

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.637/Ind/2025
Assessment Year: 2020-21

Kamal Shadija 156, Palsikar Colony, Indore (Assessee/Appellant)	<u>बनाम/</u> Vs.	Assessment Unit Income Tax Department (Revenue/Respondent)
PAN:AZSPS4490H		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	19.01.2026	
Date of Pronouncement	06.02.2026	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 07.07.2025 passed by learned Commissioner of Income-tax-NFAC, Delhi ["CIT(A)"] which in turn arises out of penalty-order dated 28.03.2023 passed by learned Assessment Unit of Income-tax Department ["AO"] u/s 270A of Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2020-21, the assessee has filed this appeal on following grounds:

"1. The Ld. CIT(A) has erred in maintaining the penalty of Rs. 91,168/- u/s 270A.

2. *The levy of penalty u/s 270A is illegal and bad in law since there is no under reporting and mis-reporting of income. The assessee is paying interest in earlier years also and such claim was accepted by the Department. Thus, there is no case of under reporting of income. The penalty levied may please be cancelled.*

3. *The assessee prays to amend, alter or delete any of the ground of appeal."*

2. The background facts leading to present appeal are as under:
- (i) The assessee-individual filed return of AY 2020-21 declaring a total income of Rs. 32,82,050/- consisting of income from salary, business and other sources. In so far as income other sources is concerned, the assessee declared interest receipt of Rs. 5,84,414/- against which claimed a deduction of interest expenditure of Rs. 5,84,414/- (actual interest paid is stated to be Rs. 13,16,688/-) u/s 57 and declared "Nil" taxable income. The case of assessee was selected for scrutiny. In Para 1 of assessment-order, the AO has mentioned the reason of selection for scrutiny: "The assessee has claimed substantial deduction under the head "Income from other sources" u/s 57 in Schedule OS of ITR. The genuineness of the expenses deducted u/s 57 is to be verified." During scrutiny-proceeding, the AO issued notices u/s 143(2)/142(1) which were replied by assessee. The AO sought explanation from assessee *qua* the deduction claimed u/s 57 on account of interest expenditure. In response, the assessee filed explanation precisely claiming that (i) he has earned interest income on the loans advanced in earlier year, and (ii) he has paid interest on the funds borrowed in earlier year. However, the AO was not convinced with this explanation given by

assessee. The AO observed that the assessee has not explained the nexus of borrowed fund (on which the interest was paid) with the loans given (from which the interest was earned). Ultimately, the AO completed assessment after disallowing the deduction of Rs. 5,84,414/- claimed by assessee and thereby assessed total income at Rs. 38,66,464/- vide assessment-order dated 30.08.2022. The assessee did not dispute the assessment framed by AO i.e. the assessee accepted the disallowance made by AO.

- (ii) In the assessment-order passed as above, the AO also initiated proceeding for imposition of penalty u/s 270A for under-reporting of income. Simultaneously, the AO also issued show-cause notice to assessee seeking an explanation as to why the penalty should not be imposed. In response, the assessee filed following submission as reported by AO in Para 4 of Penalty-order:

"4. In response to SCN issued, assessee submitted its reply in ITBA. Assessee stated that they borrowed funds from various parties and paid interest of Rs. 13,16,688/- on borrowed funds. Since the total interest income was Rs 5,84,414/-, the claim of interest expense was restricted to Rs 5,84,414/-. Assessee stated that since they didn't had their own funds, hence borrowed funds were used and hence interest expenses claim should be allowed. Assessee stated that, the details of advances and borrowings were filed during the proceeding and no loans was borrowed during the FY. Assessee stated that the claim was made correctly and mere rejection of claim does not call for levy of penalty. Assessee accordingly requested to drop the penalty."

However, the AO rejected assessee's submission and imposed penalty of Rs. 91,169/- through Penalty Order dated 28.02.2023.

- (iii) Aggrieved by Penalty Order, the assessee went in first-appeal but did not get any relief.
- (iv) Now, the assessee has come in next appeal before us.
3. At first, we re-produce below the penalty-order passed by AO imposing penalty upon assessee:

*"5. The replies of assessee has been duly considered however same is found to be unacceptable. The claim of deduction of expense against income shown under the head "Income from other sources" is available provided the expenses are incurred wholly and exclusively for purpose of earning the income u/s 56 of the Act. There needs to be a direct link of expenses and income. **In the case of assessee, the AO specifically observed that the assessee was not able to establish the link of interest expense with interest income. The borrowings were specifically used for interest earning advances was not proved and established. Mere general claim cannot be allowed. Assessee failed to substantiate its claim of interest u/s 57 of the Act with income u/s 56 of the Act.** Assessee was well aware of the fact that, it claimed deduction u/s 57 of the Act which is not connected with interest income earned u/s 56 of the Act. Accordingly, assessee should have offered the said amounts in its return but such is not the fact of the case. **Had the case of assessee been not subject to scrutiny, it would have never be known that the above income of Rs 5,84,414/- was under reported. Since in the scrutiny proceeding, the assessee was called for to furnish the details, the under reporting came into picture.** Further, assessee didn't file appeal against the Assessment Order for AY 2020-21 before NFAC, which itself proves that, the additions are made on right footing. It was during the course of assessment proceeding that the AO determined the under-reported income of Rs. 5,84,414/-. This amount of Rs. 5,84,414/- which was chargeable to tax was not offered which itself proves that, there is under reporting of income.*

6. In the light of the foregoing paras, it can be seen that during the assessment proceedings, the assessee had failed to justify his claim of deduction u/s 57 of the Act and also not filed appeal before the Ld. CIT(A) against the assessment order. Therefore, it is clear that the assessee has nothing to say in this regard and addition was in accordance with the provisions of the I.T. Act, 1961.

7. In view of the aforesaid and considering the provisions of section 270A of the I.T. Act, I am convinced that assessee had defaulted the provisions of section 270A wilfully and without reasonable cause, hence this is a fit case for levy of penalty u/s 270A of the I.T. Act for under reporting its income.

As per sub-section 2 of section 270A of the Act:

The cases of under reporting of income referred to in sub-section (2) shall be the following, namely:-

(a) the income assessed is greater than the income determined in the return processed under section 143(1)(a);

The condition mentioned as per clause (a) of sub-section 2 of section 270A of Act is satisfied in the case of the assessee. Hence, the penalty referred to in sub-section (2) of section 270A of the Act shall be equal to 50% per cent of the amount of tax payable on under reporting income.

8. Considering the above facts, the assessee is held to be liable for penalty u/s 270A(2)(a) of the Act. The penalty leviable as provided in section 270A(7) of the Act is 50% of the amount of tax payable on under-reported income. In the instant case, the tax on under reported income is Rs. 1,82,337. Thus, I hereby impose penalty of Rs. 91,169/- being 50% of the amount of tax payable on under reporting income as per provisions of section 270A of the Act in the case of the assessee for A.Y. 2020-21."

[emphasis supplied]

4. Now, we also re-produce the order of first-appeal passed by CIT(A) upholding AO's action:

"5. Appellate finding and decision:

5.1 Ground No. 1 to 4: In these grounds the appellant has agitated against levy of penalty of Rs. 91,168/- u/s 270A.

*5.2 In my considered legal analysis, the appellant, in the course of filing their Income Tax Return (ITR), purportedly sought to avail a deduction of expense made on account of interest expenses of Rs. 5,84,414/-. Subsequently, during the meticulously conducted assessment proceedings under **Section 143(3) r.w.s. 144B**, the AO noticed that the appellant had wrongly claimed expenses of Rs. 5,84,414/- against the interest income of Rs. 5,84,414/- and there is no nexus between the loan taken on which interest of Rs. 13,16,688/- had been paid viz-a-vis utilization of loan. This observation led to the palpable disallowance of claim of expense, resulting in an augmentation of the taxable income by a sum of Rs. 5,84,414/-.*

5.3 In Light of the evidences before me, it is incontrovertible that this is a clear-cut case of under reporting of income as per provisions of sub-section 1 and sub-section 7 of section 270A.

5.4 It is noteworthy that the such disclosure materialized only during the assessment proceedings, whereas it was incumbent upon the appellant to

proactively declare the said income. The omission to do so, particularly in cases where scrutiny was averted, would have resulted in a direct loss to the Government's revenue. Consequently, the Assessing Officer has judiciously imposed the penalty at the statutory rate of 50%.

5.5 Further, it is noted that it was only through the scrupulous scrutiny assessment proceedings that the latent misreporting of the tax liability came to light. It is imperative to underscore that, had the appellant's case evaded the meticulous scrutiny it underwent, it would have paved the way for an unambiguous revenue diminution for the exchequer. The appellant's obligation is unequivocal: they cannot manipulate the circumstances to diminish their tax liability through the under-reporting of income. In light of the aforementioned legal principles and the intricacies of this case, the grounds of appeal No. 1 to 4 are dismissed.

6. In the result the appeal filed by the appellant is dismissed."

[emphasis supplied]

5. Before us, Ld. AR for assessee made oral arguments and filed a written-submission raising following contentions:

- (i) Firstly, he made the very same submission as was made by assessee before lower authorities and also raised by assessee in Ground No. 2 re-produced earlier i.e. the assessee has given loans (on which interest was earned) and borrowed funds (on which interest was paid) in earlier year and there is neither any new loan given nor new funds borrowed during the year. That, the AO has allowed the deduction of interest claimed by assessee in earlier year. With this submission, Ld. AR contended that when there is no change in loan given or funds borrowed, the AO must follow consistency and allow deduction to assessee in current year.
- (ii) Secondly, he claimed that mere disallowance of a claim by AO in assessment-order cannot give rise to penalty.

- (iii) Thirdly, he contended that the assessee has the benefit of clause (a)/(c) of sub-section (6) of section 270A which read as under:

“(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 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 bonafide and the assessee has disclosed all the material facts to substantiate the explanation offered;

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(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;”

Ld. AR submitted that the total interest paid by assessee on borrowed funds was Rs. 13,16,688/- but the assessee claimed deduction of Rs. 5,84,414/- only; thus the assessee, on his own, made disallowance of Rs. 7,32,274/- [13,16,688 (-) 5,84,414] whereas the AO has made disallowance of entire interest of Rs. 13,16,688/-. Thus, the clause (c) is very much applicable.

6. Per contra, Ld. DR for revenue also made oral arguments and also filed a written-submission raising following contentions:

- (i) The assessee has claimed deduction of interest expenditure u/s 57. The case of assessee was selected under scrutiny only to examine the deduction so claimed by assessee. Therefore, the AO scrutinized the

claim of assessee and in that process, the AO gave enough opportunities to assessee during assessment proceeding to explain the deduction claimed. Even in penalty proceeding also, the AO give opportunity to assessee. However, in both assessment and penalty proceedings, the assessee has failed to file any explanation *qua* the nexus of funds borrowed for giving loans. Furthermore, the assessee has not filed such explanation to CIT(A) during first appellate proceeding or to the tribunal in present proceeding. The assessee is only harping on a limited point that the loans given as well as the funds borrowed are old (i.e. given/taken in earlier year) but this explanation is not cogent and sufficient. The submission of Ld. AR that the deduction was allowed in earlier year and therefore consistency must be followed, is also to be rejected because in earlier years, the returns of assessee were processed u/s 143(1) and the current year is the first year in which the department has subjected assessee's case to scrutiny.

- (ii) Since the assessee failed to establish the deduction in terms of section 57, the AO made disallowance and ultimately imposed penalty also. The assessee is only contesting penalty imposed by AO, he has not filed any appeal against assessment-order and accepted the disallowance made by AO. This clearly shows that the assessee does not have any explanation to establish the claim of deduction.

(iii) The provisions of clause (a)/(c) of sub-section (6) of section 270A being pressed by Ld. AR are on different footing and cannot help assessee.

7. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. The issue before us is confined to the levy of penalty u/s 270A of the Act in respect of disallowance of interest expenditure claimed by assessee u/s 57 of the Act.

8. It is an admitted fact that the assessee claimed deduction of interest expenditure of Rs. 5,84,414/- against interest income under the head "Income from other sources". During scrutiny assessment, the AO specifically called upon the assessee to establish nexus between borrowed funds and loans advanced. Despite repeated opportunities, the assessee failed to demonstrate any direct or proximate connection between the interest-bearing borrowings and interest-earning advances. The claim was thus disallowed and the assessment was completed accordingly. The assessee accepted the disallowance and did not prefer any appeal against the assessment order.

9. In penalty proceedings also, the position of assessee remained same i.e. the assessee did not bring any material or evidence to demonstrate the nexus between funds borrowed and loans given. The AO, after considering the explanation, recorded a categorical finding that the assessee had failed to substantiate the claim of deduction u/s 57 and that the income to the

extent of Rs. 5,84,414/- was under-reported. The penalty was accordingly on the basis of provision of section 270A(2)(a) of the Act.

10. The contention of Ld. AR that the deduction was allowed in earlier years and therefore the principle of consistency should apply, cannot be accepted. As rightly pointed out by the Ld. DR, the earlier returns were processed u/s 143(1) and no scrutiny assessment was carried out. It is settled law that intimation u/s 143(1) does not amount to formation of any opinion. Furthermore, there is no estoppel against law and the AO was fully justified in examining the claim during scrutiny in the year under consideration.

11. The argument that mere disallowance of a claim cannot give rise to penalty is also not acceptable in the facts of the present case. The assessee claimed a deduction which was not allowable in law and failed to substantiate the same despite opportunity. The income assessed is admittedly higher than the income declared in the return and thus squarely falls within the ambit of "under-reporting of income" as defined in section 270A(2)(a) of the Act.

12. We further find no infirmity in the observation of the AO/CIT(A) that but for scrutiny assessment, the under-reporting would not have come to light. The disclosure of interest income was neutralised by an inadmissible claim of deduction, resulting in reduction of taxable income. Such conduct clearly attracts the provisions of section 270A.

13. We also do not find any merit in the reliance placed by Ld. AR on clause (a) or (c) of sub-section (6) of section 270A due to following reasons:

- (i) The clause (a) applies to a case of "income" whereas the present case of assessee concerns with a situation of "deduction of expenditure". Further, in order to get immunity under clause (a), the assessee has to establish that the explanation offered is bona fide and that all material facts have been disclosed whereas in present case, the assessee has failed to establish the essential requirement of nexus between funds borrowed and loans given, a condition precedent for allowability of deduction u/s 57(iii) [*Section 57(iii) grants deduction only when the expenditure is laid out or expended wholly and exclusively for the purpose of making or earning income*]. Mere furnishing of a limited explanation that the borrowals as well as loans were taken/given in earlier year but without substantiating the nexus of funds borrowed vis-à-vis the loans given, does not satisfy the requirement of disclosure of all material/necessary facts. Therefore, clause (a) is not applicable.

- (ii) The clause (c) applies to a case where the assessee has made an estimate of addition/disallowance whereas in present case, the assessee has not made any estimate of disallowance in the computation of income. On the contrary, the assessee has claimed deduction of interest to the tune of Rs. 5,84,414/- by restricting it upto the amount of interest receipt and thereby reported "Nil" income

under the head "Income from other sources". The AO has disallowed assessee's claim of Rs. 5,84,414/- when the assessee is not able to prove the same. Thus, there is no estimation involved either on the part of assessee in claiming deduction of Rs. 5,84,414/- or on the part of AO in disallowing same. Furthermore, in order to get immunity under clause (c), the assessee has to establish that all material facts have been disclosed whereas in present case, as noted earlier, the assessee has failed to establish the essential requirement of nexus between funds borrowed and loans given, a condition precedent for allowability of deduction u/s 57(iii). Mere furnishing of a limited explanation that the borrowals as well as loans were taken/given in earlier year but without substantiating the nexus of funds borrowed vis-à-vis the loans given, does not satisfy the requirement of disclosure of all material/necessary facts. Therefore, clause (c) is not applicable.

14. In view of the above discussions and for the reasons stated therein, we are of the considered opinion that the AO has rightly levied penalty u/s 270A and the Ld. CIT(A) has correctly upheld the same. We find no reason to interfere with the orders of lower authorities.

15. Resultantly, this appeal is dismissed.

Order pronounced in open court on 06/02/2026

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 06/02/2026

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore