

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 7401/Mum/2025
(Assessment Year: 2017-18)**

Kshitij Interiors Pvt. Ltd. 210, Mogra Village, Old Nagardas Road, Mumbai- 400069	Vs.	DCIT- Circle 2(1)(1), Aayakar Bhavan, Maharshi Karve Road, Mumbai-400 020
PAN/GIR No. AABCK8174D		
(Applicant)		(Respondent)

Assessee by	Shri Vishwas Mehendale
Revenue by	Shri Hemanshu Joshi, SR. DR

Date of Hearing	20.01.2026
Date of Pronouncement	21.01.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

This appeal is filed by the assessee against the order dated 17.09.2025 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “CIT(A)”], under section 250 of the Income-tax Act, 1961 [hereinafter referred to as “the Act”], for the Assessment

Year 2017–18, whereby the learned CIT(A) confirmed the penalty of Rs. 1,03,15,656/- levied by the Assessing Officer under section 270A(8) of the Act.

Facts of the Case

2. The assessee is a company engaged in the business of interior decoration works and allied activities, such as civil, plumbing, electrical, air-conditioning, painting and polishing works. For A.Y. 2017–18, the assessee filed its original return of income on 30.10.2017 declaring total income of Rs. 1,61,91,500/- under normal provisions and book profit of Rs. 89,24,642/- under section 115JB. Subsequently, a revised return was filed on 26.02.2018 declaring total income of Rs. 1,62,71,890/- under normal provisions, while the book profit under section 115JB remained unchanged. The return was processed under section 143(1) of the Act.

3. Prior to filing of the return, a survey action under section 133A of the Act was conducted at the business premises of the assessee on 22.09.2016. During the course of the survey, the assessee declared cash receipts of Rs. 1,56,00,000/-, which were subsequently offered to tax in the return of income for the year under consideration.

4. The case was selected for scrutiny under CASS and notice under section 143(2) dated 12.09.2018 was issued. The

assessment was completed by the Assessing Officer, Assistant Commissioner of Income Tax, Circle 10(1)(2), Mumbai, vide order dated 24.12.2019 passed under section 143(3) of the Act. While completing the assessment, the Assessing Officer accepted the returned income as assessed income and computed the total income at Rs. 1,62,71,890/-. However, the Assessing Officer recorded a categorical finding that the additional income of Rs. 1,56,00,000/- was declared as a consequence of the survey action and that, had the survey not taken place, the assessee would not have declared the said income. On this premise, the Assessing Officer initiated penalty proceedings under section 270A of the Act for misreporting of income.

5. Pursuant thereto, penalty proceedings were carried out and the National Faceless Assessment Centre passed an order dated 16.03.2022 under section 270A(8) of the Act, holding that the assessee had under-reported income in consequence of misreporting within the meaning of section 270A(9)(a). The under-reported income was quantified at Rs. 1,56,00,000/-, tax thereon was computed at Rs. 51,57,828/-, and penalty at 200% of such tax, amounting to Rs. 1,03,15,656/-, was levied.

6. Aggrieved by the penalty order dated 16.03.2022, the assessee carried the matter in appeal before the CIT(A). Before the CIT(A), the assessee contended that the income of Rs. 1,56,00,000/- had been duly disclosed in the return of income and accepted in assessment, that there was no difference

between the returned income and the assessed income, and therefore the basic condition for levy of penalty under section 270A was not satisfied. It was further submitted that the disclosure was made before completion of assessment and could not be treated as misrepresentation or suppression of facts.

7. The learned CIT(A), however, did not accept the submissions of the assessee. Relying upon the findings recorded in the assessment order and the penalty order, the CIT(A) held that the assessee had suppressed cash receipts which were disclosed only after the survey action, and that such conduct clearly fell within the ambit of misreporting of income under section 270A(9)(a). The CIT(A) further held that penalty under section 270A is leviable even in cases where returned income and assessed income are the same, provided misreporting is established. Accordingly, vide order dated 17.09.2025, the CIT(A) confirmed the penalty of Rs. 1,03,15,656/- and dismissed the appeal of the assessee.

8. Aggrieved by the order of the CIT(A), the assessee is in appeal before us and has raised following grounds:

1. *“On the Facts and Circumstances of the case and in law, ld. lower officers have erred in holding that appellants had willfully and knowingly under-reported their income to the tune of Rs. 1,56,00,000/- which is liable to pay penalty under Section 270A of the Act.*
2. *On the Facts and Circumstances of the case and in law, ld. lower officers have erred in invoking the provisions of S. 270A(9)(a), on the allegation that in appellants’ case there is misrepresentation or suppression of facts and appellants had suppressed cash receipt amounting to Rs. 1,56,00,000/- which was subsequently declared after survey action took place and further that had survey not taken place in this case, appellants would not have declared the said amount.*

3. *On the Facts and Circumstances of the case and in law, ld. lower officers have erred in holding that appellants' income was assessed for the first time and thereby erred in computing the penalty as per the provisions of section 270A(10) of the Act.*
4. *On the Facts and Circumstances of the case and in law, ld. Lower officers have erred in levying penalty of Rs. 1,03,15,656/- as per the provisions of section 270A(8) of the Act.*
5. *Appellants pray for a leave to add, alter, modify, and withdraw the aforesaid Grounds of Appeal."*

9. During the course of hearing before us, the learned Authorised Representative of the assessee reiterated the submissions made before the lower authorities. It was submitted that the income of Rs. 1,56,00,000/- declared by the assessee during the year under consideration was duly offered to tax in the return of income and the assessment was completed under section 143(3) of the Act by accepting the returned income without making any addition. It was contended that there being no difference between the income returned and the income assessed, the very foundation for invoking the provisions of section 270A of the Act was absent.

10. The learned AR further submitted that the Assessing Officer, while initiating penalty proceedings in the assessment order, has not specified as to whether the penalty proceedings were initiated for "under-reporting of income" under section 270A(2) or for "misreporting of income" under section 270A(9). According to the learned AR, such non-application of mind at the stage of initiation vitiates the entire penalty proceedings, particularly

when the consequences and rate of penalty under the two limbs are materially different.

11. The learned AR specifically drew our attention to the findings of the Hon'ble High Court affirming the order of the Tribunal, wherein it has been held that when the income assessed is not greater than the income determined in the return processed under section 143(1)(a), there is no case of under-reporting of income under section 270A(2) and (3), and further that mere disclosure of income pursuant to search or survey, prior to the due date of filing return and before finalisation of books, does not automatically fall within the mischief of misreporting under section 270A(9).

12. Relying on the above judicial precedent, the learned AR submitted that, on identical reasoning, the penalty levied under section 270A in the present case is unsustainable in law and deserves to be deleted.

13. Per contra, the learned Departmental Representative relied upon the orders of the lower authorities. The learned DR submitted that it is pertinent to note that a survey action under section 133A of the Act was carried out at the business premises of the assessee. During the course of the said survey action, unexplained cash was found, and the assessee admitted and declared cash receipts of Rs. 1,56,00,000/- as additional income.

14. We have heard the rival submissions, perused the material available on record, and carefully considered the orders of the lower authorities. The undisputed facts emerging from the record are that a survey under section 133A of the Act was conducted on 22.09.2016, during which the assessee declared cash receipts of Rs. 1,56,00,000/-. The said amount was thereafter offered to tax in the return of income filed for A.Y. 2017-18, and the assessment was completed by the Assessing Officer under section 143(3) by accepting the returned income without any addition. It is also an admitted position that the income assessed is the same as the income returned, and there is no difference between the income processed under section 143(1) and the income assessed under section 143(3). The penalty proceedings under section 270A were initiated solely on the premise that the income of Rs. 1,56,00,000/- was declared as a consequence of the survey and that, according to the Assessing Officer, the assessee would not have declared the said income but for the survey action.

15. At this stage, it is relevant to note that the Assessing Officer, while initiating penalty proceedings in the assessment order, has not specified as to whether the penalty was initiated for “under-reporting of income” under section 270A(2) or for “misreporting of income” under section 270A(9). The satisfaction recorded in the assessment order is vague and does not indicate the precise limb under which penalty proceedings were proposed. This assumes significance because the nature, scope, and rate of penalty under section 270A(7) and section 270A(8) are materially different, and

therefore the assessee is entitled to know the exact charge it has to meet.

16. Even otherwise, on merits, we find force in the contention of the assessee that the basic jurisdictional requirement for levy of penalty under section 270A(2) is absent, inasmuch as the income assessed is not greater than the income determined in the return processed under section 143(1). In such circumstances, the statutory definition of “under-reported income” as contained in sections 270A(2) and 270A(3) is not satisfied.

17. Coming to the allegation of misreporting under section 270A(9), the Revenue has proceeded on the premise that mere disclosure of income during survey, followed by its inclusion in the return of income, automatically constitutes “misrepresentation or suppression of facts”. We are unable to subscribe to this view. The return of income for the relevant assessment year was filed after the survey but before completion of assessment, and the income so disclosed was accepted by the Assessing Officer without any modification. There is no finding that the assessee made any false entry in the books of account, nor is there any finding of claim of expenditure not substantiated by evidence, or any other ingredient specified in clauses (a) to (f) of section 270A(9).

18. In this context, the reliance placed by the assessee on the judgment of the Hon'ble Gujarat High Court in Principal

Commissioner of Income-tax v. Prafulbhai Vallabhdas Fuletra [2023] 157 taxmann.com 754 (Gujarat) is apposite. In the said decision, on materially similar facts, the Hon'ble High Court has held that where the income assessed is not greater than the income returned, there is no case of under-reporting of income under section 270A(2) and (3), and further that mere disclosure of income pursuant to search or survey, before the due date of filing return and before finalisation of accounts, does not fall within the ambit of misreporting under section 270A(9). The Hon'ble High Court has observed as under:

“4. Reading the order of the Tribunal would indicate that the Tribunal while confirming the order of the CIT(A) found that the conditions specified in Section 270A of the Act could not be invoked and so also regarding levy of penalty. The Tribunal noticed that the case is not covered under the provisions of section 270A(2)(a) of the Act for the reason that the income assessed and the income processed u/s.143(1)(a) are same or in other words, income assessed was not greater than the income determined in return processed u/s.143(1)(a) of the Act. As per provisions of section 270A(3)(i)(a) of the Act as there was no difference between the amount of income assessed and amount of income determined u/s.143(1)(a) of the Act, there was no case of underreporting of income as per provisions of section 270A(2) and (3) of the Act.

4.1 With regard to misreporting of income as per provisions of section 270A(9), the Tribunal observed that the case of the assessee does not fall in any of the clauses specified at (a) to (f). Neither any misrepresentation or suppression of facts has occurred nor there was any false entries in the books of accounts as mentioned in various clauses of 270A(9) of the Act. During the year under consideration search was carried out at the premises of the third party where from on the basis of seized documents the assessee's on-money transactions were found. These transactions were duly offered for taxation by the assessee and his brother in their return of income filed u/s. 139 of IT Act. Since the return of income was not due as on the date of search carried out on 10.08.2016 and the accounting year was not ended also therefore the books of accounts were not up-dated. Therefore, the assessee's case does not fall under the category of misreporting of income.

4.2 The Tribunal therefore held that the provisions of Section 270A(9) are inapplicable as it is neither the case of misreporting of income nor the case of under reporting of income.

5. For the aforesaid reasons, no substantial question of law arises in the present appeals for consideration of this court. Appeals are therefore dismissed.”

19. The aforesaid judgment squarely applies to the facts of the present case. The Revenue has not brought on record any material to demonstrate that the said decision is distinguishable on facts or that the ratio laid down therein does not apply to the assessee's case. Nor has any contrary decision of the jurisdictional High Court or the Hon'ble Supreme Court been placed before us. In absence of any such distinguishing feature or contrary binding precedent, we are bound to follow the law laid down by the Hon'ble Gujarat High Court.

20. We also note that the entire edifice of the penalty order rests on the assumption that, had the survey not taken place, the assessee would not have declared the income. Such an assumption, howsoever strong, cannot substitute the statutory conditions prescribed under section 270A, particularly when the income has ultimately been offered to tax in the return and accepted in assessment.

21. At this juncture, it is also necessary to examine the scope of section 270A(1) of the Act in its plain statutory setting. The provision empowers the Assessing Officer or the appellate authorities to direct levy of penalty “during the course of any proceedings under this Act” where a person has under-reported

his income. The expression “any proceedings” is undoubtedly wide and is not confined to assessment proceedings alone. However, the width of the forum or stage of proceedings does not dilute the substantive requirement embedded in the provision, namely, the existence of “under-reporting” of income. The concept of under-reporting is intrinsically linked to a legally enforceable obligation to report income. In a situation where a survey is conducted during the very previous year relevant to the assessment year, the accounting year has not concluded, the books of account are not finalised, and the statutory time available to the assessee for reporting income by filing the return under section 139 has not expired, it cannot be said that the assessee has failed in its reporting obligation merely because certain amounts were offered to tax during survey proceedings to buy peace. Once such income is duly incorporated in the return of income filed within the prescribed time and the assessment is completed by accepting the returned income, the foundational element of “under-reporting” itself ceases to exist.

22. In the light of the foregoing discussion and having regard to the statutory scheme of section 270A, the absence of any under-reported income, the non-fulfilment of the conditions of misreporting under section 270A(9), the vagueness in initiation of penalty proceedings without specification of the applicable limb, and the binding ratio laid down by the Hon'ble Gujarat High Court, which has not been distinguished or controverted by the Revenue, we hold that the penalty levied under section 270A(8) of

the Act is unsustainable in law. Accordingly, the penalty of Rs. 1,03,15,656/- levied by the Assessing Officer and confirmed by the learned CIT(A), NFAC, is hereby deleted.

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

Order pronounced in the open court on 21.01.2026.

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 21/01/2026
Disha Raut, Stenographer

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai