

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad
[THROUGH HYBRID HEARING]

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MANJUNATHA G. ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.605/Hyd/2022**
 Assessment Year 2018-2019

ACIT, Central Circle-2(4), Hyderabad. PIN-500 004. Telangana.	vs.	M/s. Incredible India Projects Private Limited, SECUNDERABAD – 500026 PAN AABCI9355A
(Appellant)		(Respondent)

राजस्व द्वारा /Revenue by:	MS U Mini Chandran, CIT-DR
निर्धारिती द्वारा /Assessee by:	Sri Sandeep Goel, Advocate

सुनवाई की तारीख /Date of hearing:	03.12.2025
घोषणा की तारीख /Date of Pronouncement:	30.01.2026

आदेश /ORDER

PER VIJAY PAL RAO, VICE PRESIDENT :

This appeal by the Revenue is directed against the Order dated 30.08.2022 of the learned Commissioner of Income Tax-(Appeals)-12, Hyderabad, for the assessment year 2018-2019.

2. The Revenue has raised the following grounds:
1. *“The Ld. CIT(Appeals) erred both in law and on facts of the case in granting relief to the assessee.*
 2. *The Ld. CIT(A) erred in deleting the penalty u/s.271AAB on the addition made of Rs.65,28,28,100/- towards cash payments to M/s. Aurora Educational Society on the facts and in the circumstances of the case.*
 3. *The Ld. CIT(A) failed to appreciate that the conduct of the appellant in this matter is a plan device to evade lawful liability by disguising and camouflaging the cash transaction as 'advance paid to landlords' and 'prepaid development expenses' and such resort to camouflaging is not lawfully permissible.*
 4. *The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”*
3. The appeal of the Department was earlier disposed of by this Tribunal vide composite order dated 14.11.2024 for the assessment years 2017-2018 and 2018-2019 whereby the application filed by the assessee under Rule-27 of ITAT Rules, 1963 were admitted and the issue raised by the assessee regarding the validity of the show cause notice issued u/sec.274 r.w.s.270A/271AAB for the assessment years 2017-2018 and 2018-2019 respectively, were remanded back to the file of learned CIT(A) for deciding the

same. The relevant finding of the Tribunal in Paras-13 and 14 are as under:

“13. *There is no dispute, Ld. CIT(A) has not adjudicated the legal issue raised by way of written submission. However, the question before us is whether the assessee can raise the said plea before the Tribunal by way of application under Rule 27 of ITAT Rules, 1963 or not. This issue is no longer res-integra. Hon'ble Madras High Court in the case of CIT Vs. India Cement Ltd. (supra) had considered identical issue and held that, once the assessee raised an issue before the CIT(A), which was not adjudicated by the first appellate authority can be deemed to be decided against the assessee and that the assessee was entitled to canvass the said issue before the Tribunal without independently filing the appeal in the light of Rule 27 of ITAT Rules, 1963. Hon'ble Bombay High Court in Peter Vaz and Others Vs. CIT [2021] 436 ITR 616 (Bom.) also considered very similar issue and held that Rule 27 of ITAT Rules, 1963 gives a right to the respondent in an appeal before the Tribunal to support the order appealed against on any of the grounds decided against him, even though he may not have appealed against the order. For supporting the order, it is not necessary for the respondent in the appeal to file a memorandum of cross objection challenging a particular finding that is rendered by the trial court against him, when the ultimate decree itself is in his favour. The sum and substance of ratio laid down by various courts is that the respondent can support the order appealed against on any points which has been decided against him by way of application under Rule 27 of ITAT Rules, 1963. Since the question raised by the assessee by way of application under Rule 27 of ITAT Rules, 1963 is purely a legal issue and further, the assessee has taken an argument before the Ld. CIT(A) on this issue*

by way of written submission, in our considered view, although the Ld. CIT(A) has not decided the issue against the assessee, application filed by the assessee under Rule 27 of ITAT Rules, 1963 is maintainable and thus admitted.

14. *Having admitted the application filed by the assessee under Rule 27 of ITAT Rules, 1963, we find that the assessee has challenged the issue of legality of notice issued u/s 274 r.w.s. 270A/271AAB for both the assessment years for the first time before the Tribunal and the facts with regard to said legal issue are not on record. Further, the assessee had also raised the above issue before the Ld. CIT(A) by way of written submission for both the assessment years and challenged the validity of order passed by the Assessing Officer, imposing penalty u/s 2701/271AAB of the Act. Since the Ld. CIT(A) has not discussed the issue or decided the issue raised by the assessee and further the assessee has raised the issue for the first time before the Tribunal, in our considered view, first appellate authority should get an opportunity to consider the legal issue raised by the assessee from his perspective and thus, we are of the considered view that, the issue needs to go back to the file of the Ld. CIT(A) for considering the preliminary legal issue raised by the assessee on validity of penalty proceedings initiated on the basis of vague notice issued u/s 274 r.w.s.270A/271AAB of the Act. Thus, we set aside the orders passed by the Ld. CIT(A) for both the assessment years and restore the issue to the file of the Ld. CIT(A) and also direct the Ld. CIT(A) to decide the preliminary issue raised by the assessee by way of application under Rule 27 of ITAT Rules 1963 and also written submissions filed before the first appellate authority as reproduced in para 6.1 of the order of the Ld. CIT(A). Ld. CIT(A) is also directed to consider the issue on merits after deciding the*

preliminary legal issue raised by the assessee for both the assessment years.”

3.1. Thus, the Tribunal proceeded on the premise as advanced by the assessee that the learned CIT(A) has not adjudicated the legal issue raised by way of written submissions. The assessee challenged the said order dated 14.11.2024 before the Hon'ble Jurisdictional High Court for the State of Telangana at Hyderabad in the Income Tax Tribunal Appeal Nos.21 and 22 of 2025 and vide Judgment dated 06.02.2025 the Hon'ble Jurisdictional High Court for the State of Telangana has set-aside the Order of the Tribunal and remanded the matter back to the Tribunal for deciding the grounds on which matter has been remanded to the learned CIT(A). It is also observed that the Tribunal would also decide the other grounds raised by the Revenue in its appeal in Para-12 as under:

“12. Taking into consideration the aforesaid legal precedents on the power vested with the fact-finding Appellate Tribunal, we are of the considered opinion that the view taken by the Income Tax Appellate Tribunal in the instant case does not seem to be proper, legal and justified. The Tribunal should have itself decided the said matter on merits in accordance with law.

Hence, the order of remand by the impugned order deserves to be and is, accordingly, set aside and the matter stands remitted back to the Income Tax Appellate Tribunal for the Tribunal itself to decide the grounds on which the matter has been remanded by the Tribunal to the CIT(A). In addition, the Tribunal would also decide the other grounds raised by the Revenue in its appeal.”

4. Thus, the issue raised by the assessee in application under Rule-27 of ITAT Rules, 1963 as well as the other grounds raised by the assessee in this appeal are taken up for hearing and adjudication. The additional grounds raised by the assessee for the assessment year 2018-2019 under Rule-27 of ITAT Rules, 1963 are as under:

1. *That on facts, circumstances and legal position of the case, since the Ld. AO has failed to specify and demonstrate the specific charge and limb under which penalty is initiated which is completely absent in the satisfaction obtained in assessment order as well as penalty notice for alleging undisclosed income u/s 271AAB, the initiation being vague, the penalty imposed thereafter deserves to be quashed in light of latest jurisdictional high court decision in case of Radical Bio Organics Limited in ITTA No.323 of 2022 order dated 17th August 2023 approving decision of DB Bench of this honorable court in ITA 1633/Hyd/2018.*

1.1. *Whether Ld.AO was correct in ignoring the ratio of supreme court decision on vague show cause notice in case of Amrit Foods reported in 2005 13. SCC 419 which is binding under ARTICLE 141 of Constitution of India.*

2. *That on facts, circumstances and legal position of the case, satisfaction of Ld. AO for initiation of penalty proceedings u/s 271AAB is totally mechanical, non-speaking and without application of mind and hence the penalty Imposed deserves to be quashed.*
3. *That on facts, circumstances and legal position of the case, SCN once issued for initiation and imposing penalty cannot be improvised/improved at the appellate stage and at no appellate stage new case can be made out which is not made out by assessing officer after recording his specific satisfaction as per law.*
4. *That on facts, circumstances and legal position of the case, since no expense has been booked against the advance payment made for purchase of land, no disallowance u/s 40A(3) could have been made. Therefore, penalty proceedings are completely non-starter.*
5. *That on facts, circumstances and legal position of the case, since Ld. AO admitted himself in the assessment order that appellant has recorded transactions in books, no such penalty could not have been initiated as per law.*
6. *That on facts and circumstances of the case, Ld. CIT(A) was fully correct in deleting the penalty levied by the AO for having found no contumacious conduct of assessee.*
7. *That on facts and circumstances of the case, Ld. CIT(A) was fully correct in deleting the penalty levied by the AO on basis of law laid down by Honorable Apex Court in Reliance petro products in 322 ITR 158 (SC)."*

4.1. Before proceeding to adjudicate the issues raised by the assessee under Rule 27 of ITAT Rules, 1963 it is appropriate to discuss the scope of Rule 27 of ITAT Rules,

1963. Therefore, for ready reference, we quote Rule 27 of ITAT Rules, 1963 as under:

“27. The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him. Remand of the case by the Tribunal.”

4.2. This Rule 27 of ITAT Rules, 1963 provides an opportunity to the respondent who may not have appealed against the impugned order but may support the order appealed against by the other party on any of the grounds decided against him. Therefore, the scope of raising the plea under Rule 27 of ITAT Rules, 1963 is to defend/support the impugned order on the issue which is decided against the respondent without filing any appeal or cross-objection and therefore, the impugned order of the learned CIT(A) would stand and will have full effect in so far as it is against the respondent but if the plea raised by the respondent is accepted as regards the validity of the show cause notice issued by the Assessing Officer for levy of the penalty u/sec.271AAB, then the effect would be that the appeal filed by the Revenue would fail. The Hon'ble Bombay High Court

in the case of **B.R. Bamasi vs. CIT [1972] 83 ITR 223 (Bom.)** has discussed the scope of Rule 27 of ITAT Rules, 1963 **at Page-246** as under:

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.....
"But even if the assessee had not made such a statement. the above judgment shows that the assessee would be entitled to raise a new ground, provided it is a ground of law and does not necessitate any other evidence to be recorded, the nature of which would not only be a defence to the appeal itself, but may also affect the validity of the entire assessment proceedings. If the ground succeeds, the only result would be that the appeal would fail. The acceptance of the ground would show that the entire assessment proceedings were invalid, but yet the Tribunal which hears that appeal would have no power to disturb or to set aside the order in favour of the appellant against which the appeal has been filed. The ground would serve only as a weapon of defence against the appeal. If the respondent has not himself taken any proceedings to challenge the order in appeal, the Tribunal cannot set aside the order appealed against. That order would stand and would have full effect in so far as it is against the respondent. The Tribunal refused to allow the assessee to take up this ground under an incorrect impression of law that if the point was allowed to be urged and succeeded, the Tribunal would have not only to dismiss the appeal, but also to set aside the entire assessment. The point would have served as a weapon of defence against the appeal, but it could not be made into a weapon of attack against the order in so far as it was against the assessee.”

4.3. Thus, we would consider the point raised by the assessee in the application filed under Rule-27 of ITAT Rules, 1963 in light of the scope as discussed by the Hon'ble Bombay High Court (supra). It is pertinent to note that the assessee can support the order of the learned CIT(A) on the point which has been decided against the assessee or even in a case where the issue raised by the assessee before the learned CIT(A) but the same has not been decided. In the case in hand, the assessee has pleaded that this point was raised by the assessee in the submissions before the learned CIT(A) and not as part of the grounds of appeal. For the sake of completeness, we reproduce the grounds raised by the assessee before the learned CIT(A) as recorded in Para-2 of the learned CIT(A) as under:

“2. Aggrieved by the said order, the appellant filed the present appeal, with the following grounds of appeal:

1. On the facts and in the circumstances of the case and in law, the order passed by the Ld.AD is bad in law as the submissions of the appellant were rejected without recording proper reasons.

2. Without prejudice to above, on the facts and in circumstances of the case, the Ld.AO has erred in treating

the amounts paid in cash that were duly recorded and accounted for in books of accounts as undisclosed income.

3. *Without prejudice to above, on the facts and in circumstances of the case, the Ld.AO has erred in imposing penalty on the amount disallowed u/s.40A(3) of the IT Act, 1961 as advances for land paid in cash.”*

4.4. Further, the learned CIT(A) has also reproduced the submissions of the assessee in Para-6.1 as under:

“6.1. The appellant has contested the levy of the said penalty, and in support of his claim, the following submissions have been made by the appellant's AR:

"B. The important conditions while imposing penalty under section 271AAB are as follows:

- (i) The penalty under section 271AAB is discretionary and is neither automatic nor mandatory as it uses the words "AO may direct".*
- (ii) The discretionary penalty under section 271AAB (1A) can be levied under clause (a) @ 30% and under clause (b) @ 60% depending upon the default and charge against the assessee.*
- (iii) Existence of 'undisclosed income' is a sine quo non for levying such penalty. which is defined in explanation (c) to section 271AAB.*

From the definition of 'undisclosed income it is evident that this expression is given a definite and specific meaning and the word has not been described in an inclusive manner so as to enable the tax authorities to give wider or elastic meaning which enables them

to bring within its ambit the species of income not specifically covered by the definition.

Further from the definition of the word "undisclosed income" it is seen that in order to bring a receipt of income within the meaning of the said expression, it is obligatory to demonstrate and prove that the income is represented either wholly or partly by any money, bullion, jewellery or other valuable article or thing found in the course of search u/s.132 and which was not recorded on or before the date of search in the books of accounts or other documents maintained in the normal course relating to such previous year or otherwise not disclosed to the Commissioner before the date of search.

From the bare perusal of the assessment order, it is clear that the assessee had voluntarily disallowed Rs.60,44,76,909/- as per Sec.40A(3) being statutory disallowance and admitted the same as its income for AY 2018-19. Also, these payments were part of the books of accounts and were included under the head Advances or Pre-paid development expenses as has been categorically confirmed by assessing authorities in their assessment order.

As per relevant clauses of Section 271AAB of the Act as well as observations made by various tribunals, it is evident that the statutory and agreed disallowance in the return of Income does not amount to undisclosed income as defined in section 271AAB and hence penalty cannot be levied on the Assessee."

4.5. Thus it is clear that neither in the grounds of appeal before the learned CIT(A) nor in the submissions the assessee has raised this point before the learned CIT(A) and

hence, the question of deciding or not deciding this point by the learned CIT(A) does not arise. However, since the matter has been remanded by the Hon'ble Jurisdictional High Court for the State of Telangana therefore, it is taken up for adjudication on the point as raised by the assessee under Rule 27 of ITAT Rules, 1963.

5. Learned Authorised Representative of the Assessee has referred to the show cause notice issued by the Assessing Officer dated 31.12.2019 placed at page-18 of the paper book and submitted that the said show cause notice is not valid as the Assessing Officer has not pointed out specific charge and limb under which the penalty is initiated which is also completely absent in the satisfaction recorded in the assessment order. Thus, he has submitted that the show cause notice initiating the penalty proceedings is very vague as it has not specified the charge/ default against which the Assessing Officer proposed to levy the penalty. In support of his contention, he has relied upon the decision of this Tribunal dated 01.07.2021 in the case of **Radical Bio Organics Limited vs. ITO, Ward-3(2), Hyderabad** in

ITA.No.1633/Hyd./2018 which has been upheld by the Jurisdictional High Court vide Order dated 17.08.2023 in ITA.No.323/2022. He has thus, submitted that the Tribunal has followed the Judgment of Hon'ble Jurisdictional High Court in the case of **Pr. CIT vs. Baisetty Revathi reported in 398 ITR 88** as well as Judgment of Hon'ble Bombay High Court in the case of **Mohd Farhan A Shaikh vs. DCIT [2021] 125 taxmann.com 253 (Bom.)**. The learned Authorised Representative of the Assessee has then referred and relied upon the decision of this Tribunal in the case of **Sunny Enterprises in ITA.No.1257/Hyd./2018**. Thus, the learned Authorised Representative of the Assessee has relied upon series of decisions on the point of validity of show cause notice for not specifying the charge for which the penalty were initiated. Accordingly, the learned Authorised Representative of the Assessee has submitted that when the Assessing Officer has failed to specify the charge against which the penalty was initiated u/sec.271AAB then, the show cause notice is liable to be quashed which also vitiates the levy of penalty.

6. On the other hand, the learned DR has submitted that the issue raised by the assessee under Rule 27 of ITAT Rules, 1963 is beyond the scope of the said Rule. Even otherwise, the Assessing Officer has specifically mentioned the charge of levy of penalty u/sec.271AAB in the assessment order as well as in the show cause notice dated 31.12.2019. The learned DR has pointed out that this is not a penalty levied u/sec.271(1)(c) where the Assessing Officer is required to specify the charge whether it was a case of furnishing of inaccurate particulars of income or concealment of particulars of income. In case of penalty u/sec.271AAB the penalty is leviable for the specified year as a result of the search and seizure action u/sec.132 of the Income Tax Act [in short "the Act"], 1961 detecting the undisclosed income of the assessee in the search proceedings. Therefore, the only condition for levy of penalty u/sec.271AAB is the undisclosed income found during the course of search and seizure action. In the case in hand, the assessee has not disputed the income on account of not recording cash expenditure for purchase of land in the profit and loss account which is hit by the

provisions of sec.40A(3) of the Act and therefore, the non-recording of the closing stock in the profit and loss account amounts to undisclosed income. The assessee has not disputed this *modus operandi* of not disclosing the closing stock during the year in which the land was purchased and payment is made in cash to circumvent the provisions of Sec.40A(3) that would disallow the expenditure on account of purchase in cash. Thus, this *modus operandi* was detected during the course of search and seizure action conducted in the case of the assessee wherein the assessee has admitted this fact of showing the purchases in cash only in the balance sheet as advance or pre-development expenses without routing through the profit and loss account. This fact was detected during the course of search and seizure proceedings as per the vouchers towards the cash payment for purchase and development expenses and the assessee admitted the same as well as offered to tax. Thus, the learned DR has submitted that it is a case of admitted undisclosed income which is not a disputed issue in the assessment proceedings and hence, it is not an addition made by the Assessing Officer

so that the Assessing Officer is under the obligation to specify the charge for which the penalty was proposed to be levied, rather it is an admitted undisclosed income offered by the assessee to tax in the return of income as a consequence of search and seizure action. Thus, the learned DR has submitted that there is no defect or illegality in the show cause notice issued by the Assessing Officer when the assessee himself has admitted the undisclosed income of Rs.60,44,76,909/- against which, the Assessing Officer has initiated penalty u/sec.271AAB of the Act. The learned DR has relied upon the Order of the Assessing Officer.

7. We have considered the rival submissions as well as the relevant material on record. There is no dispute that during the course of search and seizure action certain cash receipts, cash vouchers in respect of cash payment made to M/s. Aurora Education Society for purchase of immovable properties were found and seized marked as Annexure-A/IIPPL/01. The assessee has not disputed these seized materials and in the statement recorded u/sec.132(4) of the Act the assessee has accepted this fact that these cash

payments are shown only in the balance sheet as an advance payment for purchase of land and pre-development charges. The Assessing Officer has recorded these facts in Para Nos.4.1 to 4.3 as under:

“4.1. During the course of Search & Seizure proceedings at the premises of M/s. Incredible India Projects Pvt. Ltd., certain cash receipts and cash vouchers in respect of cash payments made to M/s. Aurora Educational Society for the purchase of immovable properties were found and seized vide Annexure A/IIPPL/01, When the assessee was asked to explain the nature of treatment given to the cash payments in its books of account, it was stated that the cash payments are shown under the head "Advances" or "Pre-paid development expenses" in Balance Sheet.

4.2. During the search proceedings, it was verified that the cash payments of Rs. 60,44,76,909/-, were shown in the balance sheet under the head "Advance paid to Landlords" and "Pre-Paid development expenses". Even though these cash payments were not yet debited to P & L account, the assessee company would bring these cash payments as expenses, after completion of registration of all lands. But considering the provisions of Sec.40A(3) of IT Act, these expenses are not allowable, being the expenditure of value more than Rs.20,000/- and incurred in cash. When the same was confronted with Mr. N. Praveen Kumar, he on behalf of the company, has voluntarily admitted to debit the cash payments to Profit & Loss Account for FY 2017-18 and offered to disallow this expenditure and agreed to pay the taxes on these amounts. Relevant extracts of the sworn statement of Mr. N. Praveen Kumar are reproduced as under:

"Q11. It observed from your reply to Q. 8 of sworn statements dated 04.05.2018 that an amount of Rs.18,73,04,350/-, Rs.18,86,04,350 & Rs.29,10,35,484/- were shown as advance to landlords for the year ending on 31.03.2016, advance to landlords for the year ending on 31.03.2017 and "Pre-Paid development expenses" for the year ending on 31.03.2017 respectively. However, these are actually cash payments made to Mis Aurora Educational Society, which were not allowable as expenses. Please offer your comments.

Ans: I confirm that we have made cash payments of Rs.65,28,28,100/- to Mis Aurora Educational Society for the purchase of land at Bhongir/Raigir. Out of this, an amount of Rs.4,83,51,191/- was voluntarily admitted to disallow expenses and offered as additional income in the hands of Mis IIPPL for AY 2017-18, over and above the regular income. The remaining amount of Rs.60,44,76,909/- was still outstanding as advances/pre-development expenses in the Balance sheet. However, considering the mode of payment and provisions of Income Tax Act, we are voluntarily admitting the amount of Rs.60,44,76,909/-, by debiting in the Profit & Loss Account of Mis IIPPL for FY 2017-18 and disallowing the same considering the provisions of Sec.40A(3) of Income Tax Act. This admitted additional income of Rs.60,44,76,909/- over and above the regular income of M/s IIPPL for FY 2017-18. To this extent we are submitting herewith provisional balance sheet and computation of Income."

4.3. *Subsequently, the assessee company admitted this undisclosed income of Rs. 60,44,76,909/-in the return of income filed for AY 2018-19.”*

7.1. Since this is the specified previous year being search was conducted on 23.03.2018 before the end of the previous year therefore, the Assessing Officer recorded the satisfaction for initiation of penalty u/sec.271AAB of the Act for the year under consideration as against the penalty u/sec.270A for the preceding assessment year i.e., assessment year 2017-2018. Once it is not an addition made by the Assessing Officer but the assessee itself has offered the same to tax based on the enquiry and investigation conducted by the department during the search and seizure action then, there is no ambiguity regarding the charge/default for which the penalty was initiated by the Assessing Officer. Further, once the assessee has admitted the undisclosed income during the course of statement u/sec.132(4) of the Act and paid the taxes together with interest by furnishing the return of income for the specified previous year then, the chargeability of levy of penalty @ 30% is prescribed. Only in the cases where either the assessee has

failed to disclose the said income in the return of income or failed to pay the taxes on the undisclosed income, the question arise of levy of the higher rate of penalty at 60% and then the Assessing Officer is required to specify the charge to justify the levy of penalty at a higher rate. In the case in hand, when the Assessing Officer has not made any addition but has recorded the satisfaction in the assessment order itself for initiation of penalty u/sec.271AAB then, it would made clear to the assessee at the time of assessment order itself that penalty would be levied on the disclosure of undisclosed income toward the incurrence of the cash expenditure not routing through the profit and loss account to avoid the provisions of sec.40A(3) of the Act but showing the same only in the balance sheet as an advance/pre-payment of expenses. Hence, the Assessing Officer was not required to give any further details of the charge for levy of penalty u/sec.271AAB of the Act. An identical issue has been considered by this Tribunal in assessee's own case for the assessment year 2017-2018 vide order dated 08.10.2025 in Para nos.21 to 29 as under:

“21. Ostensibly, the AO, while framing the assessment vide his order passed under Section 143(3) r.w.s. 153A of the Act, dated 27.12.2019, had in unequivocal terms observed that the penalty proceedings u/s 270A are initiated separately for misreporting of income. Also, we find that a perusal of the “Show Cause Notice” issued by the AO under Section 274 r.w.s 270A of the Act, dated 31.12.2019, reveals that the assessee company was intimated that the penalty proceedings were being initiated for under-reporting of income, which is in consequence of misreporting thereof. We are of the view that based on the aforesaid facts discernible from the body of the assessment order read along with the SCN, dated, 31.12.2019, it can safely be gathered that the assessee company was validly put to notice that the penalty proceedings under Section 270A of the Act were initiated in its case for “under reporting of income, which is in consequence of misreporting thereof”.

22. We find that the controversy involved in the present appeal in the backdrop of the application filed by the assessee company under Rule 27 of Appellate Tribunal Rules, 1963 boils down to the issue that, as to whether or not the AO had erred in law and the facts of the case in not specifying the limb of misreporting u/s 270A(9) of the Act, for which penalty was sought to be imposed in the case of the assessee company.

23. We have thoughtfully considered the Ld. AR’s contentions in the backdrop of the judicial pronouncements pressed into service by him, and are unable to persuade ourselves to concur with the same. We say so, for the reason that Section 270A of the Act, at the threshold, contemplates that the AO, during the course of any proceedings under this Act, may direct that any person who has under-reported his income shall

be liable to pay a penalty in addition to tax, if any, on the under-reported income. As observed hereinabove, Section 270A of the Act contemplates the levy of the penalty for under-reporting of income by an assessee. However, in case such under-reporting is in consequence of any misreporting thereof by the assessee, then the penalty is imposed for under-reporting of income, but at a higher rate. Although, the erstwhile section 271(1)(c) of the Act contemplated two separate defaults, viz. (i) concealment of income; and (ii) furnishing of inaccurate particulars of income, but section 270A of the Act draws a distinction between, viz (i) under reporting of income; and (ii) under reporting in consequence of any misreporting, only for the limited purpose of quantifying the penalty. Also, we may observe that the circumstances in which an assessee shall be considered to have under-reported his income are contemplated in sub-section (2) of Section 270A of the Act. Also, the quantification of such underreported income has been put by the legislature in all its wisdom in a straitjacket and is provided in sub-section (3) of Section 270A of the Act. On the other hand, the cases of misreporting of income that would invite a higher penalty, i.e., @200% of the amount of tax payable, can be traced in the set of circumstances contemplated in sub-section (9) of section 270A of the Act.

24. *We are of a firm conviction that now in the case of the present assessee company before us, as the AO had in the assessment order r.w the SCN, dated 31.12.2019, validly put the assessee company to notice that the penalty proceedings were being initiated in its case for “under reporting of income in consequence of misreporting”, therefore, the assessee company could not have thereafter claimed that no valid notice intimating the specific default for which the penalty was sought to be imposed in its case was brought to its notice before imposing the*

penalty vide order passed u/s 270A of the Act, dated 30.03.2022. At this stage, we may herein observe, that once the assessee company was put to notice about the fact that the penalty proceedings u/s 270A of the Act was initiated in its case for “misreporting of income”, thereafter, it cannot claim that as the specific limb for which the said penalty was sought to be imposed was not intimated, therefore, the same would render the order imposing the penalty u/s 270A dated 30.03.2022 as invalid. Our aforesaid conviction is all the more fortified by the fact that the assessee company had in response to the SCN, dated 31.12.2019, vide its reply dated 17.06.2021 furnished its exhaustive submissions on merits that as to why penalty under Section 270A for “underreporting of income in consequence of misreporting thereof” was not liable to be imposed in its case, Page 8 -14 of APB.

25. We shall now deal with the judicial pronouncements that have been pressed into service by the Ld.AR to drive home his contentions. The Ld. AR had relied upon the orders of the coordinate bench of the Tribunal, i.e., **ITAT, Hyderabad Bench ‘B’ in Daggubati Venkatesh, Chennai Vs. DCIT, Central Circle-1(2), Hyderabad, ITA No.645/Hyd/2023 dated 04.03.2025 and Suresh Productions, Hyderabad Vs. DCIT Central Circle-1(2), Hyderabad, ITA No.642/Hyd/2023 dated 29.02.2024.** On careful perusal of both the aforesaid orders, we find that the Tribunal had in the said respective cases, observed that as the AO had in his penalty order not spelled out the specific instance, i.e., clause (a) to (f) of sub section (9) of Section 270(A) of the Act for which penalty was being imposed on the assessee under Section 270A of the Act, therefore, the order so passed by him suffered from the vice of non- application of mind and also violated the principles of natural justice, which,

thus, could not be sustained. However, we find that in the present case before us, the AO, vide his order passed under Section 270A of the Act, dated 30.03.2022, had clearly mentioned that the penalty for misreporting of income by the assessee was being imposed under Section 270A(9)(d) of the Act. Accordingly, as the aforesaid orders of the coordinate benches of the Tribunal are distinguishable on facts, therefore, the same will not assist the case of the assessee company before us.

26. *Apropos the judgment of the **Hon'ble High Court of Delhi** in the case of **GE Capital US Holdings Vs. DCIT, 468 ITR 746 (Delhi)**, as had been pressed into service by the Ld. AR, we find that the same too being distinguishable on facts would not assist the case of the assessee company. We say so, for the reason that in the case before the Hon'ble High Court, the AO had failed to specify in the "Show Cause Notice" as to whether the penalty was being initiated for underreporting or underreporting in consequence of misreporting, therefore, it was for the said reason that the penalty imposed by the AO was quashed. However, we find that as in the present case before us, the AO had, since inception, i.e., both in the body of the assessment order and also the "Show Cause Notice" issued u/s 274 r.w.s. 270A, dated 31.12.2019, validly put the assessee company to notice that the penalty proceedings were being initiated for the under-reporting of income, which is in consequence of misreporting, therefore, the same renders the facts involved in the present case before us as distinguishable from those as were there in the aforesaid case before the Hon'ble High Court.*

27. *Apropos the judgment of the **Hon'ble High Court of Rajasthan** in the case of **GR Infra Projects Limited Vs. ACIT, 470 ITR 382 (Raj.)**, we find the same also being distinguishable on facts will not carry the case of the assessee company any further. We say so, for the reason that as the assessee company in the case before the Hon'ble High Court had, in view of insertion of sub-section (18) of section 155 of the Act before it came into force w.e.f.01.04.2022 withdrawn its claim for deduction of education cess, therefore, the Hon'ble High Court had in the backdrop of the said facts, observed that the assessee company was entitled for immunity from imposition of penalty under Section 270A of the Act.*

28. *Apropos the order of the **ITAT Hyderabad** in the case of **ITO, Ward-16(1) Vs. NSL Nagapatnam Power Ventures Private Limited, ITA No.28/Hyd/2025 dated 28.04.2025**, as had been relied upon by the Ld.AR, we find the same being distinguishable on facts will also not assist the case of the present assessee company before us. On a perusal of the facts involved in the aforementioned case, we find that as the assessee company therein involved had raised the claim for deduction of interest expenditure based on a complete disclosure and correct representation of the facts which though was not accepted by the AO, therefore, the Tribunal in the backdrop of the said peculiar facts, observed, that as there was full disclosure of all material facts, therefore, the AO after considering the said bonafide explanation of the assessee company ought not to have held it as liable for having under reported its income as per section 270A(6)(a) of the Act. As in the case of the present assessee company before us, the fact regarding the wrong of deduction of the "Site salaries" and "Development expenses", had surfaced based on the incriminating documents that were*

unearthed in the course of search proceedings, thus, the same cannot be equated with the aforementioned case where the assessee had voluntarily come forth with the full and true disclosure. Therefore, as the aforementioned case is also factually distinguishable from the case of the present assessee company before us, the same will not assist its case.

29. *We thus, in terms of our aforementioned observations, are unable to persuade ourselves to concur with the Ld.AR that, as the assessee company was not validly put to notice about the specific limb of the default of underreporting of income in consequence of misreporting as contemplated u/s 270A(9) of the Act, therefore, the AO had wrongly assumed jurisdiction and subjected the assessee company to penalty under the said statutory provision and, thus, reject his said contention. Thus, the preliminary objection filed by the assessee company, being devoid and bereft of any substance, is accordingly rejected.”*

7.2. Accordingly, in the facts and circumstances as discussed above and in view of earlier decision of this Tribunal in assessee's own case for the assessment year 2017-2018, we do not find any merit or substance in the issue raised by the assessee under Rule 27 of ITAT Rules, 1963. The same is dismissed.

8. We have heard the learned DR on the ground raised by the Revenue in this appeal as well as the learned Authorised Representative of the Assessee. The learned DR

has submitted that the Assessing Officer has clearly culled-out the *modus operandi* adopted by the assessee to circumvent the provisions of sec.40A(3) of the Act in respect of the expenditure incurred in cash for purchase of land and development charges. The assessee by adopting this *modus operandi* for not showing this expenditure in the profit and loss account but taking the same to the balance sheet and thereafter claimed the said expenditure in the subsequent year is clearly a device to circumvent the provisions of sec.40A(3) of the Act. The land purchased by the assessee forms part of its inventory as a stock-in-trade and therefore, it is necessary be part of the closing stock of the assessee for the year in which the land is purchased and payment is made. Since the payment is in the violation of the provisions of sec.40A(3) of the Act, therefore, the expenditure incurred in cash for purchase of land is not allowable. Further to avoid the provisions of sec.40A(3) of the Act, the assessee is deliberately showing the purchases as 'advance' for purchase of land in the balance-sheet year-after-year which was detected during the course of search and seizure action.

Since the assessee is not claiming these expenses for the year in which it is paid in cash, therefore, it avoids the scrutiny for the relevant assessment year and then in the subsequent years the assessee claims the same as purchase expenses by converting the advance as revenue expenditure and therefore, this *modus operandi* of the assessee could not be detected in the ordinary course of proceedings of assessment. The learned DR has further submitted that in most of the cases only a limited scrutiny under CASS is taken up in which only the issues which are either reported by the various agencies or the claim is made by the assessee are taken up for scrutiny but the expenditure which is incurred in cash is escaping in these mechanisms of reporting and further when the assessee is not claiming these expenditure in the year when it is paid in cash, it is also circumventing the provisions as well as scrutiny. Thus, the learned DR has submitted that it is a clear case of undisclosed income by not disclosing the correct income of the assessee by showing this purchase of land as part of the closing stock. The learned DR has thus, submitted that the learned CIT(A) has misconceived the

provisions of sec.271AAB and ignoring sub-sec.(1A) of section 271AAB which clearly contemplates that a penalty @ 30% would be computed of the undisclosed income of the prescribed previous year if the assessee in the course of search in a statement u/sec.132(4) of the Act admits the undisclosed income and specifying the manner in which such income has been derived. The learned DR has then referred to the definition of the “undisclosed income” as per Explanation and submitted that any income of the specified previous year represented *inter alia*, any entry in the books of accounts or other documents or transactions found during the course of search which has not been recorded on or before the date of the search in the books of accounts or any entry in respect of expenses recorded in the books of accounts relating to the specified previous year which is found to be false and would not have been found to be so, had the search has not been conducted. Thus, the learned DR has submitted that the learned CIT(A) has misconceived the facts as regards the recording of these payments in the books of accounts are concerned. He has pointed out that showing these amounts

in the balance-sheet as an advance and not recording in the profit and loss account amounts to not recording the expenditure or making a false entry. Thus, the provisions of sec.271AAB are attracted in the case of the assessee.

9. On the other hand, the learned Authorised Representative of the Assessee has submitted that the transactions are duly recorded in the books of accounts as it is found during the course of search and seizure action therefore, the learned CIT(A) has rightly deleted the penalty. He has also relied upon the decision of Coordinate Bench of this Tribunal in assessee's own case for the assessment year 2017-2018 apart from various judicial precedents as part of the synopsis.

10. We have considered the rival submissions as well as the relevant material on record. We have also gone through the decisions relied upon by the learned Authorised Representative of the Assessee and particularly, the decision of this Tribunal in assessee's own case for the assessment year 2017-2018. As we have already discussed the facts in this case that during the course of search and seizure action

the vouchers regarding cash payment towards purchase of land and other expenses for development were found. When it was confronted to the assessee, the assessee in the statement recorded u/sec.132(4) of the Act has admitted that these expenditures are shown in the balance-sheet as 'advance payment' for purchase of land and pre-development charges and not recorded in the profit and loss account. In the said statement the assessee also admitted this fact that this expenditure incurred in cash is hit by the provisions of sec.40A(3) of the Act. We have already reproduced the relevant part of the statement of the assessee as reproduced by the Assessing Officer. Even the assessee in the post-search enquiry admitted this fact that the expenditure incurred in cash is not routed through the profit and loss account. Therefore, we find strength in the submissions of the learned DR that this *modus operandi* is adopted by the assessee from year-after-year as it is evident that the same method is followed by the assessee in the earlier years and particularly, for the assessment year 2017-2018. From the facts, it is clear that the assessee is entering

into these transactions of purchase of land by making the payments in cash knowing fully that it is in contravention of the provisions of sec.40A(3) of the Act. However, the assessee has adopted a device to circumvent the provisions of sec.40A(3) by not showing these transactions of cash purchases in the profit and loss account for the year in which the payment is made but the same are shown only as advance payment/advance expenditure in the balance-sheet. This would amount to reducing the income of the assessee by not showing these transactions as part of the closing stock of the assessee and consequently, the assessee is avoiding the provisions of sec.40A(3) as well as the tax on the income equivalent to the amount of closing stock not disclosed by the assessee. The learned CIT(A) has deleted the penalty only on the ground that since these transactions are shown in the balance-sheet of the assessee, therefore, these are recorded in the books of accounts and does not fall in the ambit of 'undisclosed income' as per sec.271AAB of the Act. However, in our considered view, once the assessee is adopting this *modus operandi* of not showing these purchases as part of

the closing stock, it clearly amounts to undisclosed income as unearthed during the course of search and seizure action. However, the Coordinate Bench of this Tribunal in assessee's own case for the assessment year 2017-2018 vide Order dated 08.10.2025 in ITA.No.604/Hyd./2022 has upheld the Order of the learned CIT(A) though in the said case the penalty was levied u/sec.270A of the Act but based on the identical facts. The relevant findings of the Tribunal in Para nos.34 to 38 are as under:

“34. We shall now deal with observations of the CIT(A) that, as the assessee company had actually incurred the subject expenses that were debited in its profit & loss account, viz. (i). Site salaries: Rs.1,25,00,000/-; and (ii). Development expenses: Rs.3,58,51,191/-, but as the same were found to have been incurred in cash as per the cash receipts/vouchers found in the course of the search proceedings, and, thus, not allowable as a deduction as per the deeming provisions of Section 40A(3) of the Act, therefore, it had as agreed in the course of the search proceedings disallowed its said claim for deduction of the subject expenses in the return of income filed in response to notice issued under Section 153A of the Act. The CIT(A) had observed that as the assessee company had actually incurred the subject expenses, but had disallowed the same, as those were found to have been incurred in a mode other than that prescribed in Section 40A(3) of the Act, i.e. a deeming provision, therefore, in absence of having recorded a false entry in the books of accounts it could not have

been subjected to penalty under Section 270A(9)(d) of the Act. The CIT(A) had further observed that it is not the case of the AO that the subject expenses were, though not actually incurred, but were falsely claimed as a deduction by the assessee company. Rather, it was a case of admission of income by the assessee company based on the disallowance of the subject expenditure, which was incurred, but was disallowed as the same was not as per the mandate of the deeming provisions of Section 40A(3) of the Act.

35. *We have given thoughtful consideration to the observations of the CIT(A) in the backdrop of the facts borne on record. Admittedly, it is a matter of fact that it is not the case of the department that the assessee company had not actually incurred the subject expenses but had raised a claim for deduction of the same. Rather, as observed by the CIT(A) and, rightly so, the subject expenses were incurred by the assessee company, but as the same as per the cash receipts/vouchers that had surfaced in the course of the search proceedings were found to have been incurred in cash, i.e., in a mode other than that prescribed under Section 40A(3) of the Act, therefore, the assessee had in the course of the search proceedings agreed to disallow the same, which disallowance it had thereafter offered in its return of income filed in response to notice under Section 153A of the Act on 13.08.2019, Page 21-24 of APB. On a perusal of the return of income filed by the assessee company in response to notice under Section 153A of the Act, we find that it had specifically disallowed the subject expenses aggregating to Rs 4,83,51,191/- (supra) under Section 40A(3) of the Act.*

36. *As observed by the CIT(A) and, rightly so, it is not the case of the department that the assessee company had not actually incurred the subject expenses but had raised a false claim for*

deduction of the same. Rather, the genesis of the disallowance of the subject expenses is that the same as per the cash vouchers and receipts that had surfaced in the course of the search proceedings were found to have been incurred in cash, i.e., in a mode other than that prescribed in Section 40A(3) of the Act. Accordingly, as the subject expenditure, the genuineness of incurring of which is not in doubt, were thereafter disallowed under Section 40A(3) of the Act by the assessee company in its return of income filed in response to the notice issued under Section 153A of the Act, i.e., as was agreed in the course of the search proceedings, therefore, we concur with the CIT(A) that the same could not have been brought within the meaning of “recording of a false entry in the books of account by the assessee company” which undeniably is a precondition for subjecting the assessee company to penalty under Section 270A(9)(d) of the Act.

37. *At this stage, we may herein observe that a genuine entry cannot be treated as false merely because it attracts a disallowance. The Hon’ble Supreme Court in the case of Attar Singh Gurmukh Singh Vs. ITO (1991) 191 ITR 667 (SC), had while upholding the constitutional validity of Section 40A(3) of the Act, observed that the same aims at checking the evasion of tax, but as the genuine and bonafide transactions are not taken out of the sweep of the said section, therefore, it is open to the assessee to furnish to the satisfaction of the A.O the circumstances under which the payments in the manner prescribed in Section 40A(3) of the Act were not practicable or would cause genuine difficulty to the payee, and also open to the assessee to identify the person who had received the cash. To sum up, it was observed that a simpliciter disallowance for infraction of the mode of payment contemplated in Section 40A(3) will not justifiably lead to the falsity of the claim of expenses. As it is not the case of the*

department that the cash vouchers found during the course of the search proceedings were found to be fabricated or that the payees were fictitious or that the cash payments made by the assessee company were routed back to its coffers, therefore, there can be no justification to infer that it had recorded any false entry in the books of account. Although, the claim of the assessee company for deduction of the subject expenses could have been brought within the meaning of misrepresentation or suppression of facts as contemplated under clause (a) of sub-section (9) of Section 270A of the Act, but as the AO had imposed the penalty for underreporting of income in consequence of misreporting thereof under clause (d) of sub-section (9) of Section 270A of the Act, i.e., for recording of any false entry in the books of account, the same, as observed by us hereinabove cannot be sustained.

38. *We, thus, in terms of our aforesaid deliberations, concur with the CIT(A), but only to the extent he had observed that there was no justification for the A.O. to have imposed the penalty under Section 270A(9)(d) of the Act, i.e., for recording by the assessee company of any false entry in the books of account. Accordingly, we approve the CIT(A) order to the limited extent that there was no justification for the AO to have imposed penalty on the assessee company under Section 270A(9)(d) of the Act, i.e., for recording of any false entry in its books of account”.*

11. To main the rule of consistency, we follow the Order of this Tribunal in assessee’s own case for the assessment year 2017-2018 (supra) and accordingly, the Order of the learned CIT(A) is upheld.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30.01.2026.

Sd/-
[MANJUNATHA G.]
ACCOUNTANT MEMBER

Sd/-
[VIJAY PAL RAO]
VICE PRESIDENT

Hyderabad, Dated 30th January, 2026.

VBP

Copy to :

1.	ACIT, Central Circle-2(4), Room No.610, 6 th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad-500 004. Telangana.
2.	M/s. Incredible India Projects Private Limited, 3-6-98, 3 rd Floor, Vasavi Towers, Mrredpally, SECUNDERABAD PIN – 500 026. Telangana
3.	The Commissioner of Income Tax-(Appeals)-12, Hyderabad.
4.	The Pr. CIT-(Central), Hyderabad.
5.	The DR, ITAT, “A” Bench, Hyderabad.
6.	Guard file.

BY ORDER

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