



आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" :: PUNE

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

आयकर अपील सं. / ITA No.2215/PUN/2025

निर्धारण वर्ष / Assessment Year: 2019-20

Ashutosh Dubey, Tower 8, Flat No.3201, Runwal Forest, LBS Road, Kanjurmarg West, Maharashtra – 400078 PAN: AJPPD0173M	V s	Income Tax Officer, Circle-8, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Amar Pandey (Virtual)
Revenue by	Smt Neha Thakur (Virtual)
Date of hearing	20/01/2026
Date of pronouncement	18/02/2026

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM :

This is an appeal filed by the Assessee against the order of
ld.Commissioner of Income Tax(Appeal)[NFAC], passed under
section 250 of the Income Tax Act, 1961 for the A.Y.2019-20 dated
30.08.2025 emanating from the Penalty Order passed under section
270A of the Income Tax Act, 1961, dated 31.07.2024

**Findings & Analysis :**

2. We have heard both the parties and perused the records. In this case, Assessee is a salaried employee. Assessee had not filed return of income for A.Y.2019-20 under section 139(1) of the Act. The Assessing Officer analysed the 26AS of the Assessee and noted that Assessee had income of Rs.58,39,560/- during the year. Therefore, Assessing Officer issued notice u/s.148 on 30.03.2023. Accordingly, Assessee filed return of income on 11.04.2023 for A.Y.2019-20. After analysing all the data, Assessing Officer accepted the return of income filed u/s.148 declaring total income at Rs.32,23,520/- and passed an assessment order without making any addition. However, Assessing Officer initiated penalty 270A for under reporting of income. The Assessing Officer passed penalty order u/s.270A on 31.07.2024 for A.Y.2019-20. The relevant paragraph no.7, 8, 9 and 10 of the penalty order are reproduced here as under :

“7. In view of the above, the contention of the assessee is not acceptable at this juncture. The assessment order and material available on record, clearly shows that during the year under consideration, the assessee had not disclosed any income since he had not voluntarily filed his ITR for the A.Y. 2019-20. The assessee had only filed ITR on 11.04.2023 i.e. in response to the notice u/s 148 of the Act dated 30.03.2023. During the course of assessment proceedings u/s 147



r.w.s. 144B, the A.O. had accepted the income declared by the assessee against notice u/s 148 of the Act which the assessee had failed to disclose voluntarily in compliance with the provisions of the section 139 of the income tax Act.

8. In view of the above facts and circumstances, the assessee without any sufficient and reasonable cause, has committed default by under reporting of income as defined u/s 270A of the Act. As such, this is fit case for levy of penalty u/s 270A of the act. The amount of Rs.32,23,520/- represents the under reported income of the assessee within the meaning of section 270A of the Act which has been rightly taxed as under reported income of the assessee.

9. Therefore, the assessee is liable to pay penalty of Fifty Percent of the amount of tax payable on the under reporting the income u/s 270A of the Act. The quantum of penalty leviable in the present case is computed as under-

<i>Net Tax Payable on under reported income as per the Assessment Order</i>	<i>Rs.8,11,518/-</i>
<i>Penalty to be levied at the rate of 50%</i>	<i>Rs.4,05,759/-</i>

10. I hereby levy penalty of Rs. 4,05,759/- u/s 270A of the Act (i.e. Fifty percent of the tax payable on the under reported income).

11. This order has been passed with the prior approval of the Addl. Commissioner of Income tax as per section 274(2) of the Act.

12. Issue Demand Notice & Challan accordingly.”

3. Aggrieved by the penalty order, Assessee filed appeal before ld.CIT(A). Ld.CIT(A) dismissed the appeal of the assessee.



Relevant paragraphs 6.3, 6.4 and 7 of the Id.CIT(A)'s are reproduced here as under :

“6.3 As regards the plea taken by appellant on the issue of rejection of immunity u/s 270AA of the Act, as per the provisions of section 270AA(4) of the Act only Assessing Officer can either accept or reject the application seeking immunity u/s 270AA(1) of the Act. Further, sub-section 5 of section 270AA of the Act says that the order passed as per section 270AA(4) shall be final. However, in case AO rejects the immunity application filed u/s 270AA of the Act the assessee can file appeal against penalty order passed by AO levying penalty u/s 270A of the Act in accordance with provisions of section 246A of the Act.

6.4 Thus, in the given case rejection of immunity by AO is final as per section 270AA(5) of the Act which is non appealable order before the CIT (Appeals) as it is not covered under the scope of section 246A of the Act. Thus, the allegations raised by appellant against the denial of immunity u/s 270AA of the Act by AO cannot be entertained/ adjudicated by the CIT (Appeals). Since, the appellant has not disputed the penalty levied of Rs.4,05,759/- on account of under reporting of income of Rs.32,23,520/-no adjudication is rendered on that issue

7. For the statistical purpose, appeal is treated as dismissed.”

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

5. Ld.AR for the Assessee submitted that return of income has been accepted without making any addition. Hence, there is no under reporting. Ld.AR further submitted that on identical facts,



Assessing Officer had dropped penalty under section 270A for A.Y.2018-19 in assessee's own case. Ld.AR filed copy of the said order. Ld.AR therefore submitted that penalty may be dropped.

6. Ld.AR for the Assessee relied on the following case laws :

- *Hon'ble Delhi High Court in the decision of Nirman Overseas (P.) Ltd., Vs. NFAC, [2022] 145 taxmann.com 664 (Delhi) dated 08.04.2022.*
- *ITAT Delhi Bench in the case of Sudarshan de Vs. DCIT in ITA No.5177/DEL/2025 for A.Y.2018-19 vide order dated 30.05.2025.*
- *ITAT Pune Bench in Smita Virendra Lodha Vs. ITO in ITA No.1980/PUN/2024 vide order dated 12.11.2024*
- *Hon'ble High Court of Delhi in the case of GE Capital US Holdings Income. Vs. DCIT [2024] 163 taxmann.com 146(Delhi) WP(C) No.s1646 & 3312 of 2022 vide order dated 31.05.2024.*

7. Ld.DR submitted that Assessee had not filed return of income voluntarily under section 139(1) of the Act. Therefore, there is under reporting of income, hence, AO was right in levying penalty under section 270A of the Act.

8. In this case, admittedly Assessee had not filed Return of Income u/s.139(1) of the Act. Assessee filed Return of Income in response to notice u/s.148 of the Act, declaring total income of Rs.32,23,520/-. In the assessment order, Assessing Officer has



accepted returned income. Nowhere in the penalty order, Assessing Officer has mentioned “how it is under reporting?”

9. ITAT Hyderabad Bench in the case of Subbalakshamma Pinnama Vs. ITO [2025] 180 taxmann.com 820 in IT Appeal No.1463 of 2025 vide order dated 19.11.2025 has held as under :

“10. We find that, although the assessee has not furnished return of income under Section 139 of the Income-tax Act, 1961, but has paid substantial amount of taxes applicable on the said income via self assessment tax in the A.Y. 2018-19, much before the A.O. issued notice under Section 148 of the Act, on 27.03.2021. The assessee had also furnished return of income in response to notice under Section 148 immediately after issuance of notice under Section 148. From the conduct of the assessee and the sequence of dates and events, it is undisputedly clear that, the explanation of the assessee with regard to non-filing of return of income appears to be bona fide and genuine without any intention of under-reporting of income, arising on account of transfer of property in pursuant to the Joint Development Agreement. Since the assessee has already paid a substantial amount of tax and also filed return of income disclosing the complete income in respect of transfer of property, and the same has been accepted by the A.O., in our considered view, the case of the assessee falls under sub-section (6) of Section 270A of the Act, where it has been clearly stated that, the under-reported income shall not include the amount of income in



respect of which the assessee offers an explanation and the A.O. is satisfied that, the explanation is bona fide and the assessee has disclosed all material facts to substantiate the explanation offered.

11. In the present case, going by the assessment order passed by the A.O. under Section 143(3) r.w.s. 147 of the Act, in our considered view, there is no dispute regarding the explanation offered by the assessee for the income offered towards capital gains derived from the transfer of property. Therefore, the A.O. ought not to have levied the penalty under Section 270A of the Act, for underreporting of income. The Ld. CIT(A), without appreciating relevant facts, simply sustained the penalty levied by the A.O. Thus, we set aside the order passed by the Ld. CIT(A) and direct the A.O. to delete the penalty levied under Section 270A of the Act.

12. In the result, the appeal filed by the assessee is allowed.”

10. In the assessee's own case for A.Y.2018-19, on identical facts Assessing Officer has dropped the penalty u/s.270A of the Act. Assessing Officer has to maintain consistency.

11. In these facts and circumstances of the case, respectfully following the decision of ITAT Hyderabad in Subbalakshmma Pinnama(supra) and the consistency principle, we direct Assessing



Officer to delete the penalty u/s.270A of the Act. Accordingly, Ground No.C of the Assessee is allowed.

12. Since we have decided the penalty order on merits, remaining grounds become academic in nature, hence, dismissed as unadjudicated.

13. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 18 February, 2026.

Sd/-
VINAY BHAMORE
JUDICIAL MEMBER

Sd/-
Dr.DIPAK P. RIPOTE
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 18 Feb, 2026/ 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, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

/ / TRUE COPY / /

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