



IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "SMC", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1608/PUN/2025

Assessment Year: 2017-18

Bajaj Housing Finance Limited, 3 <sup>rd</sup> Floor, Panchshil Tech Park, Viman Nagar, Pune 411 014 Maharashtra PAN : AADCB6018P	Vs.	Income Tax Officer, Ward-8(1), Pune
Appellant		Respondent

Appellant by	:	Shri Nikhil Mutha
Respondent by	:	Shri Sanjay Dhivare
Date of hearing	:	13.08.2025
Date of pronouncement	:	09.10.2025

**आदेश / ORDER**

The captioned appeal at the instance of assessee pertaining to A.Y. 2017-18 is directed against the order dated 08.05.2025 of CIT(A)/NFAC, Delhi passed u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') arising out of Penalty Order dated 30.09.2021 passed u/s.270A of the Act.

2. Assessee has raised following grounds of appeal :

*"Based on the facts and circumstances of the case and in law, Bajaj Housing Finance Limited ('BHFL' or 'Appellant'), respectfully craves leave to prefer an appeal against the order dated 8 May 2025 passed by the Hon'ble Commissioner of Income Tax (Appeals), NFAC ['Hon'ble CIT(A)'] under section 250 of the Income Tax Act, 1961 ('Act') on the following grounds which are separate and without prejudice to each other:*

*1. Ground 1: Penalty order invalid due to failure in specifying applicable limb under section 270A(9) of the Act in all notices and orders throughout the penalty proceedings*

*In the facts and circumstance of the present case and in law, the penalty order passed under section 270A of the Act, levying penalty*



ITA No.1608/PUN/2025  
Bajaj Housing Finance Limited

*of ₹ 26,15,568, at the rate of 200%, concluding it as case of under-reporting in consequence of misreporting is vague, arbitrary and invalid considering the failure to specify in any of the notices as well as in the penalty order as to which limb of section 270A(9) of the Act is allegedly attracted in the present case:*

*2. Ground No. 2 - Levy of penalty under section 270A of the Act amounting to ₹26,15,568 is bad in law*

*The Hon'ble CIT(A) has erred in confirming the order of the learned Assessing Officer ('learned AO') of levy of penalty under section 270A of the Act amounting to 26,15,568 without appreciating that it is not a case of under-reporting of income as well as not a case of under-reporting in consequence of misreporting of income,*

*In doing so, the Hon'ble CIT(A) erred in*

*2.1. Not considering the facts of the present case and submissions filed by the Assessee and confirming the ex-parte order passed by the learned AO wherein the learned AO has not considered the time-to-time detailed submissions filed by the Appellant during the course of hearings:*

*2.2. Not appreciating the fact that adjustment was only pertaining to reclassification of income from the head 'Profits & Gains from Business or Profession' to the head 'Capital Gains', which had been suo-moto reclassified the head of income and also offered to tax by the Appellant,*

*2.3. Disregarding the accepted legal position that penalty cannot be levied merely on account of change in head of Income which is also affirmed by the various Courts and Tribunals*

*3. Ground No. 3 - Confirming the order of learned AO without providing any reasoning on the issue on merits*

*3.1 The Hon'ble CIT(A) while passing the order has failed to provide any reasoning on the issue on merits and accordingly, the order passed by the Hon'ble CIT(A) is not in compliance with the provisions of section 250(6) of the Act, thereby the order is void-ab-initio*

*4. Ground No. 4 - Non consideration of application filed by the Appellant under section 270AA of the Act*

*4.1 Without Prejudice to above grounds and merits of case, the Hon'ble CIT(A) erred in upholding the penalty order passed by the learned AO without appreciating that the application for seeking immunity under the provisions of section 270AA of the Act duly filed by the Appellant was not acted upon, resulting in deemed acceptance of the same. Consequentially, the levy of penalty under section 270A stands invalidated and is liable to be quashed*



ITA No.1608/PUN/2025  
Bajaj Housing Finance Limited

*The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide this appeal according to law.”*

3. Brief facts of the case are that the assessee is a Limited Company and declared Nil income in the return for A.Y.2017-18 furnished on 12.10.2017. Return processed u/s.143(1) of the Act. Thereafter, case selected for Scrutiny through CASS followed by validly serving statutory notices. During the course of assessment proceedings, assessee filed revised computation of income wherein the profit on sale of investments which was originally declared and shown as business income and set off against business expense has been revised in the computation of income and declared as income under the head 'short term capital gain'. It was stated by the assessee that revised computation has been filed after considering the decision of the Coordinate Bench, Ahmedabad in the case of *Ashok Kumar Khimraj (HUF) Vs. ITO in ITA No.674/Ahd/2017 dated 07.12.2018*. Ld. AO concluded the assessment proceedings making the addition for short term capital gain at Rs.43,78,250/-. Subsequently, ld. AO initiated the penalty proceedings by issuance of notice u/s.274 r.w.s. u/s.270A of the Act on 16.07.2021 for under reporting of income in consequence of misreporting of income. However, as per the ld.AO assessee failed to comply to the notice of hearing and ld. AO concluding the proceedings levying penalty u/s.270A of the Act @200% of the tax of Rs.13,07,784/- thereby calculating the penalty at Rs.26,15,568/-.

4. Aggrieved assessee preferred appeal before ld.CIT(A), who affirmed the order of the AO observing that the assessee has



failed to comply to the show cause notice issued by him. Now the assessee is in appeal before this Tribunal.

5. Ld. Counsel for the assessee firstly referred to the compliance made by the assessee before ld.AO as well as before ld.CIT(A) and stated that all the replies filed before has not been considered by both the lower authorities. He further submitted that it is not a case of under reporting of income because the assessee has already disclosed this transaction in its regular books of account as business income and after considering the judicial precedents has declared it as short term capital gain and offered it to tax. He also submitted that reclassification of income cannot be made liable for penalty and further it is a bonafide case and there is no concealment of particulars of income. He further submitted that even on legal ground in absence of specifying sub-clause 270A(9) of the Act initiation and levy of penalty proceedings deserves to be quashed. Decisions referred and relied on by the ld. Counsel for the assessee are as under :

*“Re-classification of income is not liable for penalty :*

1. *Hiralal Doshi Vs. CIT [2017] 79 taxmann.com 371 (Bombay HC)*
2. *D.C. Polyester Ltd. [2023] 157 taxmann.com 753 (Mumbai - Trib.)*
3. *Commissioner of Income-tax-1, Mumbai vs. Bennett Coleman & Co. Ltd. [2013] 33 taxmann.com 227 (Bombay HC)*

*Penalty not leviable in case of bona fide cause :*

4. *Jaypee Cement Corporation Ltd. vs. ACIT [2023] 157 taxmann.com 757 (Delhi-Trib.) [11-09-2023]*

*Penalty not leviable in case of in absence of specifying the sub-clause of section 270A(9) of the Act*

5. *DCIT vs. Chakradhar Contractors and Engineers (P.) Ltd. [2025] 171 taxmann.com 133 (Pune - Trib.) [26-12-2024]*



ITA No.1608/PUN/2025  
Bajaj Housing Finance Limited

6. *Santosh Ashokrao Barhanpurkar Vs. (ITO ITA Nos. 2131 & 2132/PUN/2024) [18-02-2025]*

7. *Schneider Electric Southeast Asia (11Q) Pte. Ltd. vs. Asst. Commissioner of Income-tax [2022] 145 taxmann.com 665 (Delhi HC) [28-03-2022]*

6. On the other hand, Ld. Departmental Representative vehemently argued supporting the order of ld.CIT(A).

7. I have heard the rival contentions and perused the record placed before me. I observe that the assessee is a Limited Company and engaged in the business of providing housing loans to Developers etc.

8. So far as the observation of both the lower authorities that assessee failed to comply to the notices of hearing, I find that the assessee has made sufficient compliance to the notice issued by the authorities and the same is depicted in the following chart :

<u>Compliance Chart</u>				
<b>I. Notices issued during the course of the Penalty Proceedings and the relevant submissions filed before the Assessing Officer</b>				
Sr. No.	Date of issuing Notice	Page no. of Factual Paper book	Date of Compliance	Page no. of Factual Paper book
1	12/12/2019	99-102	22/01/2020	103-116
2	05/11/2020	117-117	20/11/2020	118-119
3	08/05/2021	120-121	18/05/2021	122-135
4	07/06/2021	136-137	30/09/2021	138-140
5	16/07/2021	141-143	30/09/2021	144-146
<b>II. Notices issued during the course of the Appellate Proceedings and the relevant submission filed before the Learned Commissioner of Income-tax (Appeals)</b>				
Sr. No.	Date of issuing Notice	Page no. of Factual Paper book	Date of Compliance	Page no. of Factual Paper book
1	09/03/2022	147-150	24/03/2022	151-167
2	16/11/2022	168-168	01/12/2022	169-172
3	08/08/2024	173-176	14/08/2024	177-194



8.1 Going through the above details, I find that the assessee has made all the necessary submissions and therefore I do not find it justified to remit back the issue to the file of lower authorities.

9. Before me, Ld. Counsel for the assessee has also raised a legal ground stating that in the notice u/s.274 of the Act ld. AO has failed to refer the specific sub-clause of section 270A(9) of the Act under which the penalty proceedings have been initiated and for such non specification of charge against the assessee it has been consistently held that such penalty proceedings are *void ab initio* and deserves to be quashed.

10. I further observe that during the year under consideration, the assessee has not generated any revenue from its operation and only derived profit on sale of investments in mutual funds. Such profit from sale of investments is Rs.43,78,251/- which is duly recorded in the books of account has been offered as 'business income' However, due to other expenditure incurred during the year the net income is declared as Nil on account of brought forward losses. However, during the course of assessment proceedings, assessee has *suo motu* filed the revised computation of income and the profit from sale of investments has been re-classified as income under the head 'capital gain' and offered to tax as 'short term capital gain'. It is not the case of Revenue that ld. AO has detected this transaction to have been taxed under wrong head but the assessee itself has offered it as income from 'capital gain' as has been originally declared it as 'business income' in the books. It is clearly a case of re-classification of income and cannot be considered as under reporting or misreporting of income.



ITA No.1608/PUN/2025  
Bajaj Housing Finance Limited

11. Though assessee has referred various decisions in the case law paper book referred (supra), I however taking note of the decision of Coordinate Bench, Delhi in the case of *Jaypee Cement Corporation Ltd. Vs. ACIT (2023) 157 taxmann.com 757 (Delhi – Trib.)* where both the aspects relating to merits of the case as well as legal issue has been dealt with and I notice that in the decision of *Jaypee Cement Corporation Ltd. (supra)* the issue relates to applicable depreciation rate which the assessee has claimed @100% however the assessee was actually eligible @15% of depreciation u/s.32AC of the Act and therefore the claim of depreciation was reduced. Relevant finding of the Tribunal reads as under :

*“4. We have heard the rival submissions and perused the material available on record. The assessee is engaged in the business of manufacturing and sale of cement, manufacturing and sale of asbestos sheets, heavy engineering workshop and foundry. The assessee filed its return of income electronically for AY 2017-18 on 31.10.2017 declaring loss of Rs. 641,08,95,408/-. The assessment was completed u/s 143(3) on 01.10.2019 declaring loss of Rs. 4,49,80,57,749/-. In the return, the assessee claimed deduction u/s 32AC of the Act in the sum of Rs. 225,03,97,246/- which is the gross amount of investment in new plant or machinery as against its claim of 100% deduction u/s 32AC of the Act. The ld AO granted deduction u/s 32AC of the Act only to the extent of 15% of gross amount of investment in new plant and machinery which worked out to Rs. 33,75,59,587/-. For the differential disallowance of deduction u/s 32AC of the Act, the ld AO initiated penalty proceedings u/s 270A of the Act on the ground that the assessee had underreported or misreported its income to the extent of Rs. 191,28,37,659/- (Rs. 2,25,03,97,246 – Rs. 33,75,59,587).*

*5. The return of income filed by the assessee was duly accompanied by tax audit report u/s 44AB of the Act, audited balance sheet, profit and loss account, among others. It is not in dispute that the assessee duly furnished the hard copy of tax audit report together with all its annexures and computation of income, audited balance sheet, profit and loss account, bank statements, Form 26AS, reconciliation of income as shown in ITR and profit and loss account and various other documents that were called for by the AO from time to time.*



6. In the tax audit report in response to question No. 19, the tax auditor had reflected the figure of claim of deduction u/s 32AC of the Act of Rs. 225,03,97,246/- . Notice u/s 143(2) of the Act was issued to the assessee on 05.09.2018 and 27.09.2018. Notices u/s 142(1) of the Act were issued to the assessee on 02.01.2019 and 28.01.2019 on which dates, no query regarding the claim of deduction u/s 32AC of the Act was sought for by the ld AO. The 3rd notice issued u/s 142(1) of the Act dated 06.02.2019 was issued wherein, the ld AO sought for furnishing of complete tax audit report along with annexures. The assessee vide letter dated 02.04.2019 addressed to the ld AO submitted that deduction u/s 32AC of the Act had been erroneously claimed by the assessee @100% of the value of investment in new plant and machinery instead of eligible rate of 15% of the value thereon which worked out to Rs. 33,79,59,878/-. Accordingly, the assessee requested the AO to consider the claim of deduction u/s 32AC of the Act only at Rs. 33,75,59,878/- instead of Rs. 225,03,97,246/-. The assessee also enclosed a certificate from the tax auditor dated 06.03.2019 duly certifying this aspect wherein, it was specifically stated that due to inadvertent mistake, deduction u/s 32AC was claimed at 100% instead of 15%.

7. The first notice u/s 142(1) of the Act was issued by the ld AO seeking clarification regarding claim of deduction u/s 32AC of the Act was only on 13.09.2019. Before this date itself, the assessee vide its letter dated 02.04.2019 had already withdrew the excess claim of deduction u/s 32AC of the Act as stated (supra). In response to the notice u/s 142(1) of the Act dated 13.09.2019, the assessee vide letter dated 18.09.2019 duly submitted the workings for claim of deduction u/s 32AC of the Act together with the revised computation of taxable income and a certificate from the tax auditor dated 06.03.2019 certifying the correct figure of claim of deduction u/s 32AC of the Act. The assessment u/s 143(3) of the Act dated 01.10.2019 was ultimately completed at the same income at the same loss figure of Rs. 449,80,57,749/- as was disclosed by the assessee in the revised computation of total income filed on 18.09.2019.

8. In response to the penalty proceedings initiated u/s 270A of the Act dated 01.10.2019, the assessee submitted a reply vide letter dated 06.12.2019 narrating the entire facts of the case and also bringing to the notice of the ld AO that the excess claim of deduction u/s 32AC of the Act was suo moto withdrawn by the assessee due to inadvertent mistake committed by the Tax Auditor in the tax audit report, before it could be detected by the ld AO. Further, it was also brought to the notice by the AO that as per section 270A of the Act, penalty was proposed to be levied for following two defaults:-

- a) Misreporting of income
- b) Underreporting of income.

9. It was pointed out that the cases of misreporting of income are covered u/s 270A(9) of the Act as under:



ITA No.1608/PUN/2025  
Bajaj Housing Finance Limited

*“(9) The cases of misreporting of income referred to in sub-section (8) shall be the following namely:-*

- (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.*

*10. It was pointed out that the assessee’s case does not fall under any of the clauses mentioned in section 270A(9) of the Act and hence no penalty could be levied on the assessee for misreporting of income. It was pointed out that case underreporting of income are covered in section 270A(2) of the Act as under:- —*

*(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;*



ITA No.1608/PUN/2025  
Bajaj Housing Finance Limited

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

11. *The assessee's case would fall only in clause (g) of Section 270A(2) of the Act as the ultimate assessment had the effect of reducing the loss returned by the assessee. It was further pointed out that under-reporting of income has got certain exceptions as provided in section 270A(6) of the Act as under:-*

*(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.*

12. *It was also pointed out that as per section 270A(7) of the Act, the penalty under sub-section (1) of Section 270A shall be a sum equal to 50% of amount of tax payable of underreported income. Hence, for underreporting of income, penalty leviable would be 50% of tax of underreported income as per section 270A(7) of the Act and in case of underreported income in consequence of misreporting of income, penalty leviable shall be 200% of tax payable of underreported income as per section 270A(8) of the Act. It was submitted that assessee's explanation was bona fide and there was a genuine error committed in the tax audit report which stood rectified by the assessee on its own volition before it could be detected by the AO*



ITA No.1608/PUN/2025  
Bajaj Housing Finance Limited

during the course of assessment proceedings. Accordingly, it was prayed that penalty shall not be leviable in the facts of the instant case. The ld AO however, did not heed to these submissions of the assessee and proceeded to ultimately levy penalty by stating the assessee has underreported income in consequence of misreporting thereof to the tune of Rs. 191,28,37,659/- (being the differential amount of claim of deduction u/s 32AC of the Act) and levied penalty in terms of section 270A(8) and (9) of the Act at @200% of tax of underreported income which worked out to Rs. 132,39,89,710/-. This action of the ld AO was upheld by the ld CIT(A).

13. At the outset, we find that it is bounden duty of the ld AO to bring on record whether: (a) assessee has underreported his income in terms of section 270A(2) of the Act; (b) whether the assessee has misreported his income in terms of section 270A(9) of the Act; (c) whether the explanation given by the assessee falls under any of the exceptions provided in section 270A(6) of the Act ; and (d) whether the assessee has underreported his income in consequence of misreporting of income thereon so as to be invited with higher rate of penalty in terms of section 270A(8) of the Act. In the instant case from the facts narrated and sequence of events narrated hereinabove, it is very clear that the assessee had indeed claimed deduction u/s 32AC of the Act @100% value of investment in new plant and machinery in the return of income based on the figure mentioned thereon in tax audit report by the Tax Auditor. However, on noticing the mistake that had happened in the return and in view of the fact that the time limit for filing revised return has expired, the assessee voluntarily withdrew the excess claim of deduction u/s 32AC of the Act vide its letter dated 02.04.2019 wherein, clearly stating that the correct claim of deduction u/s 32AC of the Act would @15% of plant and machinery which worked out to Rs. 33,75,59,587/-. Further, the assessee also enclosed a certificate from the Tax Auditor dated 06.03.2019 wherein, Tax Auditor had duly admitted inadvertent mistake that had been committed in the tax audit report and also certified the correct figure of claim of deduction u/s 32AC of the Act to be Rs. 33,75,59,587/- only. It is pertinent to note that though several notices were issued u/s 142(1) of the Act by the ld AO dated 28.01.2019, 06.02.2019, we find no query regarding the claim of deduction u/s 32AC of the Act was even asked by the ld AO. The first query regarding the claim of deduction u/s 32AC of the Act was raised by the ld AO only vide notice u/s 142(1) of the Act on 13.09.2019, before which date, the assessee had already withdrawn the excess claim of deduction u/s 32AC of the Act by way of written letter dated 02.04.2019. The assessee again in response to notice u/s 142(1) of the Act dated 13.09.2019 had filed a reply letter dated 18.09.2019 before the ld AO wherein, it categorically stated that claim of deduction u/s 32AC of the Act would be only Rs. 33,75,59,587/- and enclosed a certificate from the tax auditor to that effect and further filed revised computation of total income wherein, the withdrawal of excess claim of deduction was duly reflected. It is absolutely not in dispute in the instant case that assessee is indeed entitled for deduction u/s 32AC of the Act in view of the investment made in new plant and



ITA No.1608/PUN/2025  
Bajaj Housing Finance Limited

*machinery. In fact the ld AO on being satisfied about the eligibility of the assessee to claim deduction u/s 32AC of the Act had indeed granted deduction @15% of value of new plant and machinery. Hence, the preliminary objection raised by the ld DR in this regard that assessee is not eligible to claim deduction u/s 32AC of the Act, does not have any legs to stand in the eyes of law and we hold that the ld DR is trying to make out a new case before the Tribunal which is not even the case of lower authorities. All these facts collectively go to prove that the assessee had come forward voluntarily before the ld AO to withdraw the excess claim of its deduction u/s 32AC of the Act before any detection by the Income Tax Department. Hence, in our considered opinion, the assessee's case would squarely fall under the exception provided u/s 270A(6)(a) of the Act wherein, the assessee had given its bona fide explanation and had disclosed all the material facts that are relevant for the explanation offered. In view of the exception provided in section 270A(6)(a) of the Act, we hold that the present facts does not make the revenue eligible to levy penalty u/s 270A of the Act.*

*14. We find that the ld AR also made argument on the ground that there was absolutely no mala fide intention on the part of the assessee to claim excess deduction u/s 32AC of the Act in the facts of the instant case as even after the withdrawal of the differential 85% claim of deduction in the sum of Rs. 191 crores, the assessee still has brought forward losses to the tune of Rs. 2698.95 crores as is evident from the schedule CFL (details of loss to be carry forward) in the ITR filed for AY 2017-18. We are in agreement with this argument of the ld AR which proves the intention and behaviour of the assessee to withdraw the claim of deduction voluntarily by the assessee.*

*15. Further, the ld. AR argued that, in any case, a mistake of a professional cannot invite an assessee with the levy of penalty and for which, he relied on the decision of the Hon'ble Punjab and Haryana High Court in the case of CIT Vs. Deep Tools Pvt. Ltd as reported in 274 ITR 603. Further, the ld AR also argued that in the penalty show cause notice issued u/s 270A read with Section 274 of the Act, the ld AO did not mention the specific charge of offence committed by the assessee i.e. the AO did not mention whether the assessee has either underreported his income or misreported his income or underreported in consequence of misreporting of his income. He argued that these are not inter-changeable and different rates of penalty are provided for different offences as per section 270A of the Act. Further, he also argued that there is provision for granting immunity u/s 270A of the Act in the case of underreporting of income and the same is not available for misreporting of income. Accordingly, he argued that the AO is duty bound to specifically mention the charge of offence committed by the assessee in the show cause notice itself. Reliance in this regard was also placed on the Full Bench decision of the Hon'ble Bombay High Court in the case of Md. Farhan A Sheikh Vs. DCIT reported in 125 taxmann.com 253 (Bombay) among other decisions. In our considered opinion, all these propositions made by the ld AR need not be gone into, as relief has*



ITA No.1608/PUN/2025  
Bajaj Housing Finance Limited

*already been granted to the assessee by applying the provisions of the Act itself considering the bonafide conduct of the assessee and the counter given by the ld DR. Hence, the other propositions made by the ld AR are hereby not adjudicated and they are left open. Accordingly, we direct the ld AO to delete the levy of penalty.”*

12. From going through the above decision of this Tribunal in the case of *Jaypee Cement Corporation Ltd. (supra)*, I find that the same is squarely applicable on the facts of the present case and the case of the assessee is on a much better footing. In the instant case, assessee has reclassified his income under the head from ‘business income’ to long term capital gain’ based on the judicial precedents as well as the *Circular No.06/2016 dated 29.02.2016* issued by Central Board of Direct Taxes on the taxability of surplus on sale of shares, securities – Capital Gains or Business income Income – instructions in order to reduce litigation.

13. Considering the facts of the case, I find that it is not a case of under reporting of income or misreporting of income and therefore respectfully following the decision in the case of *Jaypee Cement Corporation Ltd. (supra)*, I hereby delete the impugned penalty and allow the effective grounds of appeal raised by the assessee.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 09<sup>th</sup> day of October, 2025.

Sd  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 09<sup>th</sup> October, 2025.

*Satish*



ITA No.1608/PUN/2025  
Bajaj Housing Finance Limited

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,  
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.