



आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "SMC" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2606/PUN/2025

निर्धारण वर्ष / Assessment Year: 2022-23

Uday Uttamrao Nevase, Saugandh Niwas, Hind Colony Lane No.1 A, Bhekrai Nagar, Phursungi, Pune – 412308.	V s	The Assessing Officer / Assessment Unit, Pune.
PAN: AKQPN1150Q		
Appellant/ Assessee		Respondent /Revenue

Assessee by	CA Rohan Gupta
Revenue by	Shri Harshit Bari – Addl.CIT(Virtual)
Date of hearing	16/12/2025
Date of pronouncement	10/02/2026

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Assessee against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], passed under section 250 of the Income Tax Act, 1961 for the A.Y.2022-23 dated 04.09.2025 emanating from the Penalty Order passed under section 270A, dated 17.09.2024. The Assessee has raised the following grounds of appeal :

*“Ground 1 Section 270AA Immunity CIT A erred in law by confirming the penalty of Rs 629382 under section 270A without considering and*



*applying section 270AA of the Income Tax Act 1961 The appellant has satisfied all mandatory conditions under section 270AA The entire tax demand was paid within 30 days of the assessment order dated 20 March 2024 and no appeal was filed against that assessment order Section 270AA provides an absolute right to penalty immunity The penalty imposed is therefore illegal and should be deleted in full.*

*Ground 2 Bonafide Error and Absence of Willfulness Without prejudice to the above CIT A failed to note that the appellants claim of deductions was a bonafide error and not a deliberate attempt to evade tax OR willful misreporting Immediately upon being prompted by the Income Tax portal on 20 August 2022 the appellant opted to revise the return of income to correct the amount of refund claimed as recorded in the Income Tax portal Unfortunately due to unavoidable reasons the revised return could not be filed which was later explained during proceedings This sequence shows the absence of concealment OR willful misreporting and the intent to correct errors was documented on the portal and the entire tax demand was paid promptly before penalty proceedings commenced A screenshot from the portal is available and can be provided if required.”*

**Submission of Id.AR :**

2. Ld.Authorised Representative(ld.AR) for the Assessee filed a paper book. Relevant submission is reproduced here as under:

*“FACTS OF THE CASE (As already placed on record)*

*1. The Assessee is a salaried individual with disclosed Gross Total income (GTI) of 18,96,108 for AY 2022-2023*

*2. During filing of the original return, the tax practitioner of assessee inadvertently claimed certain deductions under sections 80DD, 80CCD(2), 80DDB, 80E, 80EEA, 80EEB, 80GGC and excess HRA claim.*



3. *These claims arose purely from misunderstanding on the part of tax return practitioner of the eligibility and unintentional clerical errors, without any intention to conceal income or misreport facts.*

4. *Based on the original return, a refund of approx. ₹1,50,000 was issued.*

5. *Upon receipt of the notice from the Department, the assessee had agreed to revise the return. However, the revised return could not be filed within the statutory time limit due to the ill health of both his parents- his father aged 69 years and his mother aged 64 years at the relevant time. A screenshot evidencing the selection of the revised return filing option by the assessee is enclosed as Exhibit A*

6. *Thereafter, in compliance with subsequent notices u/s 143(3), the Assessee voluntarily paid the tax differential of 23,71,620 without dispute. The same was paid within stipulated time of 30 Days and no appeal against the same was filed*

7 *Despite full cooperation, the CIT(A) levied a penalty @ 200% of the tax on the so-called "misreported income" The assessee in spite of facing many financial troubles due to bad health of parents, arranged for funds and paid Rs. 6,29,382*

8. *The Assessee has consistently maintained that there was no concealment, no suppression, and no deliberate misrepresentation. And assessee consistently cooperated for all the legal proceedings from revenues side."*

**Submission of Id.DR:**

3. Ld.Departmental Representative(ld.DR) for the Revenue submitted that Assessee has consciously claimed the deductions



under Chapter-VIA though he was aware that he is not eligible for said deductions. Ld.DR further submitted that Assessing Officer had even provided video conferencing hearing to the Assessee.

3.1 Ld.DR further submitted that Assessee has not filed any petition for immunity u/s.270AA of the Act. Therefore, there is no question of any immunity u/s.270AA of the Act. Ld.DR read out the orders of the Assessing Officer.

**Findings & Analysis :**

4. We have heard both the parties and perused the records. In this case, Assessee is a salaried employee. Assessee had filed Return of Income on 15.06.2022 declaring total income at Rs.5,71,110/-. Assessee's case was selected for scrutiny on account of large deductions under Chapter-VIA of the Act. Assessing Officer during the scrutiny asked Assessee to provide evidence for his claim for deduction under Chapter-VIA of the Act.

4.1 Assessee had claimed following amounts as deduction under Chapter-VIA :

Section	Amount
80C	150000
80CCD(1B)	50000
80D	50000
80TTA	10000



80DD	75000
80CCD(2)	100000
80DDB	90000
80E	400000
80EEA	150000
80EEB	150000
80GGC	100000

4.2 Out of the above deductions claimed in the Return of Income, for following deductions Assessee could not file any documentary evidence and during the video conference assessee submitted that the claim made by him is wrong.

80DD	75000
80CCD(2)	100000
80DDB	90000
80E	400000
80EEA	150000
80EEB	150000
80GGC	100000

4.3 Thus, Assessee admitted that he had made incorrect claim of Rs.10,65,000/- as deduction under section Chapter-VIA. During the assessment proceedings, Assessee submitted that Assessee wanted to file revised return, but could not file it.

5. On these facts, Assessing Officer disallowed assessee's claim of Rs.10,65,000/-. During the assessment proceedings, Assessing Officer also noted that Assessee has claimed excess HRA of Rs.86,593/-. Accordingly, Assessing Officer added Rs.86,593/-.



6. Assessee has not filed any appeal against these additions. It means, Assessee has accepted the additions.

7. In the assessment order, Assessing Officer has also initiated penalty under section 270A of the Act. Assessing Officer after providing opportunity of hearing, levied penalty. The relevant part of the penalty order is as under :

*“3. Analysis of issues involved (issue wise)*

*The assessee filed his return of income u/s 139. Thereafter, statutory notices u/s 143(2) and 142(1) were issued from time to time. The assessee filed his response/reply! submission in response to the statutory notices. The assessment was completed on 20.03.2024 determining total income at Rs.17,22,703/- and penalty proceeding u/s 270A was initiated for under reporting of income as a consequence of misreporting of the income. Since the assessee did not furnish documentary evidences and admitted in VC that the claims were wrong, total deductions u/s 80DD for Rs.75,000/-, 80CCD(2) for Rs. 1,00,000/-, 80DDB for 90,000/-, 80E for Rs.4,00,000/-, 80EEA for Rs. 1,50,000/-, 80EEB for Rs.1,50,000/- and 80GGC for Rs.1,00,000/- were disallowed. Further, since as per rent agreement, the assessee paid rent Rs. 30,000/- per month, exemption in respect of HRA received was allowed for Rs.1,28,777/- only and Rs.86,593/- was added in total income of the assessee. Show cause notices for penalty u/s 270A were issued to the assessee on 20.03.2024 and 29.04.2024. Subsequently, a reminder to the said show cause notices was also issued on 31.05.2024 regarding imposition of penalty requesting the assessee to make necessary compliance. The assessee submitted his reply on 13.05.24 and 04.06:24 stating that when he submitted his response to confirm his*



*refund on 20.08.22, with acknowledgement number 210047030280722, it was stated that he would revise his income tax return to correct the amount of refund claimed. Some errors were made at the time of filing the respective ITRs. In the following days, he received the refund amount and the notice of assessment. Mistake apparent from record before notice of assessment the assessee was unable to file rectification u/s 154 of the Income Tax Act.*

*The reply of the assessee is not acceptable because the assessee filed ITR and e-verified it on 28.07.22. He did not revise it to correct the amount of refund claimed. Then he filed response for refund confirmation on 20.08.22 that he will revise his return of income to correct the amount of refund claimed. But he did not revise his return of income. Then he got refund on 6.09.2022. Even after getting the refund, the assessee did not file revised Return of Income. Then, he was issued notice u/s 143(2) on 02.06.23. Thus, it is clear that the assessee was not interested to correct his ITR and consequential refund. In this case the assessee should file revised return not petition for rectification u/s 154 because as per section 139(5), if any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before three months prior to the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.*

*Considering the above, it is clear that the assessee had wrong intention in respect of claiming and getting of refund. I am satisfied that the assessee is liable for imposition of penalty u/s 270A of the Act on under reported income in consequence of misreporting thereof for Rs. 11,51,593/- for the year under consideration. Accordingly, penalty u/s 270A of the Act as per the quantum laid down as under is imposed.”*



8. Aggrieved by the penalty order, Assessee filed appeal before Id.CIT(A) who confirmed the penalty order.

9. Aggrieved by the order of the Id.CIT(A), Assessee has filed appeal before this Tribunal.

10. In this case, admittedly assessee had claimed deductions which Assessee was not eligible. Admittedly, assessee has not filed any revised return of income.

**Ground No.1 :**

11. Assessee has raised the ground that Assessee was eligible for immunity under section 270AA of the Act. Section 270AA is reproduced here has under :

*“Immunity from imposition of penalty, etc.*

*270AA. (1) An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under [section 270A](#) and initiation of proceedings under [section 276C](#) or [section 276CC](#), if he fulfils the following conditions, namely:—*

*(a) the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of [section 143](#) or [section 147](#), as the case may be, has been paid within the period specified in such notice of demand; and*

*(b) no appeal against the order referred to in clause (a) has been filed.*

*(2) An application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in*



*clause (a) of sub-section (1) has been received and shall be made in such form and verified in such manner as may be prescribed.*

11.1 Thus, as per Section 270AA, Assessee has to file an application before Assessing Officer within one month of passing of assessment order. In this case, no application has been filed by Assessee u/s.270AA of the Act. Therefore, AO was right in not providing any immunity u/s.270AA of the Act. Accordingly, Ground No.1 raised by the Assessee is dismissed.

**Ground No.2 :**

12. Assessee's only contention is that it was a Bonafide mistake by the Assessee. Assessee's submission was that it was not a deliberate attempt to evade the taxes. In this case, the admitted facts are that Assessee has claimed Deductions under Chapter-VIA of Rs.10,65,000/- for which Assessee was not eligible. Assessee has accepted the fact that he was not eligible for deductions of Rs.10,65,000/- claimed by him.

13. As per Section 270A of the Act, a person shall be considered to have under reported his income if the income assessed is greater than the income shown in the return of income. In this case,



admittedly income assessed is greater than the income determined under section 143(1) of the Act.

14. In this case, admittedly there is an incorrect claim and also mis-representation of facts.

15. Assessee has consciously claimed deduction u/s.80DD, 80CCD, 80DDB, 80E, 80EEA, 80EEB and 80GGC of the Act, knowing fully well that Assessee is not eligible. For example, Deduction u/s.80GGC is for Donation given to political party. Assessee was well aware of the fact that he has not given any donation to political party. In spite of that Assessee claimed Deduction u/s.80GGC.

16. Deduction u/s.80DDB is for actual payment of medical treatment of the diseases specified in the Income Tax Rules for himself or a dependent. Assessee knows very well that he had not incurred any such expenditure, but claimed it.

17. This itself shows that Assessee has consciously claimed all the deduction mentioned above, though he was not eligible. Had the assessee's case was not been selected for scrutiny, Assessee would have enjoyed the wrong claims. Therefore, we are of the opinion



that it was not a Bonafide mistake at all. Therefore, we are of the opinion that Assessing Officer was right in levying penalty u/s.270A of the Act. We find support from the following decisions :

18. ITAT Pune Bench in the case of Sanjeev Kumar Manchand Rajput Vs. ITO in ITA No.612/PUN/2023 vide order dated 13.07.2023 on identical facts has held as under :

*“6.1 In A.Y. 2017-18, the original return filed by the assessee declaring income of Rs. 4,22,340/- was processed u/sec. 143(1) of the Act and refund was issued to the assessee. Later, it was revealed that assessee has suppressed the gross total income itself to the extent of Rs.3,20,000/-. This was in spite of Form 16 issued by the employer showing higher and correct salary. It is for reasons best known to the assessee why he had declared salary lower than that recorded in Form 16 and similarly had overstated the deduction under chapter VI-A by Rs. 85,000/-, meaning thereby, claimed higher deduction under chapter VI-A of Rs.2,35,000/- as against the correctly allowable maximum deduction of Rs. 1,50,000/-. These details of such inflated claims and the justifiable reasons thereof were not revealed by the assessee, even during the appellate proceedings before the NFAC. The assessee was specifically asked to explain the reasons for these differences between the original return filed and that the return filed in response to notice u/sec. 148. But even before the NFAC, the assessee responded that he has nothing further to state in respect of difference between the figures of gross total income and chapter VI-A deduction between the original return and the later return. Similarly, in A.Y.2018-19, the gross total income as per original return was at Rs. 7,46,015/- as against Rs.9,26,047/- in the return filed in response to notice u/sec. 148 and was thus misreported by Rs.1,80,000/-. The Chapter VI-A deduction was claimed at Rs.3,55,000/- in the original return as against Rs. 1,50,000/- claimed in the later return and was inflated by Rs. 1,55,000/-. In this case, as evident from the order of the NFAC, assessee has offered no explanation as to why the gross total income was understated*



*causing misreporting of income in the original return in spite of Form 16 issued by the employer, and similarly there was no explanation given by the assessee as to why chapter VI-A deductions were inflated. That, as rightly observed by the NFAC for both these years, it was a clear case of misreporting of income as defined u/sec. 270A(9) of the Act, which is preceded by sec.270A(8) of the Act which begins with a non-obstante clause. Sec.270A(8) and (9) specifies that in case of under-reporting of income as a consequence of mis-reporting thereof, sec. 270A(8) and (9) would operate and a higher penalty is prescribed. As per the provisions of clause (a) & (c) of sec. 270A(9), the assessee has misreported his income. The scheme of the provisions provides that if it is a case of under-reporting, it attracts penalty of 50% with certain exclusions, but if it is a case of mis-reporting, it attracts higher penalty of 200%. The assessee admittedly declared lower salary than that reported by his employer in Form 16 and further has not disclosed the basis for such misreporting. This is a clear case of mis-representation or suppression of facts. Similarly, the assessee had inflated his claim of deduction under chapter VI-A of the Act and again has not revealed the basis for which, such higher claim of deduction was made. In fact, the assessee specifically stated before the NFAC that he does not have any explanation for these discrepancies. In fact, as per records with the Department, the assessee is habitual for claiming fraudulently refund by increasing deduction and reducing his taxable income since A.Y. 2016-17 onwards. Reference maybe made to the decision of the Hon'ble Supreme Court in the case of *Mc Dowell & Co. Ltd. v. Commercial tax Officer* [1985] 22 Taxman 11 /154 ITR 148 wherein the Hon'ble Supreme Court has held that "Tax planning may be legitimate provided it is within the framework of law, Colourable devices cannot be part of tax planning....". In the case of *Dy. CIT v. Pawan Kumar Malhotra* [2010] 2 ITR (T) 250 (Delhi - Trib.), it was observed that AO had come to a conclusion after meticulous enquiry as regards the purchases found by him as sham transaction treating the difference as undisclosed income and, therefore, the Revenue's appeal was allowed restoring the order of the AO. The Tribunal relying upon the decision of the Hon'ble Supreme Court in the case of *Mc Dowell & Company Ltd. (supra)* and the case of *Sumati Dayal v. CIT* [1995] 80 Taxman 89/214 ITR 801 (SC) wherein the former case dealt with tax planning and not on sham*



*transactions and in the later case, the inference was based upon test of human probabilities with the assessee's version on facts was unbelievable and hence, was to be discarded. In all these decisions, the judicial conclusion is clearly set out that where tax planning is permitted at the same time, the assessee is not allowed to resort to any sham transaction or colourable devices for avoiding and evading tax. One classic judicial example is the decision of the Hon'ble Supreme Court in the case of Friends Trading Company v. Union of India in Civil Appeal No.5608/2011 vide order dated 23/09/2022 held in the context of availment of alleged forged in capital DEPB under the Customs Act held that exemption benefit availed on such forged DEPB are void ab initio on the principle that fraud vitiates everything. The ratio of this decision squarely applies to the conduct of the present assessee before us as he had done fraud with the Revenue by misreporting his income in the return filed for evading tax. Further, the application of principle of fraud was considered by the Hon'ble Supreme Court in the case of Badami (deceased) by her LRs v. Bhali in Civil Appeal No. 1723/2008, dated 22/05/2012 wherein the Hon'ble Supreme Court has held as follows:-*

*"20. In S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others AIR 1994 SC853 this court commenced the verdict with the following words:-*

*"Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."*

*21. In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose*



*case is based on falsehood has no right to approach the Court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.*

*22. In Smt. Shrist Dhawan v. M/s. Shaw Brothers AIR 1992 SC 1555 it has been opined that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in Roshan Deen v. Preeti Lal AIR 2002 SC 33, Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and others (2003) 8 SCC 312 and Ram Chandra Singh v. Savitri Devi and others (2003) 8 SCC 319.*

*6.2 Reverting to the facts of the present case, here also, the assessee who has a history for habitually claiming fraudulent refund by increasing deductions and reducing his taxable income since A.Y. 2016-17 onwards, could not justify why he has continuously misreported his income and what was the legal basis for such an action and no plausible legal explanations were submitted why such misreporting was done by the assessee. It is obvious that this is a fraud committed against the Department in order to evade tax. That, on examination in the light of aforesaid judicial pronouncements and the facts and circumstances involved in the assessee's case, we hold that NFAC has rightly upheld the levy of penalty by the AO @200% for misreporting of income as defined u/sec. 270A(9) of the Act. In view thereof, we do not find any infirmity with the findings of the NFAC which is upheld. Grounds of appeal in ITA No.612/PUN/2023 for A.Y. 2017-18 stands dismissed.*

*7. In the result, appeal of the assessee in ITA No.612/PUN/2023 for A.Y. 2017-18 stands dismissed.”*



19. We also find support from the decision of ITAT Pune Bench in the case of Shrikant Gajanan Vyavahare Vs. ITO in ITA No.915/PUN/2023 vide order dated 12.04.2024.

20. In these facts and circumstances of the case, following the decision of ITAT Pune Bench(supra), we dismissed the Ground No.2 of the Assessee and confirmed the penalty order.

21. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 10 February, 2026.

**Sd/-**  
**VINAY BHAMORE**  
**JUDICIAL MEMBER**

**Sd/-**  
**Dr.DIPAK P. RIPOTE**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 10 Feb, 2025/ SGR

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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सहायक रजिस्ट्रार /Assistant Registrar  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.