

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.325/SRT/2025

Assessment Year: (2017-18)

(Hybrid hearing)

Gopal Mittal, 1041, 1 st Floor, Jash Textile Market, Ring Road, Surat - 395001	Vs.	ITO, Ward – 1(1)(1), Surat
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AEMPM3251M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	12/11/2025
Date of Pronouncement	23/12/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 30.01.2025 by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the assessment year (AY) 2017-18.

2. The grounds of appeal raised by the assessee are as under:

"1. On the facts and circumstances of the case as well as in law, Ld. CIT(A) has erred in confirming action of Assessing Officer in passing penalty order u/s.270A without considering Form-68 filed by the assessee for seeking immunity u/s.270AA from imposition of penalty u/s.270A of the I.T. Act, 1961.

2. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in confirming action of Assessing Officer in levying penalty of Rs.3,49,310/- u/s.270A of the I.T. Act, 1961 in violation to provisions of Section 270A(6).

3. It is therefore prayed that the above penalty levied by the assessing officer and confirmed by the learned CIT(A) may please be deleted.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. The facts of the case in brief are that the assessee filed his return of income on 02.08.2017, declaring total income of Rs.1,68,34,410/-. The case was selected for scrutiny and assessment was completed u/s 143(3) of the Act on 22.10.2019, determining total income at Rs.1,88,59,410/- after making addition of Rs.20,25,000/-, being survival benefit received from LIC policy, which was taxed as income from other sources. The assessee had credited Rs.20,25,000/- in the capital account and submitted that the same was not taxable income. The Assessing Officer (in short, 'AO') did not accept the explanation of the assessee and added the amount to total income. The assessee contended that he had applied for immunity u/s 270AA of the Act. The AO also rejected the claim for immunity holding that Form No.68 was filed beyond 30 days. There is demand raised u/s 143(3) of Rs.9,26,135/- and the demand was outstanding till date. The AO observed that the assessee did not file appeal as per Audit module in ITBA. The AO levied penalty of Rs.3,49,310/- u/s 270A of the Act, being 50% of tax payable on under-reported income.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The appellant submitted to grant the immunity from imposition of penalty as per provisions of section 270AA of the Act and delete the penalty of Rs.3,49,310/-. The CIT(A) held that he has no power to direct the AO to grant immunity u/s 270AA of the Act. The appellant had under-reported income and did not fall within the exceptions of section 270A(6) of the Act. During the appellate proceedings, the

appellant had not furnished any written submission on the merit of the case. The appellant failed to substantiate as to how the explanation about the amount of under-reported income was bonafide and he has disclosed all material facts to substantiate the explanation offer. He observed that appellant is not covered by any of the exceptions provided in section 270A(6) of the Act. The CIT(A) upheld the penalty imposed by AO by observing that the assessee had under-reported income and did not fall within the exceptions of section 270A(6) of the Act. Hence, he dismissed the appeal of the appellant.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted a paper book containing 44 pages, which includes demand notice and computation sheet, notice u/s 270A issued by JAO, reply to notice u/s 270A, rectification order u/s 154, payment made of demand raised in Form 26AS, Form 68 along with intimation to the JAO, show cause notice u/s 270A and reply to the show cause notice, penalty order u/s 270A, written submission and additional written submission before the CIT(A). He submitted that all the documents and details were filed before the AO and CIT(A). The Id. AR submitted that the assessee had intimated his intention to seek immunity within time vide letter dated 14.11.2019. However, Form No. 68 could not be filed because quantum demand was wrongly reflected and payment to outstanding demand was a pre-requisite, which was rectified u/s 154 on 07.12.2019. The revised outstanding demand was paid on 17.12.2019 within 30 days of the passing of rectification order. There is a delay of

only 1 day in filing Form No.68, which was a procedural lapse. He submitted that the assessee had disclosed all material facts and explanation, which were covered u/s 270A(6) of the Act, therefore, no penalty u/s 270A should be levied under-reporting of income. The Id. AR relied on the decisions in cases of (i) Punam Kanwar Bhati vs. ITO, 165 taxmann.com 286 (Jodh – Trib.), (ii) DACSS Granites Pvt. Ltd. vs. ITO, ITA No.1876/Bang/2024 (Bang – Trib.) and (iii) Sonali Subodh Pethe vs. ACIT, ITA No. 89/Mum/2025 (Mum – Trib.).

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities.

7. We have heard both the parties and perused the materials available on record. We have deliberated on the decisions relied upon by Id. AR. It is undisputed that the assessee did not file appeal against the quantum order and tax demand along with interest was paid. There was a delay of 1 day in filing Form 68. It was a procedural lapse and not a substantive failure. In fact, assessee had paid the outstanding demand of Rs.9,26,135/- vide challan dated 17.12.2019 (Page 20 of PB). Section 270AA of the Act provides immunity from penalty u/s 270A subject to fulfilment of the following conditions: (i) payment of tax and interest within the prescribed period and (ii) non-filing of appeal against the assessment order. The Id. AR relied upon the decision in case of Punam Kanwar Bhati (supra), wherein it was held that immunity from penalty u/s 270AA is available if demand is deposited within 30 days, and delay in filing Form No.68 is only a procedural lapse. He further relied upon the decision in case of Sonali Subodh Pethe (supra), wherein appeal of

the assessee was allowed under similar circumstances after referring to the decision in case of Punam Kanwar Bhati (supra). Facts of the instant appeal are similar to the facts of the cases relied upon by Id. AR. Hence, following the reasons given therein, the grounds are allowed and the order of CIT(A) is set aside.

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

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 23/12/2025.

Sd/-
(T. R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 23/12/2025

SAMANTA (On tour Mumbai)

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat