

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH “SMC”, RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

**आयकर अपील सं./ITA No.640/RPR/2025**

**निर्धारण वर्ष / Assessment Year : 2017-18**

M/s. R D Construction  
Shikshit Nagar, Near Bus Stand,  
Bhilai Marshalling Yard, Charoda,  
Bhilai-490 025 (C.G.)  
PAN: AAJFR3698E

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-1(5), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 13.11.2025

घोषणा की तारीख / Date of Pronouncement : 14.11.2025

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM**

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 25.08.2025 for the assessment year 2017-18 as per the grounds of appeal on record.

2. At the time of hearing, none appeared for the assessee. However, an adjournment petition has been filed which is rejected. The matter was heard after recording the submissions of the Ld. Sr. DR and on careful perusal of the material available on record.

3. Brief facts in this case are that the assessment was completed u/s. 143(3) of the Income Tax Act, 1961 (for short 'the Act'). It was noted by the A.O on verification of labour payment vouchers and register that the payments to the labour were made in the attendance register by putting thumb mark or signature. However, no vouchers for payments were prepared, but receipt of payments made by the assessee were available with the assessee. During further verification, the A.O found attendance register maintained by the assessee which was without any name and other site details. That register were having thumb impression of the labourers and since vouchers of payment were not available, though receipt of payments made by the assessee were produced before the A.O

which according to him were false claim of expenses made by the assessee. Accordingly, he disallowed entire expenses of Rs.25,58,400/- and initiated penalty u/s. 270A(1) r.w.s. 270A(9)(c) of the Act.

4. That further fact reveals as emanated from the penalty order u/s. 270A(1) of the Act, dated 24.01.2024, the Ld. CIT(Appeals)/NFAC had partially allowed the appeal of the assessee substantially and had held that the A.O was not justified in disallowing labour expenses to the tune of Rs.25,58,400/-. However, on ad-hoc basis and considering the nature of business of the assessee, the Ld. CIT(Appeals)/NFAC restricted the disallowance @ 20% of Rs.25,58,400/-. That all these while penalty proceedings were kept in abeyance and it was only after the Ld. CIT(Appeals)/NFAC upheld the disallowance @ 20% of Rs.25,58,400/- that such penalty u/s. 270A of the Act was levied. It is surprise to note also that even though the Ld. CIT(Appeals)/NFAC upheld the disallowance @ 20% of labour expenses but in the penalty order the A.O writes that for under reported income, penalty is 50% and for mis-reported income, it is 200% and accordingly, he computes at Para 4 of his order and levies penalty u/s.270A of the Act @ 200% i.e. Rs.3,16,218/-. It is further astonishing that as per the assessment order, penalty was initiated u/s. 270A(1) r.w.s. 270A(9)(c) of the Act but in the penalty order there is no such specification of the provisions in which penalty is levied and as per

penalty order such levy of penalty has been done u/s. 270A of the Act for both under-reporting and misreporting of income. In this background it is relevant to extract the relevant provisions of Section 270A of the Act which reads as follows:

**“270A. Penalty for under reporting and misreporting of income.—**

(1) The Assessing Officer 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;
- (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;
- (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 no return has been furnished,—
- (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 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.

(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.

(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 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, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be."

5. It is clearly seen that there are two limbs i.e. under-reporting of income and misreporting of income. In the entire penalty order, the A.O had failed to bring out any satisfaction regarding what was the under-reporting of income by the assessee and what was the misreporting of income by the assessee for which, penalty was levied u/s. 270A of the Act @ 200%. It is a matter of common knowledge that such penalty

proceedings is not a proceedings to be carried out in a routine manner and there requires specific satisfaction to be arrived at by the quasi-judicial authority for levy of such penalty since it is a financial hardship added to the liability of the assessee. In the present case, there is no satisfaction brought out in the penalty order levying penalty regarding what is exactly under reporting of income by the assessee and what is misreporting of income by the assessee. It is very much discernable from the penalty order that such penalty has simply been levied without application of mind by the A.O only on the basis that ad-hoc disallowance have been upheld by the Ld. CIT(Appeals)/NFAC @ 20%. The penalty order being silent of any reasoning and without any satisfaction arrived at by the imposing authority, therefore, is vitiated, perverse, bad in law, liable to be quashed.

6. Furthermore, the A.O on merits had not brought out the specific reason of doubting the genuineness regarding labour payment register and terming the same as bogus. The A.O himself writes that such labour payment register contains the thumb impression of the labourers who had received the payments. There is no evidence brought on record by the A.O in his order where he had made efforts to verify these thumb impression from the required experts for which he had doubted the genuinity. Furthermore, payment receipts were also there with the assessee. It was

only because of that some register was found without name and site details and that payment vouchers were not available with the assessee for which the A.O had made addition on estimate basis, which triggered the process of initiation of penalty.

7. Thereafter, when the matter travelled upto the Ld. CIT(Appeals)/NFAC on the quantum issue, the Ld. CIT(Appeals)/NFAC restricted the disallowance to 20% again on ad-hoc basis without compliance to Section 250(4) & (6) of the Act and resultantly, for such sustainment of 20% disallowance, penalty was levied on the assessee. That against the penalty order when the assessee preferred an appeal before the Ld. CIT(Appeals)/NFAC, the said authority while disposing the appeal of the assessee had not followed again the mandate of Section 250(4) & (6) of the Act and it had simply upheld the penalty order of the A.O without independent application of mind or reasoning in its order. As per the mandate of adjudication by a quasi-judicial authority it had miserably failed to adjudicate the same through principles of substantive justice. The order of the Ld. CIT(Appeals)/NFAC has been done in a summary manner without application of mind and one such instance is that as per quantum the disallowance which had been restricted by the Ld. CIT(Appeals)/NFAC was at 20% of the impugned disallowance of labour expenses and at Para 6.7, the Ld. CIT(Appeals)/NFAC writes while dealing

with the appeal of the assessee against penalty order that “*disallowance of 25% of such impugned labour expense.....*” which means the Ld. CIT(Appeals)/NFAC is also not clear about the correct facts, on which, he is dealing regarding the issue of penalty.

8. Furthermore, when I refer to the provisions of Section 270A(6)(c) of the Act which states that “the under-reported income for the purpose of this section shall not include following namely, ....the amount of under-reported income determined on the basis of an estimate.....”.

9. In the present case, entire substantive additions has been done on estimate basis only which therefore does not fall within the parameters of under-reported income and as there is no satisfaction brought on record by the A.O levying penalty u/s.270A of the Act, therefore, on examination of entire facts and circumstances along with legal principles such levy of penalty in the hands of the assessee is arbitrary, bad in law, void ab initio hence, quashed.

10. In view of the aforesaid facts and circumstances, I set-aside the order of the Ld. CIT(Appeals)/NFAC and direct the A.O to delete the penalty from the hands of the assessee.

11. In the result, appeal of the assessee is allowed.

Order pronounced in open court on 14<sup>th</sup> day of November, 2025.

Sd/-

**(PARTHA SARATHI CHAUDHURY)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

रायपुर / Raipur; दिनांक / Dated : 14<sup>th</sup> November, 2025.

SB, Sr. PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,  
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur