

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

ITA No. 258/Ran/2024

(Assessment Year-2018-19)

M/s Eklavya Estate Pvt. Ltd., H-95, Harmu Housing Colony, Ranchi-834002 (Jharkhand) PAN No. AABCE 5815 F	Vs.	D.C.I.T., Central Circle-2, Ranchi.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Devesh Poddar, A.R.
Department represented by	Shri R.C. Marndi, Sr.DR
Date of hearing	07/01/2026
Date of pronouncement	03/02/2026

ORDER

PER: BENCH

1. This is an appeal filed by the assessee against the order of the Id. CIT(A), Patna-3, Patna in Appeal No. CIT(A), NFAC/2017-18/10189831 dated 29/12/2023 for the A.Y. 2018-19 by raising following grounds of appeal:

- "1. For that the Ld CIT(A) was not justified in confirming the penalty of Rs. 2,83,995/-imposed by the Ld AO invoking section 270A of the Act.
2. For that the initiation of penalty proceedings was itself ab-initio void since the AO has specifically failed to mention the charges for which the proceedings have been initiated i.e. under reporting of income or misreporting of income.
3. For that the penalty imposed by AO and confirmed by CIT(A) is uncalled for since the same has been made towards the addition on estimate basis or any subsequent uncalled for addition.
4. For that in any view of the case the notice issued u/s 274/270A and the conclusion in order of assessment was itself vague and as such, penalty imposed thereby is void.
5. For that other grounds in detail will be argued at the time of hearing."

2. There is a delay of 92 days in filing of this appeal for which the assessee has filed application for condonation of delay mentioning the fact that since beginning of the proceedings the assessee had always been misrepresented

with the facts and legal procedure by the CA/AR of the company. An affidavit to that extent is attached. It is only in 1 week of May 2024 when the assessee contacted their Advocate for legal opinion and payment of outstanding demand that the entire case records were perused and it was suggested to immediately file appeal with prayer for admission of the grounds and this delay petition.

The assessee should not be a sufferer at the cost of misconduct by its CA/AR. It is prayed that the delay caused due to such misconduct may kindly be condoned and the appeal of the assessee be heard and adjudicated upon on merits. The Id. Sr.DR did not raise any serious objection. Considering the facts and circumstances of the case and the reasons given by the assessee, the delay in filing of the appeal is condoned and the appeal disposed off on merits.

3. The facts of the case, in brief, are that the assessee is a private limited unlisted company, engaged in the real estate business. Survey under section 133A of the Income Tax Act, 1961 (in short, the Act) was conducted in the case of assessee on 31/01/2018 at its business premises at H-95, Harmu housing Colony, Ranchi. During the course of survey, several incriminating documents marked as EEPL-01 to EPPL-15 were impounded and inventorised from the said premises. However, during the course of survey, no books of account were found to be maintained by the assessee company. Accordingly, the Assessing Officer estimated the income @ 10% of the gross receipt of ₹ 1,83,81,638/- and assessed the income at ₹ 18,38,164/-. Penalty proceedings under Section 270A of the Act as separately initiated for under reporting of income shown in the return.

4. Aggrieved by the order of Assessing Officer, the assessee preferred appeal before the Id. CIT(A). The appeal against the quantum addition is still pending before the Id. CIT(A). However, in the mean time, the Assessing Officer imposed penalty under Section 270A of the Act. The Id. CIT(A) vide the impugned order, confirmed the penalty imposed under Section 270A of the Act on the ground that the assessee despite having admitted the findings of the survey, did not file its return of income as admitted during the course of survey.
5. Aggrieved by the order of the Id. CIT(A), this appeal has been preferred before this Tribunal.
6. During the appellate proceedings before us, a written submission was filed by the assessee which reads as follows:

- "1) *That this is an appeal is against the order passed by Ld. CIT(A) Patna dated 29/12/2023 wherein the penalty imposed U/s 270A for Rs. 2,83,959/- was confirmed.*
- 2) *That in the grounds of appeal we have challenged the initiation of penalty proceedings vide notice dated 13/04/2021 (copy of which is attached herewith) to the extent that the specific clause for under reporting of income was not mentioned and as such, the notice was defective.*
- 3) *That even on the merits we would like to state that penalty U/s 270A is uncalled for since the addition in dispute pertains to estimation of Gross Profit @ 10% after rejecting the books of the assessee. We would like to mention that the quantum appeal against the addition made is still (as on date) pending with Id CIT(A) 3 Patna wherein an application under Vivad se Vishwas Scheme 2024 was filed and has been rejected by the Ld PCIT.*
- 4) *That anyhow as the case may be, it is a settled principle of law that penalty should not be imposed against the addition which has been made on estimate basis. The lower authorities have failed to consider this contention of the assessee. The sub section 6 to section 270A clearly*

states that no penalty should be imposed for alleged under reporting of income if the same is determined on estimate basis. For ready reference, the extract of the provision reads as below:-

Section 270A

- (6). The under-reported income, for the purposes of this section, shall not include the following, namely:-*
- (a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or 20[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered:*
 - (b) the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or 21[the Joint Commissioner (Appeals) or] the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom:*
 - (c) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance,*

5) That lastly, we place reliance upon the following case laws:-

DCIT vs. Chakradhar Contractors and Engineers (P.) Ltd. [2025] 171 taxmann.com 133 (Pune-Trib.) [26-12-2024]

It is an admitted fact that the Assessing Officer in the assessment order has not specified as to under which limb of provisions of section 2704(2) or 2704(9), the assessee has misreported or under-reported it's income. [Para 7.1]

It is found the Delhi High Court in the case of Schneider Electric South East Asia (HQ) PTE Ltd. v. ACIT reported in (2022) 443 ITR 186 (Del) has held that when there is not even a whisper as to which limb of section 270A is attracted and how the ingredient of sub-section (9) of section 270A is satisfied. the action of the Assessing Officer is contrary to the legislative intent. [Para 7.3]

The various other decisions relied on by the assessee also supports his case to the proposition that where neither in the assessment order nor in the notice issued under section 274 read with section 70A the Assessing

Officer has specified as to under which limb of provisions of section 270A(2) or 2704(9) the case of the assessee falls, then in that case, no penalty under section 270A is leviable. Therefore, the order of the Commissioner (Appeals) is to be upheld (Para 7.6)

Even otherwise also, it is an admitted fact that profit of the assessee has been estimated by resorting to the provisions of section 145(3). It has been held in various decisions that penalty under section 271(1)(c) is not leviable when the profit is estimated. The same corollary in our opinion is also applicable to the provisions of section 270A. Therefore, there is no infirmity in the order of the Commissioner (Appeals) cancelling the penalty levied by the Assessing Officer under section 2704(9) [Para 7.7]

Rajendra Bahusaheb Deshmukh vs. Income-tax Officer [2023] 157 taxmann.com 746 (Pune-Trib.)[29-03-2023]

7. In these facts and circumstances, we are of the opinion that Assessing Officer has failed to establish underreporting. Section 2704 of the Act provides for imposition of penalty for underreporting and misreporting of income. Sub-section (2) enlists certain circumstances of under-reporting of income. Sub-section (3) deals with the determination of under-reported income, which, in our context, is by reducing the income returned by the assessee from the amount of income finally assessed. Sub-section (6) is relevant for our purpose which states that under-reported income for the purpose of this section shall not include certain items. Clause (b) of subsection (6) refers to "the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer. It is ostensible from the language of sub-section (6) that an addition made on the basis of estimation cannot provide foundation for under-reported income for the purpose of imposition of penalty u/s 2704 of the Act. In the case under consideration, the addition is based on GP estimation. In the case under consideration, the addition is based on GP estimation. Hence, we hold that the penalty levied w/s.2704 is not maintainable. Hence, AO is directed to delete the Penalty levied u/s.270A of the Act.

ITAT Delhi in the case of Ram Lakhan Vs DCIT-ITA No. 5456/Del/2024 dated 30/05/2025.

The tribunal held that the penalty was legally unsustainable because the underlying income addition was based on an estimation and not on concrete evidence of concealment or misreporting.

As such, relying upon the above facts and case laws, we submit that the penalty imposed of Rs. 2,83,995/- on account of estimated gross profit is fit to be deleted."

7. On the other hand, the Id. Sr.DR, strongly justified the action of the lower authorities.
8. We have considered the rival submissions and it is found that the Assessing Officer has imposed penalty under Section 270A of the Act on the ground that during the course of survey, statement of Smt. Kanti Kumari, Managing Director of the company was recorded and in the statement she admitted that no books of account was maintained and voluntarily admitted the net profit of 10% on the gross receipt. Accordingly, the Assessing Officer, imposed a penalty of ₹ 2,83,995/- @ 50% of the tax sought to be evaded under Section 270A(2)(a) of the Act. The Id. CIT(A) confirmed the penalty imposed by the Assessing Officer on the ground that intention of the assessee clearly established as the assessee had admitted at the time of survey of the undisclosed profit but did not file its return of income and did not pay any tax on that. We have also considered the submission made by the assessee stated as above. The assessee has mainly raised a ground that it is the case of the estimation of income and nothing specific has been brought on record by the Assessing Officer that the assessee had under reported the income. The assessee has stated that no penalty can be imposed where income was estimated. The Id. AR of the assessee also placed reliance on the various decisions of the Tribunal i.e. in the case of DCIT vs. Chakradhar Contractors and Engineers (P.) Ltd. [2025] 171 taxmann.com 133 (Pune-Trib.) [26-12-2024] wherein the Tribunal has held as follows:

"Even otherwise also, it is an admitted fact that profit of the assessee has been estimated by resorting to the provisions of section 145(3). It has been held in various decisions that penalty under section 271(1)(c) is not leviable when the profit is estimated. The same corollary in our opinion is also applicable to the provisions of section 270A. We, therefore, do not find any infirmity in the order of the Id. CIT(A) cancelling the penalty levied by the Assessing Officer u/sec. 270A(9) of the Act. The ground raised by the Revenue are accordingly dismissed."

The Pune Bench of the Tribunal in the case of Rajendra Bahusaheb Deshmukh vs. Income-tax Officer [2023] 157 taxmann.com 746 (Pune-Trib.) [29-03-2023] has held as under:

"7. In these facts and circumstances, we are of the opinion that Assessing Officer has failed to establish underreporting. Section 2704 of the Act provides for imposition of penalty for underreporting and misreporting of income. Sub-section (2) enlists certain circumstances of under-reporting of income. Sub-section (3) deals with the determination of under-reported income, which, in our context, is by reducing the income returned by the assessee from the amount of income finally assessed. Sub-section (6) is relevant for our purpose which states that under-reported income for the purpose of this section shall not include certain items. Clause (b) of subsection (6) refers to "the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer. It is ostensible from the language of sub-section (6) that an addition made on the basis of estimation cannot provide foundation for under-reported income for the purpose of imposition of penalty u/s 2704 of the Act. In the case under consideration, the addition is based on GP estimation. In the case under consideration, the addition is based on GP estimation. Hence, we hold that the penalty levied w/s.2704 is not maintainable. Hence, AO is directed to delete the Penalty levied u/s.270A of the Act."

The Delhi Bench of the Tribunal in the case of Ram Lakhan Vs DCIT-ITA No. 5456/Del/2024 dated 30/05/2025 has held as under:

"The tribunal held that the penalty was legally unsustainable because the underlying income addition was based on an estimation and not on concrete evidence of concealment or misreporting."

Thus, after considering the facts and circumstances of the case and the decisions of the Hon'ble Tribunals stated as above, it is held that in the case of

estimation of income, penalty under Section 270A cannot be imposed and accordingly, the penalty imposed by the Assessing Officer and confirmed by the Id. CIT(A) is deleted and the appeal of the assessee is allowed.

9. In the result, this appeal of the assessee is allowed.

Order announced in open court on 03/02/2026.

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Ranchi, Dated: 03/02/2026

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi