

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं सुश्री पदमावती यस, लेखक सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.303/Chny/2026

&

SA No.29/Chny/2026

(Arising out of ITA No.303/Chny/2026)

निर्धारण वर्ष /Assessment Year: 2018-19

M/s. Citadines OMR Aparthotel Pvt.
Ltd.,
No.94, Somerset Greenways,
Sathyadev Avenue,
Raja Annamalaipuram,
Chennai – 600 028.
PAN: AADCR 5653C

The Income Tax Officer,
Vs. Corporate Ward-1(3),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr. Vikram Vijayaraghavan, Advocate
: Ms. R. Anitha, Addl. CIT

सुनवाई की तारीख/Date of Hearing
घोषणा की तारीख /Date of Pronouncement

: 03.02.2026
: 10.02.2026

आदेश / ORDER

PER PADMAVATHY.S, A.M:

This appeal and stay application by the assessee are against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi, (in short "CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 (in short "the Act") dated 05.12.2025 for Assessment Year (AY) 2018-19. The assessee raised the following ground of appeal:

"1. The Order passed by the Assessment Unit, Income tax Department ('Ld. AO') and the National Faceless Appeal Centre ('CIT(A')) are bad in law and contrary to the facts and circumstances of the case.

:- 2 -:

2. *The Ld. CIT(A) has erred in sustaining the penalty of INR 21,30,143 levied by the Ld. AO under Section 270A of the Income-tax Act, 1961 ('the Act').*

3. *The Ld. CIT(A) has erred in law and on facts by failing to appreciate that the Appellant had made full and true disclosure of the impugned amount under Clause 27(b) of Form 3CD and that the explanation offered by the Appellant falls within the exceptions provided under Section 270A(6)(a) of the Act.*

4. *The Ld. CIT(A) has erred in ignoring the fact that the Appellant, during the course of proceedings under section 263 and revised assessment proceedings under section 143(3) read with section 263 of the Act, voluntarily admitted that the expenses were not allowable and accepted the corresponding disallowance.*

5. *The Appellant craves leave to add to, withdraw or modify any of the grounds of appeal at the time of hearing."*

2. The assessee is a company engaged in the business of construction, operation and management of service residences/apartments. The assessee filed the return of income for A.Y 2018-19 on 30.11.2018 declaring loss of Rs.13,56,62,267/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The A.O completed the assessment u/s. 143(3) of the Act determining the assessed income at Rs.50,389/- after making disallowance u/s. 40A(7) towards gratuity provision. Subsequently, the PCIT noticed that the A.O noticed from Form-3CD filed by the assessee that the following expenditure are reported as prior period expenditure:

<i>Sl. No.</i>	<i>Expenditure</i>	<i>Amount in INR</i>	<i>Grouping under profit and loss account</i>
1	<i>Business expenditure</i>	<i>2,31,892</i>	<i>Other expenses</i>
2.	<i>Advertising expenses</i>	<i>2,56,845</i>	<i>Other expenses</i>
3.	<i>LC Charges</i>	<i>1,15,045</i>	<i>Other expenses</i>
4.	<i>POP T-Shirt expenses</i>	<i>1,49,625</i>	<i>Other expenses</i>
5.	<i>Salaries and Wages</i>	<i>1,18,77,633</i>	<i>Employee benefit expenses</i>
	<i>Total</i>	<i>1,26,31,040</i>	

: - 3 - :

3. Since the assessee has not disallowed the above expenditure in the return of income and the A.O has also not considered the disallowance while completing the assessment u/s. 143(3) of the Act, the PCIT exercised jurisdiction u/s. 263 and issued a show cause notice to the assessee. The assessee during the course of proceedings u/s.263 of the Act submitted that the assessee has inadvertently omitted to disallow prior period expenditure and accordingly conceded to the disallowance. The PCIT accordingly held the order u/s.143(3) as erroneous and prejudicial to the interest of the revenue and set aside the order with a direction to the AO to consider the disallowance. The A.O passed the order u/s. 143(3) r.w.s 263 of the Act disallowed the prior period expenditure and the assessee paid the tax along with interest towards the disallowance made. The A.O subsequently initiated penalty proceedings u/s. 270A of the Act stating that the assessee has under reported the income. After considering the explanation furnished by the assessee, the A.O levied the penalty to the tune of Rs. 21,30,143/-. On further appeal, the CIT(A) confirmed the penalty levied by the A.O.

4. The Ld. Authorized Representative (AR) of the assessee at the outset submitted that the assessee during the revision proceedings accepted the inadvertent error in not disallowing the prior period expenditure and has paid the tax including interest on the said amount. The Ld. AR further submitted that the assessee has not filed any appeal against the impugned disallowances. The Ld. AR accordingly argued that the assessee is eligible for immunity as provided u/s. 270AA of the Act. The Ld. AR further argued that the assessee has fulfilled all the conditions as mentioned in section 270AA of the Act except filing the required form which is a procedural non compliance. The Ld. AR accordingly argued that the assessee is entitled for immunity u/s.270AA

:- 4 -:

of the Act. The Ld. AR in this regard placed reliance on the decision of the coordinate Bench in the case of *New Dawat Traders v. ITO* [ITA No.2717/Chny/2024 dated 14.02.2025]. The Ld. AR also made an alternate submission that the assessee has committed a bonafide mistake by inadvertently claiming the deduction in the return of income and therefore the same is covered under clause (a) of section 270A(6) of the Act. The Ld. AR in this regard relied on the decision of the Hyderabad Bench of the Tribunal in the case of *Baba Akhila Sai Jyothi Industries P. Ltd. v. DCIT* [ITA No.987/Hyd/2024 dated 05.12.2024].

5. The Ld. Departmental Representative (DR) on the other hand submitted that the disallowance is not only based on the fact that the impugned expenditure are prior period expenditure but also capital in nature. The Ld. DR further submitted that subsequent admission of the assessee was only after initiation of revision proceedings and therefore the assessee cannot claim that it is a bonafide mistake. With regard to the claim of applicability of immunity u/s. 270AA of the Act, the Ld. DR submitted that all conditions prescribed under the said section is mandatory including filing of the relevant form and therefore the claim of the assessee cannot be entertained.

6. We have heard the parties, and perused the material available on record. The revision proceedings in assessee's case were initiated for the reason that the assessee in the return of income has claimed prior period expenditure which is reported in Form-3CD and that the A.O during the course of assessment proceedings omitted to make a disallowance towards the same. We notice in this regard that the assessee during the course of revision proceedings has admitted that the prior period expenditure has been

:- 5 -:

inadvertently claimed and conceded for the disallowance of the same. We further notice that the assessee has paid the tax and the interest when the order u/s. 143(3) r.w.s 263 of the Act was passed by the A.O. We also notice that the assessee has not filed any appeal against the order of the A.O. The provision of Section 270AA of the Act provides immunity to the assessee on fulfilment of certain conditions. The said section reads as under:

"270AA. Immunity from imposition of penalty, etc.—(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 of 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.

*(3) ******

7. A combined perusal of the above section and the facts in the present case makes it clear that the assessee has fulfilled all the conditions except filing the prescribed form i.e. Form-68 before the A.O seeking immunity. We in this regard notice that the issue of whether mere non filing of Form-68 will disentitle the assessee from immunity u/s. 270AA of the Act is considered by the Coordinate Bench in the case of New Dawat Traders, supra, where it has been held that:

"5. We have heard both the parties and perused the material available on record. We note that the assessee-firm filed its RoI admitting total income at Rs.6,52,740/- on 30.10.2017. Pursuant to survey on 17.03.2017, u/s.133A of the Act, the return was selected for scrutiny and

:- 6 -:

the AO made an addition of Rs.55,46,812/- and since, the assessee offered Rs.30 lakhs under PMGKY scheme, the net-assessed income was computed at Rs.25,46,812/-. Pursuant thereto, assessee paid tax & interest within the period/time given in the assessment order/demand notice and thus it is an undisputed fact that the assessee has fulfilled conditions prescribed u/s.270AA of the Act for claiming immunity from imposition of penalty u/s.270A of the Act by duly remitting the tax & interest as per the order of the assessment as well as didn't file any appeal against the assessment order dated 30.12.2019. Thus, it is noted that the assessee has fulfilled the conditions under Clause (a) & Clause (b) of sub-section (1) of section 270AA of the Act. However, the assessee didn't file before the AO the application for immunity in Form 68 as prescribed by sub-section (2) of section 270AA of the Act. In case, if the assessee had filed Form 68 within the prescribed period stated in subsection (2), [i.e. within one month from the end of the month in which the assessment order was received by assessee] then the AO should have granted immunity from imposition of penalty u/s.270A of the Act. At the cost of repetition, it is noted that the assessee has fulfilled both the conditions for grant of immunity as stipulated under clause (a) & (b) of sub-section (1) of section 270AA of the Act, which are substantive in nature except didn't file Form 68 before AO. Therefore, in substance assessee was entitled for claiming immunity from imposition of penalty u/s.270A of the Act. In this context, it has to be kept in mind that courts are meant to do substantial justice between the parties, and that technical rules or procedure should not be given precedence over doing substantial justice. Undoubtedly, justice according to the law, doesn't merely mean technical justice, but means that law is to be administered to advance justice [refer the decision dated 30.10.2017 of the Hon'ble Supreme Court in the case of Pankaj Bhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya in Civil Appeal No.155549 of 2017]. In the given factual background, according to us, non-filing of Form 68 is only a technical or venial breach which should not snatch away the substantive right to claim immunity from levy of penalty, which assessee got vested with on fulfilment of substantive conditions mandated in Clause (a) & (b) of sub-section (1) of section u/s.270AA of the Act. Be that as it may be, it has been further brought to our notice that assessee has filed Form 68 [a copy of which is found placed at Page Nos.1-3 of the Paper Book which has been uploaded in the IT portal]. Hence, considering the overall facts in this case, we are of the view that no penalty ought to have been levied u/s.270A of the Act for under-reporting of income and therefore, we direct deletion of the same.”

8. Since in the facts of the assessee's case are identical, we are of the considered view that the ratio laid down by the coordinate in the above case is applicable to assessee's case also. Respectfully following the above decision,

:- 7 -:

we hold that non filing of Form-68 is only a technical or venial breach and cannot hinder the substantive right to claim immunity from levy of penalty. Accordingly, we direct the A.O to delete the penalty levied.

9. Since we have allowed the appeal considering the above contentions the alternate arguments with regard to bonafide mistake has become academic and is left open.

10. Considering that we have allowed the appeal of the assessee, the stay application filed by the assessee has become infructuous. Accordingly the same is dismissed as infructuous.

11. In the result, the appeal of the assessee is allowed and the stay application of the assessee is dismissed as infructuous.

Order pronounced on 10th day of February, 2026 at Chennai.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

Sd/-
(पदमवती यस)
(Padmavathy.S)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 10th February, 2026.

EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF