

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1639/PUN/2025
निर्धारण वर्ष / Assessment Year : 2022-23

Sunil Daulatrao Dhonde, At 1, Navi Peth, Rahuri, Ahilyanagar- 413705. PAN : AFPPD5741P	Vs.	ITO, Ward-1, Ahilyanagar.
Appellant		Respondent

Assessee by : Shri Prasad S. Bhandari (Virtual)
Revenue by : Shri Umesh Phade

Date of hearing : 01.09.2025
Date of pronouncement : 17.11.2025

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 16.05.2025 passed by Ld. CIT(A)/NFAC for the assessment year 2022-23.

2. Facts of the case, in brief, are that the assessee is an individual engaged in the retail business of liquor and has furnished its return of income on 04.10.2022 by declaring total income of Rs.34,04,750/- which includes business income of Rs.31,05,114/- and an income of Rs.2,99,236/- as income under other heads. The

case was selected for scrutiny under CASS and accordingly statutory notices u/s 143(2) and 142(1) were issued to the assessee. In response to the said notices, the assessee submitted copies of audited financials, tax audit report, computation of income, month wise purchase sales, creditors and details of expenses. However the Assessing Officer found that in tax audit report quantitative details of goods traded was not provided. The Assessing Officer initially proposed to estimate 5% net profit on gross sales declared by the assessee, however after considering the reply dated 08.03.2024 of the assessee, the Assessing Officer calculated business income by estimating 3% net profit on gross sales of Rs.12,80,75,820/- as declared by the assessee. Accordingly, the Assessing Officer estimated the business income at Rs.38,40,275/- as against the business income declared by the assessee at Rs.31,05,140/-. Accordingly, the assessment was complete by the Assessing Officer u/s 143(3) r.w.s. 144B of the Act at Rs.41,41,911/- as against the income returned by the assessee at Rs.34,04,750/-. The Assessing Officer also initiated penalty u/s 270A of the Act for under reporting of income. Subsequently, the Assessing Officer issued notice u/s 274 r.w.s. 270A of the Act and asked the assessee to show

cause why penalty order u/s 270A of the Act should not be passed.

After considering the reply, the Assessing Officer imposed penalty of Rs.1,14,997/- as per the provisions of section 270A(2)(b) of the Act by observing as under :-

“For the sake of convenience, provisions of section 270A of the IT. Act, 1961 are re-produced hereunder

270A Definitions.

Penalty for under-reporting.

270A. (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 or where return has been furnished for the first time under section 148.

Having regard to the above facts and circumstances of the case, I am satisfied that the assessee has committed default u/s. 270A(2)(b) of the IT. Act. The assessee has not submitted his Return of income and has also remained non-compliant during the course of assessment as well as penalty proceedings, which clearly implies that the assessee has under reported its income. The total income which has been under reported, comes to Rs. 7,37, 161/-, on which tax payable comes to be Rs.2,29,994/-

In view of the above, the conditions mentioned as per sub-section 2 & sub-section (b) of section 270A of Act are satisfied in the case of the assessee. The penalty referred to in sub-section (2) of section 270A of the Act shall be equal to 50 percent of the amount of tax payable on under reported income. Considering the above facts, I hereby impose penalty of Rs. 1,14,997/-being 50% of the amount of tax payable on under-reported income (i.e. Rs.2,29,994/-) as per the provisions of section 270A(2)(b) of the Act in the case of assessee for A.Y. 2022-23 for under reporting of income.

4. Computation of Penalty.

Under reporting income amounting to Rs. 7,37,161/-.

Tax on under reporting income Rs.2,29,994/-

Being 50% of the tax payable on under reported income of Rs.1,14,997/-

This penalty is being levied after obtaining necessary approval of competent Authority.

Issued demand notice and challan accordingly.”

3. Being aggrieved with the above penalty order, the assessee preferred an appeal before Ld. CIT(A)/NFAC. After considering the reply furnished by the assessee, Ld. CIT(A)/NFAC dismissed the appeal filed by the assessee and confirmed the penalty of Rs.1,14,997/- imposed u/s 270A of the Act levied by the Assessing Officer.

4. It is the above order against which the assessee is in appeal before this Tribunal.

5. Ld. AR appearing from the side of the assessee submitted before us that the order passed by Ld. CIT(A)/NFAC is not justified. Ld. AR submitted before us that the addition on the quantum assessment was made on the basis of estimation only and it has already been held by a coordinate bench of this Tribunal that no penalty can be imposed on the basis of estimated addition. In support of this contention, Ld. AR relied on the orders passed by coordinate benches of this Tribunal in the case of Rajendra Sadashiv

Patil in ITA No.669/PUN/2022 order dated 31-03-2023, and in the case of M/s Jai Balaji Business Corporation Pvt. Ltd. in ITA No.840/PUN/2022 order dated 10.02.2023 and accordingly requested before the bench to delete the penalty of Rs.1,14,997/- u/s 270A of the Act.

6. Ld. DR appearing from the side of the Revenue relied on the orders passed by the subordinate authorities and requested to confirm the same.

7. We have heard Ld. counsels from both the sides and perused the material available on record including the case laws relied on by the assessee. In this regard, we find that admittedly income of the assessee was determined on estimated basis and the turnover disclosed by the assessee in his books of accounts was also accepted as correct. We further find that the Assessing Officer while passing the penalty order u/s 270A of the Act relied on some wrong facts by observing as under :-

“Having regard to the above facts and circumstances of the case, I am satisfied that the assessee has committed default u/s. 270A(2)(b) of the IT. Act. The assessee has not submitted his Return of income and has also remained non-compliant during the course of assessment as well as penalty proceedings, which clearly implies that the assessee has under reported its income. The total income which has been under reported, comes to Rs. 7,37, 161/-, on which tax payable comes to be Rs.2,29,994/-.”

8. From perusal of above, it clearly appears that while imposing a penalty u/s 270A of the Act the Assessing Officer was under the impression that the assessee has not furnished its return of income, the assessee remained non-compliant during the assessment proceedings as well as in penalty proceedings. However, in this regard, we find that the assessee furnished its return of income for the period under consideration and duly attended/responded the assessment proceedings as well as in the penalty proceedings. Furthermore, the penalty was imposed under section 270A(2)(b) which is related to addition in the case where no return has been filed or the return has been furnished for the first time u/s 148 of the Act. All these facts which are being relied on by the Assessing Officer while imposing the impugned penalty are not present in the instant case in hand and therefore we are of the considered opinion that the penalty order passed u/s 270A of the Act imposing penalty of Rs.1,14,997/- is not correct.

9. Considering the totality of the facts of the case and in view of our above discussion, we find force in arguments of Ld. counsel of the assessee that the penalty of Rs.1,14,997/- imposed u/s 270A of the Act is not correct and accordingly, we deem it appropriate to

set-aside the order passed by Ld. CIT(A)/NFAC and direct the Assessing Officer to delete the penalty of Rs.1,14,997/- imposed u/s 270A(2)(b) of the Act. Thus, the grounds raised by the assessee are allowed.

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

Order pronounced on this 17th day of November, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17th November, 2025.

Sujeet

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, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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