आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA Nos. 973 to 975/JP/2024
निर्धारण वर्ष/Assessment Year : 2017-18

Sincere Architects Engineers Private Limited, 42 Lal Singh Judo Colony, Tonk Road, Jaipur	बनाम Vs.	ACIT, Circle-07, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGCS6770G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashish Sharma, Adv.
राजस्व की ओर से/ Revenue by : Shri Gaurav Awasthi, JCIT

सुनवाई की तारीख/ Date of Hearing : 18/09/2025
उदघोषणा की तारीख/Date of Pronouncement: 10/10/2025

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present bunch of three appeals were filed by the above named assessee. The dispute relates in all the years is of Assessment Year 2017-18, one appeal relates to the quantum proceeding, one for levy of penalty on that quantum proceeding and the third one for levy of penalty for not getting the books of account audited by the above-named assessee. Since

the matter were argued and heard together the same are disposed off with the common order.

2. First we take up the appeal of the assessee in ITA No. 973/JP/2024 wherein the grounds of appeal taken by the assessee are as under:-

> (a) The AO erred in not rectifying the apparent mistake of having adopted total income at Rs. 1,10,04,980/- instead of the income returned at Rs. 97,04,424/- as per the return of income filed on 14.12.2021.
>
> (b) The CIT(A) has erred in confirming the action of the AO by erroneously noting that the appellant has offered two different taxable total income during the course of reassessment proceedings and in ignoring the fact that the income as per the Return was Rs. 97,04,424/- on the pretext that the Return of income was not filed withing the time given in the notice u/s. 148 dated 30.03.2021.

3. Succinctly, the fact as culled out from the records is that the assessee company is engaged in the business of providing services as Architects and Engineers and related consultancies though having taxable income has not filed its return of income for the AY 2017-18. Revenue was having the information that for the year under consideration, the assessee was having income from Interest income of Rs. 75,847/-, Cash payments for goods and services of Rs. 2,50,000/-, Professional or Technical fees (section 194A) of Rs. 1,87,40,593/-, Purchase of motor vehicle of Rs. 1,10,87,222/- and Contract receipts of Rs. 1,54,46,700/-. As assessee has not filed return of income for AY 2017-18 though having taxable income,

amounts as shown above aggregating to Rs. 4,56,00,362/- was considered as escaped assessment within the meaning of section 147 of the I.T. Act, 1961. Accordingly, a notice u/s 148 of the IT Act was issued on 30.03.2021 calling for filing of return of income for A.Y.2017-18.

Ld. AO noted that there was no response to the notice issued u/s 148, a notice u/s 142(1) of the IT. Act, 1961 was issued on 29.06.2021 calling for filing of return and other information. The record reveals that the assessee submitted that the assessee could not file the return of income in the year under consideration within the time allowed u/s 139 of the Act. However, the assessee has paid due tax of Rs. 28,94,478/- and interest of Rs. 3,47,480/- for a total amount of Rs. 32,41,958/- was deposited all these payments of taxes were duly refracted in Form No. 26AS placed on record. The assessee further submitted that they could not file the return of income on account of various facts including that of error on the portal and thereby immediately the assessee filed a return of income on 14.12.2021. The time lag between the notice issued u/s. 148 and till the assessee filed the ITR was covered by the Covid-19 wherein the Apex Court has extended all the due dates whether extendable expressly or not on account of pandemic Covid-19. Therefore, the contention of the revenue that the assessee could not file the return within 30 days of issue of notice was not correct. Even

though this facts are available on record ld. AO did not consider the return of income so filed by the assessee and thereby assessed income as per computation of income at Rs. 1,10,04,980 ignoring the correct return of income filed by the assessee on 14.12.2021.

On receipt of that order the assessee preferred an application u/s. 154 of the Act before the assessing officer to rectify the apparent mistake that there was an observation that the assessee has not filed the ITR in response to notice u/s. 148 of the Act but that fact being wrong and therefore, an application was filed before the ld. AO to correct the fact that the assessee filed its return of income on 14.12.2021 wherein the assessee has declared the total income at Rs. 97,04,420/- and thereby supported that return for payment of TDS Rs. 22,23,578/-, TCS Rs. 1,10,872/- and self assessment tax deposited on 31.03.2018 at Rs. 16,60,000/-. The assessment u/s. 147 r.w.s. 144 r.w.s. 144B of the Act was completed by NFAC on 28.03.2022 wherein the income was considered at Rs. 1,10,04,980/- was assessed and thereby the interest was not correctly calculated. The ld. AO rectified the mistake in charging the interest u/s. 234A and 234B of the Act. Thus, the ld. AO considered the rectification application in part vide order dated 21.12.2022.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the ld. CIT(A), NFAC. Apropos to the grounds raised the relevant finding of the ld. CIT(A), NFAC is reiterated here in below:

> Hence, it is seen that in the computation of income filed before the AO, the appellant itself had offered taxable total income of Rs. 1,10,04,984/-. Subsequently, the assessee filed its Return of Income on 14.12.2021 vide Acknowledgement No. 189416240141221 in which the total income of Rs. 97,04,420/- is offered. Order u/s. 147 rws 144 rws 144B dated 28.03.2022 was passed in which income of Rs. 1,10,04,980/- is assessed. The AO has adopted the income which was offered by the appellant itself in the computation of income filed by it with the AO which is reproduced above. The AO has not mentioned anything wrong in the assessment order u/s. 147 rws 144 rws 144B of the Act dated 28.03.2022 that the assessee had offered income of Rs. 1,10,04,980/- under normal provisions and Rs. 44,22,598/-under MAT provisions in the computation of income filed by it. The appellant had offered two different taxable total incomes during the course of re-assessment proceedings. In the computation of income filed by it as per submission dated 09.08.2021 vide Ack. No. 189416240141221, the appellant had offered taxable total income of Rs. 1,10,04,980/- and in the return of income filed on 14.12.2021, the appellant had offered total income of Rs. 97,04,424/-. It is worth noting that the appellant had not filed any return of income u/s. 139(1) of the Act within the due date or u/s. 139(4) within the time limit prescribed in Sec. 139(4). The appellant even did not file the return of income in response to notice u/s. 148 dated 30.03.2021 within the time limit prescribed in the notice and the return was filed by the appellant much after the time limit prescribed in the notice u/s. 148 of the Act dated 30.03.2021. The AO adopted taxable total income of Rs. 1,10,04,980/- suo-moto offered by the assessee as assessed income of the assessee. If the appellant had any issue with the income assessed by the AO, the appellant should have filed an appeal against the order u/s.147 rws 144 rws 144B dated 28.03.2022. However, it is not a mistake apparent from record. The AO has assessed the income on the basis of information available on record and the income cannot be changed u/s. 154 of the Act. Hence, the AO as per order u/s. 154 dated 21.12.2022 has correctly dismissed the rectification application of the assessee as the mistake is not apparent from records and is beyond the purview of Sec. 154 of the Act. Hence, the appeal of the appellant is dismissed.

5. Feeling dissatisfied with the above order of the ld. CIT(A) the assessee preferred the present appeal before this tribunal on the ground as reproduced hereinabove. In support of the contention raised the ld. AR of the assessee relied upon the submission made before the ld. AO contending that the return of income was not filed for various unforeseen reasons, the assessee could file the return of income for A. Y. 2017-18 within the time allowed as per section 139 of the Act. The fact that the assessee was conscious about the liability to file the return of income shows that the assessee has paid the self assessment tax for an amount of Rs. 16,60,000/- on 31.03.2018 and based on that ld. AO has already considered the rectification for charge of interest u/s. 234A and 234B of the Act. Having accepted that fact and considering the Covid-19 the time line as prescribed while issuing the notice the assessee could not file the return of income because the lockdown came into effective and movement of the people restricted. Even the assessee vide reply to notice dated 29.06.2021 issued u/s. 142(1) the assessee narrated all this fact is already reflected in the order of the assessment and assessee filed the same at page 1 to 2 of his paper book thus, mere delay in filling the return in response to 148 is covered by the extension granted by the Apex Court and thereby the same should be considered to have been filed in time and the income be

assessed as such as declared in the ITR filed on 14.12.2021. In support of these contentions the ld. AR of the assessee filed a paper book containing following evidence:

S. No.	Particulars	Page No.
1	Income Tax Return Acknowledgement	1
2	Independent Auditor's Report	2-31
3	Ministry of Corporate Affairs Receipt	32
4	Form No. AOC-4	33-47
5	Form No. 3CA	48-56

6. The ld DR relied upon detailed finding recorded in the order of assessing officer and that of the ld. CIT(A). He vehemently argued that the assessee has not filed the ITR u/s. 139 of the Act and even has not filed the ITR within the time allowed u/s. 148 of the Act and thereby he supported the orders of the lower authority.

7. We have heard the rival contentions and perused the material placed on record. Though the assessee has raised two grounds of appeal challenging the action of the lower authority in not considering the ITR filed by it on 14.12.2021 and thereby framing the assessment on it. The brief facts related to the dispute are that the assessee company engaged in the business of providing services as Architects and Engineers and related consultancy. The assessee company, though having taxable income, has

not filed its return of income for the AY 2017-18. Revenue was having noted that fact and based on the information with them noted that the assessee is having the income from Interest income of Rs. 75,847/-, Cash payments for goods and services of Rs. 2,50,000/-, Professional or Technical fees (section 194A) of Rs. 1,87,40,593/-, Purchase of motor vehicle of Rs. 1,10,87,222/- and Contract receipts of Rs. 1,54,46,700/- but not filed the voluntary return of income as per provision of section 139 of the Act. Having noted that fact ld. AO recorded the reasons and issued a notice u/s. 148 of the Act on 30.03.2021 calling for filing of return of income for A.Y.2017-18 to the assessee within 30 days. As the date on which notice was issued there was a period of Covid-19 pandemic. After issue of notice u/s. 148 of the Act the ld. AO issued notice u/s. 142(1) of the Act dated 29.06.2021 the assessee has filed the detailed letter explain the facts as to why the return of income of u/s. 139 of the Act was not filed and as to why the return of income u/s. 148 is pending to be filed. Ultimately the assessee could get success and thereby filed the return of income on 14.12.2021 and thereby ld. AO framed the assessment order on 28.03.2022 and thereby he could not consider that return of income as filed by the assessee on 14.12.2021.

But while making the assessment he considered the computation of income wherein the assessee while filling the computation of income

considered the income of Rs. 1,10,04,980 being income chargeable to tax as per provision of Minimum Alternative Tax mechanism as section 115JB of the Act.

Whereas in the ITR filed online the same was offered at Rs. 97,04,424/-. Be that it may so the ld. AO should have considered the income as per 115JB of the Act or under the normal provision of the Act where the tax payable is higher and therefore, the ld. AO is directed to considered the return of income filed on 14.12.2021 though after 30 days' time. Having noted so even the arguments of the ld. DR does not come to rescue because Hon'ble Gujarat High Court in the case of PCIT Vs. Babubhai Ramanbhai Patel [84 taxmann.com 32 (Gujarat)] High Court observed that ;

> **4.** Before us learned counsel for the revenue placed heavy reliance on the provisions contained in sub-section (3) of Section 139 to contend that an assessee who wishes to carry forward any loss must file a return under sub-section (3) within the time permitted and only upon which the same would be treated as return under Section 139(1) of the Act. Counsel for the revenue submitted that when no return in terms of sub-section (3) of Section 139 claiming carry forward or set off loss was filed, such claim cannot be subject matter of a revised return. Had the assessee filed such return, the possibility of revising such return on finding any error would arise.
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> **5.** We may notice that under sub-section (1) of Section 139, every person whose income for the previous year exceeds the maximum amount not chargeable to tax, is required to file a return before the due date. Sub-section (3) of Section 139 provides that any person who has sustained a loss and claims that the loss should be carried forward would file a return of loss within the time prescribed under sub-section (1) and thereupon all the provisions of the Act shall apply as if it was a return under sub-section (1) of Section 139 of the Act. Under sub-section 4 of Section 139, a person who has not furnished a return within the time allowed under sub-section (1) may still furnish a return at any time before the end of the

relevant assessment year or before the completion of the assessment whichever is earlier. Sub-section (5) of Section 139 provides that any person having furnished a return under sub-section (1) or sub-section (4) discovers any omission or a wrong statement therein, he may furnish a revised return any time before the expiry of one year from the end of relevant assessment year or before the completion of the assessment whichever is earlier.

6. Sub-section (5) of Section 139, therefore, gives right to an assessee who has furnished a return under sub-section (1) or sub-section (4) to revise such return on discovery of any omission or a wrong statement. Such revised return, however, can be filed before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. This is precisely what the assessee did while exercising the right to revise the return. Sub-section (5) of Section 139 does not envisage a situation whereupon revising the return if a case for loss arises which the assessee wishes to carry forward, the same would be impermissible. In terms, sub-section (5) of Section 139 allows the assessee to revise the return filed under sub-section (1) or sub-section (4) as long as the time frame provided therein is adhered to and the requirement of the revised return has arisen on discovery of any omission or a wrong statement in the return originally filed. Accepting the contention of the revenue would amount to limiting the scope of revising the return already filed by the assessee flowing from sub-section (5). No such language or intention flows from such provision.

6.1 The Allahabad High Court in case of *Dhampur Sugar Mills Ltd.* v. *CIT* [1973] 90 ITR 236, in the context of the Income Tax Act, 1922 held that the assessee is given a right to file a correct and complete return if he discovers an error or omission in the return filed earlier. The assessment can be completed only on the basis of the correct and complete return. The earlier return, after a revised return has been filed, cannot form the basis of assessment although it may be used to indicate the conduct of the assessee. **There is a clear distinction between a revised return and a correction of return. Once a revised return is filed, the original return must be taken to have been withdrawn and substituted by a fresh return for the purpose of assessment.**

7. The Madras High Court in the case of *CIT* v. *Periyar District Co-operative Milk Producers Union Ltd.* [2004] 266 ITR 705/137 Taxman 364 held that once the assessee had filed a return claiming carry forward loss under sub-section (3) of Section 139, **a revised return could be filed in respect of such a return**. We are conscious that we are not directly concerned with such a situation.

8. In view of the above discussion, we do not find any error in the view of the Appellate Tribunal. Tax appeal is, therefore, dismissed.

Ld. AO noted that there was no response to the notice issued u/s 148, a notice u/s 142(1) of the IT. Act, 1961 was issued on 29.06.2021 calling for filing of return and other information. The record reveals that the assessee submitted that the assessee could not file the return of income in the year under consideration within the time allowed u/s 139 of the Act. However, the assessee has paid due tax of Rs. 28,94,478/- and interest of Rs. 3,47,480/- for a total amount of Rs. 32,41,958/- was deposited all these payments of taxes were duly refracted in Form No. 26AS placed on record. The assessee further submitted that they could not file the return of income on account of various facts including that of error on the portal and thereby immediately the assessee filed a return of income on 14.12.2021. Therefore, the contention of the revenue that the assessee could not file the return within 30 days of issue of notice was not correct. Even though these facts available on record ld. AO did not consider the return of income so filed by the assessee and thereby assessed income as per computation of income at Rs. 1,10,04,980 ignoring the correct return of income filed by the assessee on 14.12.2021. On receipt of that order the assessee preferred an application u/s. 154 of the Act before the assessing officer to rectify the apparent mistake that there was an observation that the assessee has not filed the ITR in response to notice u/s. 148 of the Act but

that fact being wrong and therefore, an application was filed before the ld. AO to correct the fact that the assessee filed its return of income on 14.12.2021 wherein the assessee has declared the total income at Rs. 97,04,420/- and thereby supported that return for payment of TDS Rs. 22,23,578/-, TCS Rs. 1,10,872/- and self assessment tax deposited on 31.03.2018 at Rs. 16,60,000/-. The assessment u/s. 147 r.w.s. 144 r.w.s. 144B of the Act was completed by NFAC on 28.03.2022 wherein the income was considered at Rs. 1,10,04,980/- was assessed and thereby the interest was not correctly calculated. The ld. AO rectified the mistake in charging the interest u/s. 234A and 234B of the Act. Thus, the ld. AO considered the rectification application in part vide order dated 21.12.2022.

Now the issue to be considered here is that the return of income that is filed on 14.12.2021 is to be considered as return before making the assessment or not. Considering the decision of the Gujarat High Court in the case of PCIT Vs. Babubhai Ramanbhai Patel (Supra) we hold that the return filed by the assessee though belated cannot be ignored while making the assessment under section 143 or 144 as the case may be Essentially the proceeding u/s. 147 with regard to the escaped income relate to the same proceeding which is commenced with the filling of the return u/s. 139 or service of the notice u/s. 142(1). Such proceedings are

not sperate or distinct from the original assessment proceeding. Thus, considering the above stated facts and circumstances as discussed herein above we direct the ld. AO to considered the return of income filed by the assessee before completion of the assessment and given effect to that return of income in accordance with law.

In the result, the appeal of the assessee in ITA No. 973/JP/2024 is allowed.

8. Now we take up the appeal of the assessee in **ITA No. 975/JP/2024.** In this appeal the assessee has challenged the order of ld. CIT(A), NFAC thereby confirming the penalty u/s. 270A of the Act of Rs. 17,69,910/- raising therein the following grounds of appeal;

> 1. The penalty-imposed u/s 270A is ab-initio void since it is primarily imposed because of the non-filing/non-traceability of the return of income whereas the penalty for non-filing of return is provided u/s 271F of the Act
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> 2. The CIT(A) has erred in confirming the penalty u/s 270A of Rs. 17,60,910/- both in law and in facts, which makes his cryptic order unsustainable, and liable to be quashed.
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> 3. The CIT(A) has erred in facts and in law in imposing the penalty when it was not called for in the facts and circumstances of the case.
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> 4. The appellant seeks your permission to modify/amend/add or delete any one or all of the grounds of appeal at the time of hearing.

9. Succinctly, the fact as culled out from the records is that the assessee company is engaged in the business of providing services as Architects and Engineers and related consultancies though having taxable income has not filed its return of income for the AY 2017-18 but they have filed the return of income before completion of the assessment and in response to notice u/s. 148 of the Act. The ld. AO while levying the penalty noted that the assessee did not file the return u/s. 139 of the Act and even within time allowed as per provision of section 148 of the Act but only filed on 14.12.2021. Considering that set of facts ld. AO levied the penalty u/s. 270A of the Act for under reporting of income and accordingly penalty @ 50 % of the tax levied was ordered to be charged to the assessee.

10. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the ld. CIT(A), NFAC. Apropos to the grounds raised the relevant finding of the ld. CIT(A), NFAC is reiterated here in below:

> 7.2 I have considered the contentions of the appellant and the order of the AO. It is a fact that the appellant was having taxable income and still it did not file Return of Income within due date u/s. 139(1) or even within the extended period allowed u/s. 139(4) of the Act. The return was filed by the appellant on 14.12.2021 only after notice u/s. 148 of the Act dated 30.03.2021 was issued and that too much after the time limit prescribed in notice u/s. 148 of the Act. The appellant has not furnished any explanation as to why the return was not filed within due date. Only because the appellant was subjected to TDS on its receipts does not make the appellant immune from penalty u/s 270A of the Act. The appellant was required to file Return of Income within the due date. The appellant failed to do so. Hence the act of the appellant amounts to offering no income for taxation although it has

taxable income. The case of the appellant is directly covered by sub-clause(b) of clause (2) of section 270A of the Income Tax Act which is reproduced as under:
"A person shall be considered to have under reported his income, if-
…….
(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where retum has been furnished for the first time u/s 148."
……..
7.3 Hence, the case of the appellant is directly covered by the above provision of the Act and in view of the same, the appellant comes within the purview of section 270A of the Act. No satisfactory explanation is offered by the appellant as to why penalty u/s 270A of the Act should not be levied in its case. Hence, I hereby hold that the appellant is liable for penalty u/s 270A of the Act for failure to offer its taxable income by filing its return of income within the due date prescribed in the Act or even within the extended time period allowed u/s. 139(4) of the Act in spite of having taxable income. The appellant has under-reported its income as per the provisions of sub-clause (b) of clause (2) of Sec. 270A of the Income Tax Act, 1961. Hence the penalty order levied by the AO is confirmed and appeal of the appellant is dismissed.

8. In ground no. 5, the appellant has reserved his right to add additional grounds at the time or before hearing of appeal. Since, this right was never exercised by the appellant during the appellate proceedings, this part of the ground has become infructuous, so treated as dismissed.

9. In the result, the appeal of the appellant is DISMISSED.

11. Feeling dissatisfied with the above order of the ld. CIT(A) the assessee preferred the present appeal challenging the finding for confirming the penalty levied. To support the various grounds raised by the assessee, ld. AR of the assessee has filed the following written submissions:

1. The appellant company engaged in providing services as Architects and Engineers, could not file its return of income u/s 139(1) / 139(4) for A.Y. 2017-18, but, filed it on 14.12.2021 at total income of Rs. 97,04,420/-, in response to notice u/s 148 dated 30.03.2021 (acknowledgement number 18948286014122). The pre-paid taxes by way of TDS and self-assessment were Rs. 39,94,450/- and reflected in Form 26AS. The return of income filed on 14.12.2021 at total income of Rs. 97,04,420/- was however, dismissed by the F.A.O., stating that *"on perusal of departmental databse no trace of return was found on perusal of departmental database".*

2. In the re-assessment order u/s 147 / 144 / 144B dated 28.03.2022, the F.A.O. has also reproduced the reply of the assessee dated 09.08.2021 in para 3.1 and also his notice u/s 142(1) dated 26.11.2021. The A.O. determined the total income at Rs. 1,10,04,984/- on the basis of details which included computation of income as per the Companies Act, filed with the reply dated 09.08.2021.

3. It is pertinent to note that the F.A.O. did not make any additions observing (in para 3.5) that the computation filed by the assessee *"appear to be reasonable and found to be acceptable. However, penalty u/s 270A for underreporting of income is initiated separately for not filing return of income*."

4. The appellant filed application u/s 154 dated 23.11.2022 of the Act, since demand of Rs. 8.61 Lakhs had been raised because the pre-paid taxes were not fully accounted for by the F.A.O. and the income adopted at Rs. 1,10,04,984/- was as per the companies accounts, instead of adopting the Returned Income i.e. Rs. 97,04,420/-.

5. The A.O. vide rectification order u/s 154 dated 21.12.2022, allowed full credit for the pre-paid taxes. Consequently, the demand of Rs. 8,61,894/- was wiped out and a refund of Rs. 2,58,910/- resulted and was granted. However, he did not accept the plea of adopting income as returned, on the ground that this return was not visible on the portal.

6. The F.A.O. invoked and imposed penalty u/s 270A vide order dated 28.09.2022, on the ground that the Return was not traceable and even if it was filed, it was invalid because of issue of notice u/s 148 dated 30.03.2021, without which the income would not have been declared, further, there was no intention to declare income voluntarily and so the contention of the assessee of pre-paid taxes being more than the computed taxes *holds no ground*. Therefore, the A.O. imposed penalty u/s 270A for under-reporting of income.

7. The CIT(A) vide order dated 21.05.2024 confirmed the order on the ground that the return filed on 14.12.2021 was only after the issue of notice u/s 148 dated 30.03.2021 and also not within the date specified in this notice and

even u/s 139(4) despite having taxable income, and that no satisfactory explanation is offered, so provisions of section 270A(b) were attracted.

12. To support the contention so raised in the written submission reliance was placed on the following evidence / records :

S. No.	Particulars	Page No.
1	Income Tax Return Acknowledgement	1
2	Independent Auditor's Report	2-31
3	Ministry of Corporate Affairs Receipt	32
4	Form No. AOC-4	33-47
5	Form No. 3CA	48-56

13. The ld. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee has already placed on record the fact that they have paid the tax including the self-assessment tax as per the time line given as per provision of section 139 of the Act. The delay or not filling the in time was explained by the assessee before vide letter dated filed in response to notice 29.06.2021 and ultimately that return of income was filed on 14.12.2021 before completion of the assessment and even the income was considered based on the computation of income and not as per the return of income and considering that aspect of the matter the levy of penalty was not justified as there is no misreporting of the income even when the relevant tax payable was paid by

the assessee beyond the issue of notice u/s. 148 of the Act and therefore, the levy of penalty was not justified.

14. On the other hand, ld. DR heavily relied upon the fact that the assessee has not filed the return of income of 139 or that of the time allowed in notice issued as per provision of section 148 of the Act and therefore, it is clear case of misreporting of income.

15. We have heard the rival contentions and perused the material placed on record. The bench noted that the in this appeal the assessee challenges the levy of penalty u/s. 270A of the Act raising therein three different grounds but since the issue is one we deal all these three grounds together. Ground no. 4 being general does not require our finding.

Apropos to ground no. 1 to 3 the relevant facts of the case on hand is that the assessee has not filed the return of income u/s. 139 of the Act and therefore, a notice u/s 148 of the Act was issued directing the assessee to file the return of income within 30 days but the same was not filed as stated by the assessee because of the technical reasons and thereby the same was filed on 14.12.2021 before completion of the assessment and as such there is major dispute in the return of income filed and the said we have dealt with vide dealing with the quantum appeal of the assessee. Now we are seized with the matter of dealing with the levy of penalty u/s. 270A of

the Act @ 50 % of the tax payable by the assessee on the assessed income as misreporting of income. The bench noted that the assessee filed the return of income on 14.12.2021 and the assessee as well as revenue did not dispute the income assessed as per normal provision or as per the special provision of section 115JB of the Act. Thus, as held by us while dealing with the quantum appeal of the assessee that the return of income filed by the assessee cannot be ignored. Having noted so now the issue is that in such a situation the penalty as per provision of section 270A of the Act can be levied or not. As the issue touches upon the levy of penalty u/s. 270A of the Act it would be appropriate to deal with the provision of section 270A of the Act which reads as under ;

[**Penalty for under-reporting and misreporting of income.**

[15]**270A.** (1) The Assessing Officer or [16][the Joint Commissioner (Appeals) 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 [17][or where return has been furnished for the first time under section 148];
(*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 [18][no return of income has been furnished or where return has been furnished for the first time under section 148];
(*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) The amount of under-reported income shall be,-

(*i*)		in a case where income has been assessed for the first time,-			
	(*a*)		if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (*a*) of sub-section (1) of section 143;		
	(*b*)		in a case where [19][no return of income has been furnished or where return has been furnished for the first time under section 148],-		
		(*A*)		the amount of income assessed, in the case of a company, firm or local authority; and	
		(*B*)		the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (*A*);	
(*ii*)		in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order:			

Provided that where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under-reported income shall be determined in accordance with the following formula-

(*A* - *B*)		+ (*C* - *D*)
		where,
		A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);
		B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;
		C = the total income assessed as per the provisions contained in section 115JB or section 115JC;
		D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income:

Provided further that where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item *D*.

Explanation.-For the purposes of this section,-

(*a*)		"preceding order" means an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated;
(*b*)		in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

(4) Subject to the provisions of sub-section (6), where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as "preceding year") and no penalty was levied for such preceding year, then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

(5) The amount referred to in sub-section (4) shall be deemed to be amount of income under-reported for the preceding year in the following order-

(*a*)		the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and
(*b*)		where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.

(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 [20][the Joint Commissioner (Appeals) 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 [21][the Joint Commissioner (Appeals) 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.

(7) The penalty referred to in sub-section (1) shall be a sum equal to fifty per cent of the amount of tax payable on under-reported income.

(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income.

[22](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) The tax payable in respect of the under-reported income shall be-

(*a*)		where no return of income has been furnished [23][or where return has been furnished for the first time under section 148] and the income has been assessed for the first time, the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income;
(*b*)		where the total income determined under clause (*a*) of sub-section (1) of section 143 or assessed, reassessed or recomputed in a preceding order is a loss, the amount of tax calculated on the under-reported income as if it were the total income;
(*c*)		in any other case, determined in accordance with the formula-
		(*X*-*Y*)
		where,
		X = the amount of tax calculated on the under-reported income as increased by the total income determined under clause (*a*) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order as if it were the total income; and
		Y = the amount of tax calculated on the total income determined under clause (*a*) of sub-section (1) of section 143 or total income assessed,

		reassessed or recomputed in a preceding order.

(11) No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.
(12) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by the Assessing Officer, [24][the Joint Commissioner (Appeals) or] the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be.]

On a plan reading of section 270A(3) read with 270A(9) of the Act that the penalty can be levied on the following cases;

1. misrepresentation or suppression of facts;
2. failure to record investments in the books of account;
3. claim of expenditure not substantiated by any evidence;
4. recording of any false entry in the books of account;
5. failure to record any receipt in books of account having a bearing on total income; and
6. 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.

Thus, we note that there is no reason as per provision of section 270A(9) to make the assessee liable to levy of penalty on misreporting of income and thereby the appeal of the assessee is allowed.

In the result, the appeal of the assessee in ITA No. 975/JP/2024 is allowed.

16. Now we take up the appeal of the assessee in **ITA No. 974/JP/2024.** In this appeal the assessee has challenged the order of ld. CIT(A), NFAC thereby confirming the penalty u/s. 271B of the Act by raising following grounds of appeal;

1. The penalty-imposed u/s 271B is ab-initio void since it is primarily imposed because of the non-filing/non-traceability of the return of income whereas the penalty for non-filing of return is provided u/s 271F of the Act.

2. The CIT(A) has erred in confirming the penalty u/s 270A of Rs. 17,60,910/- both in law and in facts, which makes his cryptic order unsustainable, and liable to be quashed.

3. The CIT(A) has erred in facts and in law in imposing the penalty when it was not called for in the facts and circumstances of the case.

4. The appellant seeks your permission to modify/amend/add or delete any one or all of the grounds of appeal at the time of hearing.

17. Apropos to the ground for levy of penalty the relevant finding of the ld. CIT(A) reads as under :

7. Decision:

7.1 It is a fact that the appellant had received receipts of Rs. 1,87,40,593/- towards professional and technical fees and receipt of Rs. 1,54,46,700/- has contract received. These facts are not disputed by the appellant. Hence total receipt of the appellant during the year under consideration was more that the limit prescribed in section 44AB and hence appellant was liable to get its account audited by an accountant before the specified date as laid down in section 44AB of the Act. The appellant failed to get its accounts audited and hence it is liable for penalty under section 271B of the Act for failure to comply with provisions of section 44AB of the Act. In the submission filed, the appellant has offered no explanation as to why it did not get its accounts audited as required u/s 44 AB of the Act. In fact, no explanation is offered by the appellant on failure to get its accounts audited as required u/s 44AB of the Act. Hence the AO has correctly levied penalty u/s 271B of the Act in the case of the appellant for breach of provisions of 44 AB of the Act. Hence, the order of the AO is confirmed. Reliance is placed on the following decisions:

1. Rakesh Kumar Jha 150 taxmann.com 298, ITAT Ranchi
2. Benchmark LLP 147 taxmann.com 391, ITAT Pune
3. S. Ramakumar Reddy 147 taxmann.com 401, Telangana High Court

7.2 Hence, the appeal of the appellant is dismissed and the order of the AO is confirmed.

8. In ground no. 2, the appellant has reserved its right to add additional grounds at the time or before hearing of appeal. Since, this right was never exercised by the appellant during the appellate proceedings, this part of the ground has become infructuous, so treated as dismissed.

9. In the result, the appeal of the appellant is DISMISSED.

18. Assessee filed the appeal against the above finding of the ld. CIT(A) in support of the grounds so raised the ld. AR of the assessee has filed the following written submissions:

1. The return for A.Y. 2017-18 was e-filed on 14.12.2021 vide acknowledgement number 189482860141221, which as per the A.O., was not traceable on departmental database. Therefore, in para 3.5 of the order u/s 147 / 144 / 144B dated 28.03.2022, the A.O. observed that *as turnover of the assessee requires the book to be audited u/s 44AB and as the assessee failed to get his books audited penalty proceedings u/s 271B is initiated separately" (emphasis supplied).*

2. The notice, first issued on 16.08.2022, u/s 271B (refer page 2 of the order) states that *"it appears to me that you have failed to get accounts audited or failed to furnish a report of such audit as required u/s 44AB of the IT Act" (emphasis supplied).* The applicable limb i.e. whether the A.O. construed it to be a failure to get accounts audited or whether the A.O. was considering the non-furnishing of audit report is not specified. A copy of this notice dated 16.08.2022 is enclosed.

3. The A.O. felt that assessee's reply was devoid of any justification / reason for failure to get accounts audited u/s 44AB OR furnish such report as required u/s 44AB. Surprisingly, thereafter, the A.O. stated that the company had failed to get its accounts audited and furnished by the specified date and imposed penalty of Rs. 1.50 Lakhs vide order dated 28.09.2022.

4. The CIT(A) reproduced the submissions of the appellant in para 6, but felt that the receipts exceeded the limit u/s 44AB and the appellant had failed to get its account audited and to comply with provisions of section 44AB, for which no explanation was offered. The CIT(A) confirmed the penalty, citing decisions

reported in 150 taxmann.com 298, 147 taxmann.com 391 and 147 taxmann.com 401.

19. To support the contention raised in the written submission reliance was placed on the following evidence / records :

S. No.	Particulars	Page No.
1	Income Tax Return Acknowledgement	1
2	Independent Auditor's Report	2-31
3	Ministry of Corporate Affairs Receipt	32
4	Form No. AOC-4	33-47
5	Form No. 3CA	48-56

20. The ld. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee the assessee being corporate entity has already filed the requisite return before ROC and there was a technical reason the assessee could not file the ITR and in support the ld. AR submitted that the considering the provision of section 273B of the Act.

21. Per contra, ld. DR supported the orders of the ld. CIT(A) confirming the levy of penalty as the assessee has violated the provision of section 44AB and not submitted required report. Not only that the assessee has not supported that they have any reasonable cause for not submitting the report.

22. We have heard the rival contentions and perused the material placed on record. The only issue that is raised in the present appeal is levy of penalty u/s. 271B of the Act. The facts of the case is that the assessee though paid the taxes as per the time line given in section 139 of the Act but could not submit the return of income along with the tax audit report as required in accordance with the provision of section 44AB of the Act. Based on that lapse the ld. in para 3.5 of the order u/s 147 / 144 / 144B dated 28.03.2022,. observed that as turnover of the assessee requires the book to be audited u/s 44AB and as the assessee *failed to get his books audited* penalty proceedings u/s 271B was initiated separately" Based on that set of fact ld. AO issued notice 16.08.2022, u/s 271B alleging that "it appears to me that you have *failed to get accounts audited* or *failed to furnish a report of such audit* as required u/s 44AB of the IT Act".

The reply filed by the assessee was not based on any reasonable cause for such failure and therefore, the ld. AO levied the penalty and ld. CIT(A) on the same very reason sustained the penalty holding that the assessee has not submitted the audit report as required u/s. 44AB of the Act and therefore, there is no reason to cancel the penalty levied and thereby we see no infirmity in the finding recorded in the orders of the lower authorities and thereby confirm the penalty levied u/s. 271B of the Act.

In the result the appeal no. 973/JP/2024 and 975/JP/2024 are allowed and appeal in ITA no. 974/JP/2024 stands dismissed.

Order pronounced in the open court on 10/10/2025.

Sd/- Sd/-

(डा॰ एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 10/10/2025
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Sincere Architects Engineers Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-07, Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 973 to 975/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar