

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER  
ITA No. 4070/MUM/2025 (AY: 2017-2018)**

*(Hybrid hearing)*

INU Exports Private Limited Office No. 33, Shrinaman Plaza, Behind shoppers Stop Kandivali, Mumbai, Maharashtra - 400067. [PAN: AAACI 6806 M]	Vs	ITO, 12(2)(2), Mumbai Room No. 145, 1 <sup>st</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400020.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Shubham Mittal, CA (virtually appear)
Revenue by	Shri R.A. Dhyani, CIT - DR
Date of Institution	09.06.2025
Date of hearing	03.11.2025
Date of pronouncement	02.01.2026

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Id. CIT(A) / NFAC dated 18.04.2025 for A.Y. 2017-18 in confirming penalty levied under section 270 of the Income Tax Act. The assessee has raised following grounds of appeal:

*1. The Id. AO was not justified in passing the order, which is bad in law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

*2. The Id. CIT(A) was not justified in confirming the order which is bad in law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

*3. The Id. CIT(A) was not justified in confirming the addition of Rs. 15,19,85,920/- against the penalty u/s 270A.*

*4. The appellant craves leave to add, amend or modify any of the grounds of appeal."*

2. Brief facts of the case are that assessee-company filed its return of income for assessment year (A.Y.) 2017-18 on 27.10.2017 declaring loss of Rs. 87.92 crore. The case was selected for scrutiny. Assessment was completed on 20.12.2019 under section 143(3). During the assessment, the assessing officer noted that assessee debited Rs. 87.83 crore on account of claim and settlement. The assessing officer (AO) on further perusal of record noted that assessee entered into a forward contract with Ruchi Soya Inds Limited for sale of palmolein etc. The AO further noted that there was no actual delivery or transfer of goods in contract is in the nature of speculative transaction and the claim and settlement is in the nature of speculative loss. For claiming such loss, the assessee was required to show business activities and that expenses were incurred related to such business activities. The assessee merely claimed that they are dealing in purchase of sale of item wherein entered into a forward contract of said transactions as a part of trading activities. The assessing officer not accepted such explanation of assessee and took his view that there is no actual movement of goods, so it cannot be considered as a trading transaction. The claim of loss was disallowed by treating a speculative loss and initiated penalty under section 270A for under reporting income. The assessing officer levied the penalty of Rs. 15.18 crore under section 270A. Before levying the penalty, the AO issued notice under section 274 r.w.s. 270A dated 20.12.2019. In response to show cause notice, the assessee filed its reply. In reply, the assessee submitted that loss incurred on account of claim and settlement was normal business loss and

requested not to impose penalty in respect of such disallowances. The reply of assessee was not accepted by assessing officer, the assessing officer concluded that during assessment, the assessee agreed with the action of assessing officer for making disallowance of expenses. Further, the assessee declared loss. By declaring loss, the assessee was not required to pay tax. Making addition, the fact is reducing the assessee's claim to the extent of Rs. 9,31,347/-. The Id. AO held that in his case, the provision of section 270A is clearly applicable. The AO accordingly levied the penalty under section 270A @50% of tax liability for under reporting income. The AO levied penalty of Rs. 15, 19,85,920/- in his order dated 13.01.2022.

3. Aggrieved by the penalty order dated 13.01.2022, the assessee filed appeal before Id. CIT(A). Before Id. CIT(A), the assessee reiterated its submission and claimed that it was a regular business loss. The Id. CIT(A) after considering the submission of assessee upheld the action of assessing officer by holding that assessee accepted the action of assessing officer in treating normal business loss as a speculative loss. The assessee neither filed any application under section 154 nor further appealed before Id. CIT(A) against the addition in assessment order. The explanation in response to show cause notice before levying the penalty was not to the satisfaction of assessing officer. Further, aggrieved the assessee has filed present appeal before Tribunal.
4. We have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Commissioner of Income Tax – Departmental

Representative (Id. CIT-DR) for the Revenue. The Id. AR of the assessee submits that assessing officer while passing the assessment order treated the business loss as a speculative loss. No further appeal was filed by assessee as no demand was created. The assessee accepted the finding of assessing officer. The AO levied penalty under section 270A vide order dated 13.01.2022 of Rs. 15.19 crore for under reporting income. The AO while passing assessment order merely changed the sub-head of income. The assessee is engaged in trading of commodities. During the period relevant to financial year for assessment year under consideration, the assessee in normal course of business in trading in commodities, settled forward contract for purchase and sale of commodities wherein assessee incurred loss of Rs. 87.83 crore. Loss was debited to profit and loss account while preparing accounts. Loss was a normal business loss shown in the return of income. Admittedly, no appeal was filed in quantum assessment. Before Id. CIT(A), the assessee submitted that assessment order passed by assessing officer is not only erroneous but arbitrary. The additions / disallowances made only to reduce the claim of loss. There could not be allegation that assessee under reported their income. The Id. AR of the assessee submits that on similar set of fact, there are series of decisions of High Courts and Tribunal, wherein it was held that mere treatment of business loss as speculative loss will not automatically warrant inference of concealment of income. To support his submissions, the Id. AR of the assessee relied on the following decisions;

- ❖ CIT Vs Bhartesh Jain (2010) 323 ITR 358 (Delhi),
- ❖ CIT Vs SPK Steels (P) Ltd (2005) 144 TAXMAN 469 (MP),
- ❖ CIT Vs Auric Investment & Securities Ltd (2007) 163 Taxman 533 (Delhi),

- ❖ DCIT Vs Shree Ram Electrocast (P) Ltd (2017) 84 taxmann.com 63 (Kol-Trib),
  - ❖ ITO Vs GACL Finance Ltd (2009) 30 SOT 360 (Mumbai)
5. The Id. AR of the assessee submits that ratio of all the aforesaid decisions is squarely applicable on the facts of his case. In all the cases, the courts have taken a consistent view that merely because loss was not allowed to be set off against the normal business income and was treated as a speculative loss and it was only change of head of loss and not furnishing of inaccurate particulars of income invoking penal provision. At the time of submission, the Id. AR submits that he is not pressing ground of appeal relating to limitation period for passing penalty order.
6. On the other hand, learned Commissioner of Income Tax – Departmental Representative (Id. CIT-DR) for the Revenue supported the order of lower authorities. The Id. CIT-DR for the revenue submits that assessing officer as well as Id. CIT(A) passed a detail order and he fully supports. On similar line, the Id. CIT-DR of the revenue also filed his written submission narrating the finding of AO/ Id. CIT(A).
7. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We also deliberated on various case laws relied by Id. AR of the assessee. The treatment of loss of disallowance thereof is discussed in preceding paras which is not repeated here for the sake of brevity. The core and crucial issue for our consideration is, if the business loss suffered and claimed by assessee in its computation of income, which was not accepted by assessing officer and treated the same as a speculative business loss, thereby changing its character would

automatically lead to under reporting of income or it was merely change of opinion. Admittedly, the 'loss' which was claimed as 'business loss', was accepted, though it was accepted as a 'speculative loss'. We find that almost similar set of fact, Hon'ble Delhi High Court in CIT Vs Bhartesh Jain (supra) held that when addition was made by AO on account of treating the business loss claimed by the assessee as speculative loss and imposed penalty, which was deleted by Tribunal. And of appeal before High Court by revenue, it was held that penalty relating to the change of treatment from business loss to speculative loss was concerned, the Tribunal rightly applied the law stated in CIT vs Auric Investment & Securities Ltd (2009) 310 ITR 121 (Delhi). We find that in CIT vs Auric Investment & Securities Ltd (supra) the Hon'ble High Court held that mere treatment of business loss as speculation loss by AO did not automatically warrant inference of concealment of income. It was also held that there was nothing on record to show that in furnishing its return of income, the assessee either concealed its income or had furnished any inaccurate particular of income. Kolkata Tribunal in DCIT Vs Shree Ram Electroplast (P) Ltd (supra) also held that merely because losses were not allowed to be set off against normal business income and was treated as a speculative loss, it was only a change of sub-head of loss and not furnishing of inaccurate particulars of income invoking penal provision. Thus, in view of aforesaid factual and legal discussions, we do not find any justification in levying penalty under section 270A for treating the assessee of guilty of under reporting of income.

8. So far as objection of lower authority that no further appeal is filed by the assessee against the additions in quantum assessment. We find no merit in such stand of lower authorities, as the penalty proceedings are separate and independent. In the penalty proceedings the AO is required to show that under reporting of income was wilful act of the assessee. Here the facts of the case in hand are quite different; the assessee reported all the facts of his case, which was not accepted by the AO. We also find merit in the contention of the Id AR of the assessee as there was no demand of tax, so the assessee has not challenged the addition in further appeal. Hence, the ground No. 3 of appeal is allowed.

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

Order was pronounced in the open Court on 02/01/2026.

Sd/-

**RENU JAUHRI**  
**ACCOUNTANT MEMBER**

Sd/-

**PAWAN SINGH**  
**JUDICIAL MEMBER**

MUMBAI, Dated: 02/01/2026  
*Biswajit*

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai