

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1835 to 1840/Bang/2025
Assessment Year: 2013-14 to 2018-19

M/s Raghuram Enterprises, No.9/42, 6 <sup>th</sup> Main, APMC Yard, Yeshwanthpur, Bangalore – 560 022.  <b>PAN – AABFR 5233 M</b>	Vs.	The Dy. Commissioner of Income Tax, Central Circle – 1(3), Bengaluru
APPELLANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Shri Subramanian, JCIT

Date of hearing	:	13.01.2026
Date of Pronouncement	:	22.01.2026

**ORDER**

**PER BENCH:**

These 6 appeals, filed by the assessee against the separate order of the learned Commissioner of Income Tax (Appeal) (hereafter- learned CIT(A)) under the provision of section 250 of the Income Tax Act, 1961 (hereafter- the Act), were heard together.

**First, we take up ITA No. 1835/Bang/2025 pertaining to AY 2013-14**

2. The assessee in the memo of appeal raised multiple grounds numbered 1 to 7 and sub-grounds thereunder, which we, for the sake of brevity are not inclined to reproduce here.

3. The grounds of appeal filed by the assessee are interconnected and pertain to levy of penalty u/s 271(1)(c) of the Act.

4. The brief facts are that the assessee, a partnership firm, is engaged in the business of trading in rice and rice products, wheat and wheat products. The assessee filed its ROI u/s 139(1) of the Act declaring an income of Rs. 28,35,100/- only. A search action u/s 132 of the Act was conducted at the premises of the partners of the assessee.

5. During the search proceedings at the premises of the partners, certain incriminating materials pertaining to various transactions such as loans, purchases were found and seized by the search team. During the assessment proceedings, based on such transactions, the AO was of the opinion that the assessee had undisclosed income from unaccounted cash dealing. On question by the AO about the impugned seized documents, the assessee voluntarily offered an additional income at 1% of total turnover disclosed in the returns of income filed under section 139 of the Act to taxation. Accordingly, the assessee filed ROI in response to the notice issued u/s 153C of the Act and offered an additional income to the tune of Rs. 30,82,166/- i.e. 1% of the total turnover. Further, the Ld. AO accepted the additional income @1% of the total turnover in the assessment framed under section 153C r.w.s. 143(3) of the Act. However, the AO initiated the penalty proceedings u/s

271(1)(c) of the Act for concealment of income by issuing a show cause notice to the assessee.

6. The assessee in response to such show cause notice contended that there was neither concealment of income nor furnishing of inaccurate particulars for the year under consideration. Further, during search and survey proceedings, no undisclosed assets or income belonging to the assessee were found or seized by the AO. Only loose sheets were found by AO, which were explained during search by the Assessee. Additional income at 1% of turnover was voluntarily offered by Assessee on an estimated basis to cover possible discrepancies and to buy peace and avoid prolonged litigation.

6.1 The assessee further submitted that the return filed in response to the notice issued u/s 153C of the Act included the said additional income, which was accepted by the AO without making any further additions or disallowances. Penalty proceedings were initiated mechanically, despite the fact that the assessment was completed by accepting the returned income.

6.2 Further, the assessee submitted that penalty under section 271(1)(c) is not automatic; the word used in the statute is "may" and the AO is required to exercise discretion judiciously. The assessee relied on judicial precedents, including Manjunatha Cotton & Ginning Factory reported in 35 taxmann.com 250 (Karnataka), to submit that penalty proceedings are independent and require clear satisfaction of concealment.

6.3 It was further submitted by the assessee that penalty cannot be levied where income is assessed on an estimated basis, as estimation does not ipso facto lead to concealment. The assessee emphasized its bona-fide conduct, cooperation during assessment proceedings, and payment of due taxes, and prayed for dropping of penalty proceedings.

7. However, the AO, placing reliance on the judgment of the Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. reported in CA No. 9772 of 2013, held that disclosure of income with a view to buy peace with the Department does not absolve the assessee from the rigours of penalty under section 271(1)(c) of the Act.

7.1 With respect to the assessee's contention that penalty under section 271(1)(c) cannot be levied where income is determined on an estimated basis, the AO observed that the quantum of undisclosed income was arrived at on the basis of incriminating materials seized during the course of search.

7.2 The AO further held that the case of the assessee squarely falls within the ambit of Explanation 5A to section 271(1)(c) of the Act. Accordingly, the AO levied penalty under section 271(1)(c) of the Act for Rs. 9,52,389 being 100% of the amount of tax sought to be evaded vide order dated 17.02.2022.

8. Aggrieved by the penalty order passed by the AO, the assessee preferred an appeal before the Ld. CIT(A).

9. Before the Ld. CIT(A), the assessee reiterated, more or less, the same submissions which were advanced before the Assessing Officer.

9.1 However, the Ld. CIT(A) examined the statements recorded during the course of search and survey and noted that the appellant had admitted earning of unaccounted income from trading in ragi outside the books of account. In view of such admission, the appellant had agreed to enhance the net profit by 1% of turnover. The Ld. CIT(A) considered the judicial precedents relied upon by the appellant, including the decisions in Dilip Shroff reported in 291 ITR 519, Manjunatha Cotton & Ginning Factory reported in 35 taxmann.com 250 (Karnataka) and M.M. Gujamagadi reported in 290 ITR 168, and observed that these decisions were rendered in the context of penalty proceedings being independent and penalty not being automatic. However, the Ld. CIT(A) held that the facts of the appellant's case were distinguishable.

9.2 With regard to the contention of assessee that penalty cannot be levied where income is determined on an estimate basis, the Ld. CIT(A) observed that the present case was not one of ad-hoc or estimated addition made by the AO. The additional income was offered by the assessee after being confronted with incriminating materials related to unaccounted trading in ragi unearthed during search and survey proceedings.

9.3 Placing reliance on the decision of the Hon'ble Supreme Court in MAK Data Pvt. Ltd. reported in 38 taxmann.com 448 (SC), the Ld. CIT(A) concluded that disclosure made to buy peace does not shield the assessee from the levy of penalty under section 271(1)(c) of the Act.

Accordingly, the Ld. CIT(A) confirmed the penalty levied under section 271(1)(c) of the Act and dismissed the grounds raised by the assessee.

10. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

11. The Ld. AR before us submitted that the penalty order passed under section 271(1)(c) of the Act is bad in law since no satisfaction, as mandated by law, was recorded in the assessment order passed under section 153C of the Act dated 28.05.2021, and therefore the very initiation and levy of penalty is vitiated and liable to be cancelled.

11.2 The Ld. AR further submitted that the Ld. CIT(A) was not justified in sustaining the levy of penalty of Rs. 9,52,389/- under section 271(1)(c) of the Act for the year under appeal, as the same has been levied solely on the basis of additional income offered at 1% of the turnover, which was purely on an estimated basis, and such estimated addition cannot be equated with concealment of income.

11.3 The learned AR further submitted that the assessee has neither concealed any income nor furnished inaccurate particulars of income so as to attract the provisions of section 271(1)(c) of the Act. The additional income was voluntarily offered to settle the matter and was accepted by the Assessing Officer without making any further additions or disallowances, which itself demonstrates the absence of concealment.

12. On the other hand, the Ld. DR before us vehemently supported the order of the authorities below.

13. We have heard the rival submissions of both the parties and perused the materials available on record. The penalty in the present case has been levied by the Assessing Officer by invoking Explanation 5A to section 271(1)(c) of the Act. At the outset, we note that Explanation 5A is applicable only in the case of a searched person and not in the case of a person assessed under section 153C of the Act.

13.1 It is an undisputed fact that the assessee before us is not the searched person but an "other person" in whose case proceedings were initiated under section 153C of the Act on the basis of certain documents seized during the search conducted in the case of another person. The assessment under section 153C has been completed by accepting the income returned by the assessee without making any addition or disallowance over and above the returned income.

13.2 In identical circumstances, the Hon'ble Bombay High Court in the case of PCIT v. Rajkumar Gulab Badgujar [2019] 111 taxmann.com 256 which was subsequently upheld by the Hon'ble Supreme Court by dismissal of SLP reported in [2019] 111 taxmann.com 257 (SC), has categorically held that Explanation 5A to section 271(1)(c) is confined to a searched person and cannot be extended to a person other than the searched person.

*"6. In view of such facts, we find no error in the Tribunal holding that the penalty could not have been imposed. There was no question of the Assessee not declaring the income of the particulars of the income so as to invite penalty under Section 271C of the Act. The three returns had been filed even before issuance of notice under Section 153C of the Act and in other two cases as accepted by the Assessing Officer the Assessee had no taxable income. When there was no addition to the declared income in any of the years, penalty was correctly deleted by the Tribunal. Explanation 5A below Section 271 of the Act would apply only in case of searched person.*

*7. By virtue of such Explanation it may be open for the Revenue to levy penalty from such a person even in a case where there is no addition to the income declared by the searched person in the return filed pursuant to search. Nevertheless this Section is confined to searched person and cannot be extended to the person other than the searched person."*

13.3 Respectfully following the ratio laid down by the Hon'ble Bombay High Court, as affirmed by the Hon'ble Supreme Court, we hold that the Assessing Officer was not justified in invoking Explanation 5A in the case of the present assessee.

13.4 Without Prejudice to above, we note that the assessment has been completed without any independent quantification of undisclosed income on the basis of seized materials by the assessing officer. As such, the Assessing Officer has not demonstrated how the figure of 1 percent of turnover represents the actual concealed income for the year under consideration. The additional income has been offered uniformly at a flat rate for all the assessment years, which itself indicates that the income was estimated to settle the matter rather than computed on the basis of specific incriminating evidence.

13.5 Though certain loose sheets were found during the course of search, the Revenue has failed to establish a direct nexus between such documents and the quantum of income offered by the assessee for the relevant assessment year. Considering the totality of facts and circumstances, we are of the considered view that this is not a fit case for levy of penalty under section 271(1)(c) of the Act. Hence, the ground of appeal of the assessee is allowed.

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

**Coming to ITA/1836/Bang/2025 AY 2014-15, ITA/1837/Bang/2025 AY 2015-16, ITA/1838/Bang/2025 AY 2016-17.**

15. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2014-15 to 2016-17 are identical to the ITA No. 1835/Bang/2025 for the AY 2013-14. Therefore, the findings given in ITA No. 1835/Bang/2025 for the AY 2013-14 shall also be applicable for the assessment years 2014-15 to 2016-17. The appeal of the assessee for the A.Y. 2013-14 has been decided by us vide paragraph No. 13 of this order favouring the assessee and against the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2013-14 shall also be applied for the assessment years 2014-15 to 2016-17. Hence, the grounds of appeal filed by the assessee are hereby allowed.

**ITA/1839/Bang/2025, an appeal by the assessee for the AY 2017-18**

16. The assessee in the memo of appeal raised multiple grounds numbered 1 to 7 and sub-grounds thereunder, which we, for the sake of brevity and convenience, are not inclined to reproduce here.

17. The grounds of appeal filed by the assessee are interconnected and pertain to levy of penalty u/s 270A of the Act.

18. The brief facts are that the assessee, a partnership firm, is engaged in the business of trading in rice and rice products wheat and wheat products. The assessee filed its ROI u/s 139(1) of the Act declaring an income of Rs. 42,51,700/- only. A search action u/s 132 of the Act was conducted at the premises of the partners of assessee.

18.1 During the search proceedings, certain incriminating materials pertaining to various transactions such as loans, purchases were found and seized by the search team. From these discrepancies, the AO confirmed that the assessee had under-reporting of income as a consequence of mis-reporting of income from unaccounted cash, However, in order to correct the discrepancies, the Assessee voluntarily offered an additional 1% of total turnover to taxation.

18.2 In response to the notices issued u/s 153C of the Act, the assessee filed ROI, offering an additional income to the tune of Rs. 1,02,72,170/- i.e. 1% of the total turnover. Further, the AO accepted the additional income @1% of the total turnover in the assessment framed under section 153C r.w.s. 143(3) of the Act and initiated the penalty proceedings u/s 270A of the Act for under-reporting of income as a consequence of mis-reporting of income.

18.3 The assessee contended that there was no under-reporting of income as a consequence of mis-reporting of income for the year under consideration. Further, during search and survey proceedings, no undisclosed assets or income belonging to the assessee were found or seized by the AO. Only loose sheets were found by AO, which were explained during search by the Assessee. Additional income at 1% of

turnover was voluntarily offered by Assessee on an estimated basis to cover possible discrepancies and to buy peace and avoid prolonged litigation.

18.4 The assessee further submitted that the return filed in response to notice issued u/s 153C of the Act included the said additional income, which was accepted by the AO without making any further additions or disallowances. Penalty proceedings were initiated mechanically, despite the fact that the assessment was completed by accepting the returned income.

18.5 Further, the assessee submitted that penalty under section 270A is not automatic; the word used in the statute is "may" and the AO is required to exercise discretion judiciously. The assessee relied on judicial precedents, including Manjunatha Cotton & Ginning Factory reported in 35 taxmann.com 250 (Karnataka), to submit that penalty proceedings are independent and require clear satisfaction of concealment.

18.6 It was further submitted by the assessee that penalty cannot be levied where income is assessed on an estimated basis, as estimation does not ipso facto lead to concealment. The assessee emphasized its bonafide conduct, cooperation during assessment proceedings, and payment of due taxes, and prayed for dropping of penalty proceedings.

19. However, the Ld. AO, placing reliance on the judgment of the Hon'ble Supreme Court in the case of MAK Data Pvt. Ltd. in CA No. 9772 of 2013, held that disclosure of income with a view to buy peace with

the Department does not absolve the assessee from the rigours of penalty under section 270A of the Act.

19.1 With respect to the assessee's contention that penalty under section 270A of the Act cannot be levied where income is determined on an estimated basis, the AO observed that the quantum of undisclosed income was arrived at on the basis of incriminating material seized during the course of search. Accordingly, the AO levied penalty under section 270A of the Act vide order dated 17.02.2022.

20. Aggrieved by the penalty order passed by the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A).

21. Before the Ld. CIT(A), the assessee reiterated, more or less, the submissions which were advanced before the Assessing Officer. Further, the assessee also submitted that assessee raised a request before AO for grant of immunity u/s 270AA of the Act and the AO should have considered the request of assessee by passing an order either rejecting or accepting the immunity application within a period of one month from the end of the month in which the application was received. However, the assessee contended that the AO did not pass any order for grant of immunity within the statutory time frame i.e. by 30.08.2021

21.1 The Ld. CIT(A) examined the statements recorded during the course of search and survey and noted that the appellant had admitted earning of unaccounted income from trading in ragi outside the books of accounts. In view of such admission, the assessee had agreed to enhance the net profit by 1% of turnover.

21.2 The Ld. CIT(A) considered the judicial precedents relied upon by the assessee, including the decisions in Dilip Shroff reported in 291 ITR 519, Manjunatha Cotton & Ginning Factory reported in 35 taxmann.com 250 (Karnataka) and M.M. Gujamagadi reported in 290 ITR 168, and observed that these decisions were in the context of penalty proceedings being independent and penalty not being automatic. However, the Ld. CIT(A) held that the facts of the assessee's case were distinguishable.

21.3 With regard to the contention of assessee that penalty cannot be levied where income is determined on an estimate basis, the Ld. CIT(A) observed that the present case was not one of ad-hoc or estimated addition made by the AO. The additional income was offered by the assessee after being confronted with incriminating material related to unaccounted trading in ragi unearthed during search and survey proceedings.

21.4 Placing reliance on the decision of the Hon'ble Supreme Court in MAK Data Pvt. Ltd., the Ld. CIT(A) concluded that disclosure made to buy peace does not shield the assessee from the levy of penalty under section 270A of the Act.

21.5 With regard to contention of assessee for immunity u/s 270AA, the Ld. CIT(A) observed that immunity application was received in the office of AO on 22.07.2021, the AO vide order date 05.08.2021 rejected the application of assessee for grant of immunity after granting him a reasonable opportunity of being heard. Accordingly, the Ld. CIT(A)

confirmed the penalty levied under section 270A of the Act and dismissed the grounds raised by the assessee.

22. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

23. The Ld. AR before us submitted that the Ld. CIT(A) was not justified in upholding the levy of penalty of Rs. 74,41,304/- under section 270A of the Act at 200% of the tax payable on the alleged under-reported income in consequence of misreporting, which is wholly unjustified on facts and in law.

23.1 The learned AR further submitted that the penalty under section 270A of the Act has been imposed by the Assessing Officer without assigning any cogent reasons for holding that the income voluntarily offered by the assessee by estimating 1% of the turnover would amount to under-reporting of income in consequence of misreporting. It was argued that the order imposing penalty is a mechanical order passed without due application of mind and therefore the very levy of penalty is vitiated and liable to be cancelled.

23.2 It was also contended that there was no under-reporting of income in consequence of misreporting, since the additional income was offered by the assessee purely on an estimate basis to resolve the issues arising out of the search proceedings.

23.3 The learned AR further submitted that the levy of penalty under section 270A of the Act is discretionary and not mandatory, as the

statute employs the word "may" and not "shall". It was argued that having regard to the facts and circumstances of the case, the Assessing Officer ought to have exercised such discretion judiciously and refrained from imposing penalty, especially when the additional income offered by the assessee was only on an estimated basis at 1% of the turnover and not on account of any proved misreporting.

24. On the other hand, the Ld. DR before us vehemently supported the order of authorities below.

25. We have heard the rival submissions of both the parties and perused the materials available on record. Section 270A of the Act is a self-contained code and penalty can be levied only if the income assessed results in under-reporting as defined under sub-section (2) of the Act. Misreporting under sub-section (9) presupposes the existence of under-reported income and only enhances the rate of penalty. Therefore, the existence of under-reported income is a **sine qua non** even for cases falling under misreporting.

25.1 In the present case, it is an undisputed fact that the Assessing Officer has accepted the income returned by the assessee in response to notice issued under section 153C of the Act and no variation has been made while completing the assessment. When the assessed income is the same as the returned income, the question of under-reporting of income does not arise and consequently the provisions of section 270A cannot be invoked.

25.2 Even otherwise, the invocation of section 270A(9)(e) of the Act, which deals with cases where the assessee has failed to record any receipt in the books of account having a bearing on total income, is not supported by any specific finding. The Assessing Officer has not identified any particular receipt which was not recorded in the books nor has any quantification been made with reference to such alleged failure. The penalty has been levied merely on the basis of the additional income offered by the assessee on an estimated basis, which by itself cannot be equated with misreporting as contemplated under section 270A(9) of the Act.

25.3 We further note that the additional income was offered uniformly at a flat rate of 1 percent of turnover to cover possible discrepancies and the same has been accepted without modification. Such disclosure, without any finding of false entry, suppression of facts, or non-recording of specific receipts, does not fall within the mischief of section 270A(9)(e) of the Act.

25.4 The provisions of section 270A being penal in nature require strict interpretation. In absence of satisfaction recorded by the Assessing Officer as to how the assessee has misreported income within the meaning of section 270A(9)(e) of the Act, the levy of penalty cannot be sustained.

25.5 Considering the totality of facts and circumstances, we are of the considered view that the penalty levied under section 270A of the Act is not in accordance with law. Accordingly, the penalty levied and

confirmed by the lower authorities is directed to be deleted. Hence, the ground of appeal of the assessee is allowed.

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

**Coming to ITA/1840/Bang/2025 AY 2018-19**

27. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2018-19 are identical to the ITA 1839/Bang/2025. Therefore, the findings given in ITA No. 1839/Bang/2025 for the AY 2017-18 shall also be applicable for the assessment year 2018-19. The appeal of the assessee for the A.Y. 2017-18 has been decided by us vide paragraph No. 25 of this order favouring the assessee and against the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2017-18 shall also be applied for the assessment year 2018-19. Hence, the ground of appeal filed by the assessee is hereby allowed.

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

29. In the combined result, all the appeals of the assessee are allowed.

Order pronounced in court on 22<sup>nd</sup> day of January, 2026

Sd/-

Sd/-

**(KESHAV DUBEY)**

Judicial Member

Bangalore

Dated, 22<sup>nd</sup> January, 2026

/ vms /

**(WASEEM AHMED)**

Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore