

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member**

**ITA No.1430/Kol/2025
Assessment Year: 2019-20**

**Gopal Banik.....Appellant
20, APC Road,
Kol- 700009..
[PAN: AEGPB1186E]**

vs.

PCIT (Central)-2, Kolkata.....Respondent

Appearances by:

Shri K K Khemka, Advocate, appeared on behalf of the appellant.

Shri Sandeep Kumar Mehta, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 05, 2026

Date of pronouncing the order : January 21, 2026

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee is directed against the order dated 29.11.2024 of the NFAC, Delhi (hereinafter referred to as the "CIT(A)") passed u/s 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2020-21.

2. The appeal has been filed by the assessee with a delay of 174 days and the assessee has filed an affidavit for condonation of the delay. After going over the said affidavit, we find sufficient reasons behind the delay and consequently, the delay in filing the appeal is hereby condoned and we proceed to dispose of the appeal on merits.

3. Brief facts of the case are that the assessee filed return of income declaring total income at Rs.1,97,26,260/-. A search operation u/s 132

of the Act was conducted on the assessee on 23.04.2019. A credible information was received from the officer-in-charge that a cash seizure of Rs.80,02,000/- was made from the assessee and consequent to such search proceedings, the assessee was issued notices. Based on the details submitted by the police authority and after going over the submission made by the assessee, the Assessing Officer held the amount of cash seized of Rs.80,02,000/- as unexplained and unaccounted money. The Assessing Officer also added Rs.1,72,500/- towards unexplained money u/s 69A and Rs.3,48,054/- as unexplained business income.

3.1. The matter therefore travelled to the Hon'ble ITAT, Kolkata wherein the Tribunal in its order dated 02.09.2024 in IT(SS)A Nos.87&88&92/Kol/2023 provided a part relief of Rs. 1,05,300/- and the addition made by the CIT(A) for A.Y 2019-20 as undeclared income was confirmed by the Hon'ble ITAT to the extent of Rs.75,52,326/-. The other additions sustained by the CIT(A) to the tune of Rs.6,56,386/- and Rs.3,20,000/- was deleted by the Hon'ble ITAT. During the penalty proceedings, the assessee was provided sufficient opportunity of being heard and after hearing the assessee, the tax payable on the under reported income of Rs.22,65,699/- and penalty was imposed @ 50% of the tax payable at Rs.11,32,850/-.

4. Aggrieved by the above order, the assessee preferred appeal before the ld. CIT(A) against the penalty proceedings wherein the ld. CIT(A) dismissed the appeal of the assessee.

5. Aggrieved and dissatisfied, the assessee is in appeal before us. The Ld. AR challenges the very impugned thereby submitting that the penalty proceedings u/s 270A(1) for under-reporting as a consequence of

misreporting but imposed u/s 270A(7) for under-reporting, hence it is illegal. The ld. AR further submits that under-reported income should not include income for which the assessee offers voluntarily explanation to the ld. CIT(A) and the ld. CIT(A) was satisfied with the same. According to him, the disclosure before the ld. CIT(A) was voluntary. He has cited decisions of Hon'ble Bangalore ITAT in the case of IIFL Samasta Finance Ltd. vs. DCIT in ITA No.1054/bang/2024 dated 27.09.2024.

6. Contrary to that, the Ld. DR supports the impugned order.

7. We have considered the submissions of the counsels of the respective parties and perused the material available on record. Going over the relevant portion of the order of the ld. CIT(A), we find that while initiating penalty u/s 270A, the ld. CIT(A) held that 'the penalty proceedings u/s 270A are initiated separately for underreporting of income as consequence of misreporting of income'. We further find that while issuing notice for penalty u/s 274 read with section 270A of the Act, it was mentioned that 'you have under-reported income which is in consequence of misreporting thereof.' We find that in the case of Commissioner of Income-tax v. Manjunatha Cotton & Ginning Factory [2013] 35 taxmann.com 250/218 Taxman 423/359 ITR 565 (Karnataka) held as under:

"...the imposition of penalty under section 271(1)(c) of the Act is bad in law and invalid for the reasons where the show cause notice under section 274 of the Act did not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. The said decision of the High Court of Karnataka was affirmed by the Hon'ble Supreme Court in the decision reported in Commissioner of Income-tax v. SSA'S Emerald Meadows [2016] 73 taxmann.com 248/242 Taxman 180 (SC). On the same lines it is the decision of this court in Pr. CIT v. Brijendra Kumar Poddar in [ITAT No. 215 of 2018, dated 23-11-2021]. As pointed out earlier, the show cause notice

issued under Section 274 read with Section 271 of the Act did not furnish any particulars and all the relevant columns have been left blank. Thus, by applying the legal position in the aforementioned decision, this court has no hesitation to hold that the show cause notice was bad in law consequently the initiation of penalty proceedings is vitiated."

14. *Thus, for the above reasons, the appeals filed by the assessee are allowed and the substantial questions of law are answered in favour of the assessee."*

7.1 We further find that in the case of St. Joseph's Educational Trust v. DCIT [2025] 175 taxmann.com 284 (Chennai-Trib.) wherein it was held as under:

15. Further to our discussion (supra) section 270A of the Act specifies two charges/faults i.e. (i) is 'underreporting of income' & (ii) is 'underreporting as a consequence of misreporting of income'. Subsections 1-7 of section 270A deals with 'underreporting of income' whereas sub-sections 8-10 deals with 'underreporting as a consequence of misreporting of income'. For underreporting of income, penalty levied u/s.270A of the Act is sum equal to 50% of the amount of tax payable on the 'underreported income' whereas for 'misreporting of income', it shall be equal to 200% of the amount taxable on the 'underreported income'. Therefore, we find that as per the scheme of sec.270A of the Act itself it shows that there are two distinct faults/lapses for which different consequences/penalty is levied. Therefore, the AO was duty bound to put the assessee on notice as to which charge/lapse/fault which is alleged against him, so that assessee can defend it in accordance to law. According to us, the assessee should have been informed in the SCN with certainty and accurately of the exact nature of the fault alleged against it, which is absent in this case. Therefore, SCN proposing penalty are found to be vague and doesn't satisfy the requirement of law and therefore, consequent levy of penalty is fragile in the eyes of law and is held to be ab initio void. Thus, assessee's appeal for AY 2018-19 & AY 2019-20 are allowed i.e. ITA Nos.3293, 3295 & 3296/Chny/2024 and the penalty imposed for these three (3) appeals are directed to be deleted.

7.2 Considering the above discussion and various judicial precedents, we hold Assessing Officer failed to specify the charge for issuing the penalty notice u/s.270A of the Act either for 'underreporting of income' or for 'misreporting of income' to defend the assessee against levy of penalty. Hence, we quash the penalty imposed u/s 270A of the Act.

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

Kolkata, the 21st January, 2026.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Dated: 21.01.2026.

RS

Copy of the order forwarded to:

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

//True copy//

By order

Assistant Registrar, Kolkata Benches