

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 7622/Mum/2025
(Assessment Year: 2018-19)**

Mr. Akil Abbas Rassai 144 Gulistan, S. V. Road Khar West, Mumbai - 400 052	Vs.	DCIT Circle-22(1), Piramal Chambers, Lalbaug, Mumbai- 400 012
PAN/GIR No. AACPR1058F		
(Applicant)		(Respondent)

Assessee by	Ms. Vinita Shah, Ld. AR
Revenue by	Shri Surendra Mohan, Ld. DR

Date of Hearing	27.01.2026
Date of Pronouncement	27.01.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

The present appeal has been preferred by the assessee against the order dated 16.10.2025 passed by the National Faceless Appeal Centre, Delhi, whereby the penalty of Rs.16,05,922/- levied under section 270A of the Income-tax Act, 1961, for the assessment year 2018-19, has been confirmed.

2. The penalty in question has been levied in respect of an addition of Rs.82,35,500/- made under section 56(2)(x) of the Act.

At the very outset, the learned counsel for the assessee brought to our notice that the very foundation of the penalty proceedings, namely, the quantum addition under section 56(2)(x), no longer survives in its present form. It was submitted that this Tribunal, vide its order dated 02.12.2025, has set aside the said quantum addition and restored the matter to the file of the Assessing Officer for fresh adjudication after examining the documentary evidences and in accordance with law.

3. We have considered the submissions and perused the material available on record. The factual position is undisputed. The addition which formed the sole basis for initiation and levy of penalty under section 270A has been set aside by the Tribunal, and the issue has been remanded to the Assessing Officer for de novo consideration. Thus, as on date, there is no subsisting or final determination of under-reporting or misreporting of income.

4. Penalty proceedings under section 270A, though distinct in form, are nonetheless dependent in substance upon the outcome of the quantum proceedings. The levy of penalty presupposes a crystallised finding of under-reported income as contemplated under the statute. Where the very addition giving rise to such alleged under-reporting has been unsettled and restored for fresh examination, the edifice on which the penalty rests cease to exist.

5. It is a well-settled principle of law that penalty proceedings are purely consequential and accessory in nature. When the quantum addition itself has been set aside and the issue has been restored for fresh adjudication, the penalty cannot be

allowed to stand independently on an uncertain and fluid foundation. To permit the penalty to survive in such circumstances would be premature and legally untenable, as it would amount to prejudging the outcome of the reassessment proceedings. In other words, where the superstructure of penalty is erected solely on an addition which has been vacated by the Tribunal, such superstructure cannot be permitted to remain standing. The Assessing Officer may, if so advised and permissible in law, examine the issue of penalty afresh only after the quantum proceedings attain finality; however, at this stage, the impugned penalty has no legs to stand.

6. In view of the aforesaid factual and legal position, we hold that the penalty levied under section 270A and confirmed by the learned CIT(A) is unsustainable and deserves to be deleted. Accordingly, the penalty of Rs.16,05,922/- is hereby deleted.

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

Order pronounced in the open court on 27.01.2026.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 27/01/2026
Dhananjay, Sr.PS

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//

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