

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AGRA BENCH, AGRA**

**BEFORE : SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 313/Agr/2025  
Assessment Year: 2017-18**

Laxmichand and Company, 79, Mayur Market, Thatipur, Gwalior.	<b>Vs.</b>	DCIT/ACIT 1(1), Gwalior.
<b>PAN : AAAFL6191M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Mahesh Agarwal, CA
Department by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	16.12.2025
Date of pronouncement	15.01.2026

**ORDER**

**PER : SUNIL KUMAR SINGH, JUDICIAL MEMBER:**

This appeal has been preferred by assessee against the impugned order dated 11.04.2025 passed in appeal No. NFAC/2016-17/10100213 by learned Commissioner of Income-tax (Appeals), NFAC, Delhi u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2017-18, wherein learned CIT(A) has dismissed assessee's first appeal, confirming the penalty levied by the Assessing Officer u/s. 270A of the Act, vide penalty order dated 08.02.2022.

2. Brief facts state that the assessee is a civil contractor and e-filed its return of income on 07.11.2017, declaring income of Rs.1,85,38,780/-. The

assessee declared net profit @ 4.22% on contract receipts of Rs.44,31,37,081/-. Assessment u/s. 143(3) of the Act was completed on 13.12.2019 and the Assessing Officer, on the basis of non-uploading of certain vouchers for wages, repair & maintenance, purchases and site expenses, rejected assessee's books of account and applied the net profit rate of 4.65% on the contract receipts and enhanced the contract income to Rs. 2,06,05,874/- as against the income of Rs.1,87,20,929/- declared by the assessee, resulting in addition of Rs.18,84,945/-. Treating this addition of Rs.18,84,945/- as under reported income, the Assessing Officer initiated penalty proceedings u/s. 270A of the Act and imposed penalty of Rs.11,76,204/- @ 200% of tax calculated on the above said under reported income of Rs.18,84,945/-, vide penalty order dated 08.02.2022 passed u/s. 270A of the Act.

3. Assessee preferred first appeal before learned CIT(Appeals), who dismissed assessee's first appeal mainly on the ground of assessee not having filed appeal against the assessment order and also failed to furnish supporting documents.

4. Present second appeal has been filed by the assessee, raising following grounds :

"1. That under the facts and circumstances of the case and in law the Ld CIT(Appeals), NFAC (National Faceless Appeal Centre), Delhi has grossly erred in sustaining the penalty u/s 270A of the

Income Tax Act addition of Rs. 11,76,204 / made by the AO on account of arbitrarily rejected accounts u/s 145(3).

2. That while sustaining the impugned addition, Ld CIT(Appeals), NFAC, Delhi has erred in law in ignoring the fact as accounts are audited by CA u/s 44AB and Ld AO adopted net profit rate of 4.65% as against the profit shown at rate of 4.22% on gross contract receipts.

3. That while sustaining the impugned addition, Ld CIT(Appeals), NFAC, Delhi has also erred in law in ignoring the peculiar facts & circumstances of the case and submitted submission & supporting documents and honest & bonafide explanation by the assessee. it is a well settled law that penalties are not to be imposed merely because there is a provision for imposing them. Penalties are a harsh punishment and should be imposed only if there is a willful contravention of any law

4. That while sustaining the impugned addition, Ld CIT(Appeals), NFAC, Delhi has also failed to give proper and reasonable opportunity to the appellant. thereby violation the principles of natural justice and condition and procedure prescribed under the statute

5. That while sustaining the impugned addition, Ld CIT(Appeals), NFAC, Delhi has erred in law in ignoring the fact as well law Supreme Court in case of Sir Shadilal Sugar Mills (168 ITR 705) held that there may be a hundred and one reasons for not protesting and agreeing to an addition but that does not follow to the conclusion that the amount agreed to be added was concealed income. Indeed, there may be numerous reasons with the tax payer for not approaching the first appellate authority for justice, for example the following:

a. To avoid the pains of further litigations, numerous hearings and mental tensions borne in it;

b. The risk of enhancement at the first appellate authority on various technical issues;

c. Nowadays commonly seen attitude of assessment in Appellate proceedings

d. Heavy litigation cost of Representatives. Withdrawn of appeal at instance of Assessee is the discretion of Appellate authority.

.....”

5. Perused the records. Heard learned representative for assessee and learned Sr. DR for revenue.

6. During the course of the hearing, the learned AR for the assessee has advanced two-fold argument. First, it was contended that the entire penalty proceedings are vitiated in law, as the Assessing Officer has failed to specify, either in the assessment order or in the notice issued under section 274 read with section 270A of the Act, the precise limb under which the penalty has been initiated, namely, whether the case falls under section 270A(2) or section 270A(9) of the Act. Such non-specification, according to the learned representative, renders the initiation of penalty proceedings invalid. Second, it was argued that the alleged under-reported income is based purely on an arbitrary and unfounded estimation made by the Assessing Officer. The Assessing Officer has applied a net profit rate of 4.65% as against the net profit rate of 4.22% declared by the assessee, without taking into consideration the assessee's past history or any comparable cases. It was further submitted that the Assessing Officer has not disturbed the declared contract receipts on which the estimated net profit rate has been applied. The learned AR further submitted that clause (b) of section 270A(6) of the Act expressly excludes additions made on an estimated basis from the ambit of "under-reporting of income." Therefore, no penalty under section 270A can be sustained where the addition itself is

based merely on estimation, without any concrete or incriminating material. In support of the above contentions, reliance was placed on the order dated 26.12.2024 of the Hon'ble ITAT, Pune Bench, in the case of DCIT vs. Chakradhar Contractors and Engineers Pvt. Ltd. (ITA Nos. 1939 & 1940/PUN/2024), as well as the order dated 19.05.2025 of the Hon'ble ITAT, Agra Bench, in the case of Mr. Tasavver Husain (ITA No. 95 & 96/Agr/2023).

7. Learned DR has supported the orders of authorities below.

8. A perusal of the assessment order reveals that the learned Assessing Officer has not disturbed the contract receipts declared by the assessee. However, the net profit has been estimated at 4.65% on the gross business contract receipts amounting to Rs.44,31,37,081/-, taking into consideration the nature of the business, reasonableness of expenses, and other related factors. Such an addition, having been made purely on an estimated basis, is specifically excluded from the ambit of "under-reporting of income" in terms of section 270A(6)(b) of the Act, if the accounts are correct and complete to the satisfaction of the Assessing Officer. It is, however, not in dispute that both the assessment order and the notice issued under section 274 r.w.s. 270A of the Act are conspicuously silent as to the specific limb of section 270A under which the penalty proceedings were initiated or

proposed to be levied. This omission renders the initiation of penalty proceedings legally untenable.

9. In the case of Chakradhar Contractors & Engineers Pvt. Ltd. (supra), an addition of Rs.8,33,51,448/- was made on account of the difference between profit estimated at 10% and the profit declared by the assessee at 7.37%, after rejection of books of account. Penalty under section 270A was levied without specifying whether it was for under-reporting of income as envisaged under section 270A(2)(a) to (g) or for mis-reporting of income under section 270A(9)(a) to (f) of the Act. On these facts, the Coordinate Bench of the Pune Tribunal deleted the penalty. Similarly, the Coordinate Bench of Agra Tribunal in Mr. Tasavver Husain (supra) also deleted the penalty in an identical factual situation. Since the facts of the present case are on parity with the above decisions, and respectfully following the orders of the coordinate benches, the impugned penalty is found to be unsustainable in law and is accordingly liable to be deleted. Assessee's appeal, thus, deserves to be allowed.

10. In the result, assessee's appeal is allowed.

***Order pronounced in the open court on 15.01.2026.***

**Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER**

Dated: 15.01.2026

\*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra