

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.4762/Mum/2025
(Assessment Year :2017-18)**

Podar Literacy and Education Trust 103/1, Basawanpura Bannerghatta Road Sakalavara B.O. Bujangadasanakere, Bangalore- 560 083	Vs.	DCIT, central Circle- 1(4), Mumbai
PAN/GIR No.AAATP9197P		
(Appellant)	..	(Respondent)

Assessee by	Shri Ravi Ganatra, Adv.
Revenue by	Shri Virabhadra Mahajan, Sr. DR
Date of Hearing	10/09/2025
Date of Pronouncement	09/12/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

This appeal is directed against the order dated 19.05.2025 passed by the learned Commissioner of Income Tax (Appeals)-47, Mumbai, whereby the penalty levied by the Assessing Officer under section 270A of the Income-tax Act, 1961 ("the Act") amounting to ₹37,61,672/- has been confirmed. The assessee has challenged both the assumption of jurisdiction for levy of penalty and the confirmation thereof on merits, contending that the facts of the case do not give

rise to any “under-reporting of income” within the meaning of section 270A of the Act.

2. The assessee before us is a public charitable trust, registered under section 12AA(1)(b)(i) of the Act and also approved under section 10(23C)(vi). It is regularly assessed to tax and its income, subject to fulfilment of statutory conditions, is exempt under section 11 of the Act.

3. For the assessment year under consideration, the assessee filed its return of income declaring total income at Nil. Subsequently, a search and seizure action under section 132 and a survey action under section 133A of the Act were carried out on the Podar Education Group on 09.01.2018, during which the assessee trust was also covered. Pursuant to the said action, the assessee filed its return of income under section 153A of the Act, once again declaring total income at Nil.

4. The assessment was completed by the Assessing Officer under section 143(3) read with section 153A of the Act vide order dated 27.12.2019, determining the total income at Nil. However, while completing the assessment, the Assessing Officer disallowed depreciation of ₹2,19,21,165/- claimed by the assessee. The basis for such disallowance was that the assessee had treated the acquisition cost of the relevant assets as application of income in earlier years and, in view of the provisions of section 11(6) of the Act, depreciation on

such assets could not again be allowed, as that would amount to a double deduction.

5. It is pertinent to note that despite the aforesaid disallowance, the assessed income continued to remain Nil. There was no positive income assessed, nor was there any reduction of a declared loss or conversion of loss into income.

6. Nevertheless, the Assessing Officer recorded a finding in the assessment order that the assessee had under-reported income to the extent of ₹2,19,21,165/- and, on that basis, initiated penalty proceedings under section 270A of the Act. Notices were issued, to which the assessee filed detailed replies explaining that the claim of depreciation was bona fide, that there was no concealment or misrepresentation, that its income was otherwise exempt under section 11 of the Act, and that no tax advantage had accrued to it.

7. The Assessing Officer was not convinced with the explanation furnished. He proceeded to pass an order dated 21.06.2023 under section 270A of the Act, levying penalty at the rate of 50% of the alleged tax payable on the so-called under-reported income, amounting to ₹37,61,672/-.

8. On appeal, the learned CIT(A) confirmed the levy of penalty. The learned CIT(A), in his findings, held that the assessee had made a claim of depreciation which was impermissible in law, being in clear violation of section 11(6) of the Act. According to the learned CIT(A), the claim of depreciation on assets

whose acquisition cost had already been treated as application of income amounted to an impermissible deduction, leading to overstatement of application of income and, consequently, under-reporting of income. On this reasoning, the learned CIT(A) concluded that the case squarely fell within section 270A(2)(a) of the Act and, therefore, confirmed the penalty.

9. It is against this finding and confirmation that the assessee is in appeal before us.

10. We have carefully considered the rival submissions, perused the material placed on record, and examined the orders of the authorities below in the light of the statutory framework governing section 270A of the Act. The issue before us is not merely whether the claim of depreciation was legally admissible under section 11(6) of the Act, but whether the making of such a claim, in the admitted factual backdrop of the case, results in “under-reporting of income” so as to warrant levy of penalty under section 270A.

11. At the outset, it is necessary to emphasise that penalty under section 270A is not automatic. The provision first requires the existence of “under-reported income” and then mandates that such under-reported income must fall within one of the situations enumerated in sub-section (2). Only upon satisfaction of these jurisdictional conditions can the machinery of penalty be set in motion.

12. In the present case, the learned CIT(A) has proceeded on the premise that the assessee's claim of depreciation, being impermissible under section 11(6), resulted in overstatement of application of income and thus constituted under-reporting of income within the meaning of section 270A(2)(a). While this line of reasoning may appear attractive at first blush, it does not withstand closer scrutiny when examined in the full factual and legal context of the case.

13. It is an admitted and undisputed position that the assessee's income, both as returned and as assessed, is Nil. The assessee is a charitable trust whose income, subject to fulfilment of statutory conditions, is exempt under section 11 of the Act. Even after the disallowance of depreciation, the assessment does not result in any taxable income. The assessed income remains Nil. Thus, in substance and effect, there is no income which has escaped assessment or has been brought to tax as a result of the disallowance.

14. The concept of "under-reporting of income" under section 270A cannot be read in isolation or in abstraction. It must be understood in the context of the charging and exemption provisions of the Act. Where an assessee's income is otherwise exempt under section 11, and the assessment, even after making the disallowance, results in Nil income, it is difficult to comprehend how the assessee can be said to have under-reported income in the statutory sense.

15. The learned CIT(A) has characterised the claim of depreciation as an impermissible deduction leading to under-reporting. However, an impermissible claim or an inadmissible deduction does not ipso facto translate into under-reporting of income for the purposes of penalty, particularly when such claim does not result in any tax advantage, reduction of tax liability, or deferment of tax.

16. Equally significant is the undisputed factual position that the assessee has categorically clarified, with supporting material, that it has not availed any benefit of carry forward or set-off of any loss arising from the impugned assessment year in subsequent years. The financial statements and the copies of ITR-7 for the relevant and subsequent assessment years placed on record demonstrate that no such benefit has been claimed. It has also been explained that the automated ITR utility itself did not permit any carry forward or set-off in the manner alleged.

17. Thus, this is not a case where the assessment has the effect of reducing a loss or converting a loss into income, nor is it a case where the assessee has secured any present or future tax advantage. In such circumstances, the essential ingredient of “under-reporting of income”, as contemplated under section 270A, is conspicuously absent.

18. The reliance placed by the learned CIT(A) on section 270A(2)(a) also does not advance the Revenue’s case. Clause (a) of sub-section (2) refers to a situation where the income

assessed is greater than the income determined in the return. In the present case, the income determined in the return is Nil and the income assessed is also Nil. The numerical equality of returned income and assessed income remains undisturbed. Therefore, even on a plain reading of section 270A(2)(a), the condition precedent for invoking the said clause is not satisfied.

19. Penalty provisions, though civil in nature, have serious consequences and must be construed strictly. They cannot be invoked on the basis of assumptions or perceived revenue loss divorced from the actual statutory impact. The Act does not authorise levy of penalty merely because a claim is disallowed, particularly where such disallowance does not result in any taxable income or tax payable.

20. Viewed in this backdrop, we are unable to sustain the finding of the learned CIT(A) that the assessee's claim of depreciation, though impermissible under section 11(6), automatically leads to under-reporting of income so as to trigger penalty under section 270A. The factual matrix clearly demonstrates that the assessee's income remains exempt and Nil, there is no loss reduction or conversion into income, and no benefit of carry forward or set-off has been availed.

21. In our considered view, therefore, the very foundation for levy of penalty under section 270A is absent in the present case. The confirmation of penalty by the learned CIT(A),

without appreciating these crucial aspects, cannot be sustained.

22. Accordingly, we hold that the penalty levied under section 270A of the Act amounting to ₹37,61,672/- is unsustainable in law and is hereby deleted.

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

Order pronounced on 9th December, 2025.

Sd/-
(ARUN KHODPIA)
ACCOUNTANT MEMBER

Mumbai; Dated 09/12/2025
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai