AO as bad in law as it involves against the provisions of law and thereby pleaded to delete the same Further in these GOA, appellant contended that, AO erred in not mentioning in the notice clearly whether it involves under-reporting of income or mis-reporting of income and thereby appellant claims such notice as defective and requested to consider. Further in these GOA, appellant contends that, AO ought not have initiated these penalty proceedings as the same are not applicable to the appellant facts of case involving assessment of income by estimation method by AO and thereby pleaded such order of AO as not maintainable. Precisely in all these GOA, appellant is contending that the penalty notice as issued is not clear whether issued on under reporting of income or mis-reporting of income and AO ought not to have given such penalty notice on an estimated income and thereby pleaded to

delete the penalty order as not maintainable as per law. However on perusal of facts on record, as brought out by AO in the assessment order, it is clearly noticeable that, appellant did not adduce any details of sale made with supporting sales ledger/sale bills/sale Invoices as needed with its reconciliation with relevant stock availability visa-a-visa with supporting purchase ledger/purchase bills/invoices as the case may be as took place on daily/monthly basis so as to establish such correctness of appellant claims on sales and purchases as contended. In the absence of the same. AO has estimated such applicable profit as at 3% of the cost of goods sold to meet the ends of justice as per the purchased claimed and thereby apparently there exists clear under reporting of income by the appellant as per the ROI filed visa-a-visa income assessed by AO as observed by AO in the assessment order for initiation of such penalty proceedings on under reporting of income. In the light of these facts, on perusal of appellant submissions/GOA, it is noticeable that, appellant is contending such estimation of income being made by AO on the purchases details provided by the appellant and in view of its estimation penalty proceedings are not attracted as involving under reporting of income and such claims of appellant are not apparently reconcilable and justifiable as per the facts of case as brought out by AO in the assessment order. Such claim of appellant neither has a basis nor has any relevance when the appellant failed to adduce such supporting evidences as needed to justify its correctness with reconcilable sales and purchases visa-a-visa closing stock on daily/monthly basis with relevant books of accounts as maintained by appellant as contended However, appellant could not give any such details as needed to advance appellant contentions on the correctness of sales and purchases with consequent admission of true income

as per law as envisaged. In the absence of the same, AQ has estimated such under reported income as at 3% of cost of goods sold by merely considering purchase cost as claimed by the appellant as a reference to meet the ends of the justice to both appellant and revenue. Hence, considering these finer facts of case as attributable to liquor business of appellant without verifiable sales visa-a-visa purchases etc., clearly there exists under reporting of income as reasoned and observed by AO in the assessment order and as concluded by AO in the penalty order as involving as squarely attracted to the facts of appellant case. Accordingly, appellant mere contentions as advanced in various GOA to hold the order of AO in levying penalty for under reporting of income on an estimated income is neither reasonable nor maintainable and thereby appellant GOA on this analogy is to be treated as not acceptable and accordingly dismissed. Further, appellant is contending that the notice issued is not clear in mentioning under reporting of income or mis-reporting of income and thereby claimed the same as defective to that extent, However, to advance the appellant contentions appellant could not adduce any such supporting verifiable facts of case/law as applicable to appellant notice as contended involving under reporting of income and thereby appellant mere contentions on this analogy are to be treated as not maintainable Further, it is categorically clear in the penalty order as at Para (3), such intention/ satisfaction of the AO involving under reporting of income is clearly brought out and thereby appellant contentions to hold the notice/AO is not clear is not acceptable as per the facts of assessment order read with further findings adduced by AO in the penalty order as at para (5) and (6) as per law. Accordingly, this plea of the appellant to hold the notice as involving no clear reference to under reporting of income neither has a basis nor has

any verifiable reconciliation and thereby such plea/GOA as advanced by the appellant is to be treated as not maintainable and accordingly dismissed. Considering all these facts of case, apparently there exists no infirmity in the penalty order of the AO as per the facts available on record and in view of the same, appellant various inter-related/over-lapping contentions as advanced in grounds of appeal needs to be treated as not maintainable as per law. In the result, appellant appeal is dismissed as not maintainable as per facts available on record on merits as appellant is squarely attracted by the penalty proceedings as reasoned and analyzed by AO in the assessment order read with related penalty order involving clear under reporting of income as per the facts of case of appellant as analyzed and discussed supra. Accordingly, appellant appeal is dismissed as not maintainable as per law.

6. Accordingly, appellant appeal against the penalty order u/s. 270A of I.T Act dated 28.07.2021 for AY 2017-18, is dismissed on merits as not maintainable as per law as above.”

5. Aggrieved by the Order of the learned CIT(A), the assessee is now, in appeal before the Tribunal.

6. CA, B Satyanarayana Murthy, Learned Counsel for the Assessee referring to the order passed by the Assessing Officer under section 270A of the Income Tax Act, 1961 submitted that, the Assessing Officer has levied the impugned penalty on total income determined by estimating

profit on cost of goods sold, which cannot be considered as under-reporting of income, within the meaning of section 270A of the Act. Learned Counsel for the Assessee further submitted that, the assessee has reported net loss from his business on trading in liquor and the Assessing Officer without assigning any reasons estimated 3% profit. However, not made-out any case of under-reported income by the assessee by furnishing incorrect details or making any excessive claim of expenditure etc. Since, the Assessing Officer has determined income on estimation basis, penalty proceeding under section 270A of the Act is not leviable. In this regard, he relied upon decision of Hon'ble Gujarat High Court in the case of CIT vs., Subhash Trading Co. (supra) and also decision of Hon'ble Delhi High Court in the case of CIT vs., Aero Traders Private Limited [2010] 322 ITR 316 (Del.). Therefore, he submitted that, penalty levied by the Assessing Officer and confirmed by the learned CIT(A) should be deleted.

7. Sri Madan Mohan Meena, learned Sr. AR for the Revenue, on the other hand, supporting the Order of the learned CIT(A) submitted that, it is a clear case of under-reporting of income, which is evident from the income determined by the Assessing Officer and income reported by the assessee, where there is a difference which clearly falls under the provisions of section 270A(3)(1)(a) of the Act. The learned CIT(A) after considering the relevant facts, has rightly confirmed the penalty levied by the Assessing Officer and thus, the Order passed by the learned CIT(A) should be upheld.

8. We have heard both the parties, perused the material on record and the orders of the authorities below. There is no dispute with regard to the fact that, the assessee has reported Rs.NIL income after carrying forward current year loss of Rs.87,300/-. It is also not in dispute that, the Assessing Officer has determined the total income of the assessee at Rs.19,79,651/- by estimating 3% profit on cost of goods sold and adjusted TDS credit available against entire tax liability. The Assessing Officer levied penalty for

under-reporting of income only on the ground that, there is a difference between the reported income and assessed income. In our considered view, mere difference between the reported income and assessed income, does not *per se* leads to a conclusion that, the assessee has under-reported his income, unless the Assessing Officer makes-out a case that, the assessee has under-reported his income with the relevant reasons. In the present case, the Assessing Officer without assigning any reasons, estimated the profit on cost of goods sold and inferred that, the case of the assessee falls under the category of “under-reported income” as defined under section 270A(3)(1)(a) of the Income Tax Act, 1961. In our considered view, once the income has been determined by estimating the profit on total turnover, then, it cannot be considered as under-reporting of income because, the Assessing Officer has not made-out a case of incorrectness in reported income filed by the assessee or discrepancies in expenditure debited in the profit and loss account. Since, the Assessing Officer has not made-out a case of under reporting of income with relevant reasons, in our considered

view, penalty levied under section 270A of the Act, cannot be sustained. In this regard, it is relevant to refer to the decision of Hon'ble Gujarat High Court in the case of CIT vs., Subhash Trading Co. (supra), where it has been clearly held that, estimation of income, cannot be a reason for levy of penalty under section 271(1)(c) of the Income Tax Act, 1961. Similar view has been taken by the Hon'ble Delhi High Court in the case of CIT vs., Aero Traders Private Limited (supra). Therefore, we are of the considered view that, the learned CIT(A) without appreciating the relevant facts, has simply sustained the penalty levied by the Assessing Officer under section 270A of the Act . Thus, we set-aside the Order of the learned CIT(A) and delete the penalty levied by the Assessing Officer under section 270A of the Income Tax Act, 1961.

9. In the result appeal of the assessee allowed.

Order pronounced in the open Court on 24.09.2025.

Sd/-
[RAVISH SOOD]
JUDICIAL MEMBER
Hyderabad, Dated 24th September, 2025
VBP

Sd/-
[MANJUNATHA G]
ACCOUNTANT MEMBER

Copy to

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2.	The Income Tax Officer, Ward-4(1), IT Towers, Masab Tank, Hyderabad – 500 004. Telangana.
3.	The Pr. CIT, Hyderabad.
4.	The DR ITAT “A” Bench, Hyderabad.
5.	Guard File.

//By Order//

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