***आयकर अपीलीय अधिकरण, हैदराबाद पीठ***

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**Hyderabad ' B ' Bench, Hyderabad**

**श्री विजय पाल राव, उपाध्यक्ष एवं श्री मंजुनाथ जी, लेखा सदस्य के समक्ष ।**

**Before Shri Vijay Pal Rao, Vice-President**
**AND**
**Shri Manjunatha G. Accountant Member**

आ.अपी.सं /**ITA Nos.2304 & 2305/Hyd/2025**
(निर्धारण वर्ष/Assessment Years: 2018-19 & 2019-20)

| | | |
|---|---|---|
| M/s. MSN Laboratories Private Limited, Hyderabad PAN:AADCM6283F | Vs. | Assistant Commissioner of Income Tax Central Circle 2(4) Hyderabad |
| (Appellant) | | (Respondent) |
| | | |
| निर्धारिती द्वारा/Assessee by: | Shri M.V. Prasad, CA | |
| राजस्व द्वारा/Revenue by: | Dr. Sachin Kumar, Sr. AR | |
| | | |
| सुनवाई की तारीख/Date of hearing: | 21/01/2026 | |
| घोषणा की तारीख/Pronouncement: | 25/02/2026 | |

## आदेश/ORDER

**Per. MANJUNATHA, G. A.M.**

These two appeals filed by the assessee are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-12, Hyderabad, both dated 04.11.2025, for the A.Ys 2018-19 & 2019-20 respectively. Since identical issues are involved in these two appeals, for the sake of convenience, these appeals were heard together and are being disposed off, by this common consolidated order.

## ITA No. 2304/Hyd/2025 A.Y 2018-19

2. The assessee has raised the following grounds of appeal:

1. On the facts and circumstances of the case, the Learned CIT(A) erred in both law and facts while passing the Order.

2. The order of the Learned CIT(A) is contrary to the facts and also the law applicable to the facts of the case.

3. The Learned CIT(A) is not justified in confirming the penalty of Rs. 2,66,77,674/- levied by the Assessing Officer.

4. The Ld. CIT(A) ought to have appreciated the fact that the penalty notice issued by the Assessing Officer is invalid without specifying the clause/limb under which penalty can be levied U/s 270A, consequently the levy of penalty is against the law.

5. The Ld. CIT(A) ought to have appreciated the fact that admission during the course of search proceedings does not lead to under-reporting in consequence to misreporting of income.

6. The Ld. CIT(A) ought to have appreciated the fact that the assessing officer is not justified in levying the penalty as there is no difference between the returned income and assessed income.

7. The Ld. CIT(A) ought to have appreciated the fact that levy of penalty is not applicable when the income is determined by way of estimation with respect to income towards spent solvents and scrap.

8. The Ld. CIT(A) ought to have appreciated the fact that Assessing Officer is erred in computation of penalty on entire purchases instead on the gross profit income on such purchases.

9. The Ld. CIT(A) ought to have appreciated the fact that the Assessing Officer is erred in computation of penalty on disallowance of expenditure u/s 40A(3)/37(1).

10. Any other factual & legal ground or grounds that may be urged at the time of hearing of the appeal.

3. The brief facts of the case are that the assessee company is engaged in manufacturing of bulk drugs and formulation products, filed its return of income for the A.Y 2018-19 on 29/11/2018 admitting total income of Rs.59,39,27,230/-. A Search and seizure operations u/s 132 of the Income Tax Act, 1961 was carried out in M/s MSN Group of cases on 24-02-2021 and the assessee is part of the MSN Group companies, is also covered u/s 132 of the I.T. Act, 1961. During the course of search, at registered and corporate office of the assessee on 24.02.2021, it was found that used solvents in the form of effluents/recovered waste/spent solvents were sold to vendors in unorganized sector, mostly in cash. From a Sony make Pen drive of 16GB (seized as Annex. A/MSN/OFF/HD1) found in the possession of Sri B. Buchi Reddy, Cashier, which contain various Excel sheet data, it was made out that the spent solvents/scrap were sold in cash and such transactions were not recorded in the books of account. The evidences found during the course of search in the case of the assessee were confronted and a statement under section 132(4) of the Act was recorded from Sri B Buchi Reddy. The statement recorded from the Cashier was put before the M.D. of the assessee company Shri M.S.N. Reddy and a statement was recorded on 27/02/2021. In his statement, the MD admitted that there are errors in the books and requested time to reconcile the same. Thereafter, in the statement recorded under section 132(4) of the Act dated 27/04/2021 at the registered office of the assessee company, additional income towards unaccounted cash receipts from sale of spent solvent and

scrap was admitted. In line with the admission made during the course of search, the assessee company admitted Rs.6,77,03,448/- as additional income towards unaccounted sale of spent solvent and scraps for the year under consideration.

4. Consequent to the search, notice under section 153A of the Act dated 5/10/2021 was issued and served on the assessee. In response, the assessee filed its return of income on 2/11/2021 declaring total income of Rs.67,30,91,940/-. In the return filed under section 153A of the Act, the assessee had admitted the following additional income:

| Sl.No | PARTICULARS | Income admitted during the search proceedings (Rs.) | Income admitted as per ROI filed in response to the notice u/s 153A (Rs.) |
|---|---|---|---|
| 1 | Unaccounted receipts from sale of spent solvents and scrap | 6,77,03,448 | 6,77,03,448 |
| 2 | Expenses incurred in cash and booked under the head Travelling & Conveyance | 1,63,375 | 1,63,375 |
| 3 | Expenses incurred in cash and booked under the head "Foreign Travel Expenses" | 31,17,395 | 20,94,297 |
| 4 | Inflation of purchase of raw material | 68,31,920 | 68,31,920 |
| 5 | Expenses incurred in cash and booked under the head other expenses | 23,71,675 | 23,71,675 |
| | | **8,01,87,813** | **7,91,64,715** |

5. The case of the assessee was selected for scrutiny and during the course of assessment proceedings, the A.O on the basis of incriminating material found during the course of search coupled with the admission of additional income in the return of income filed under section 153A of the Act, has assessed the additional income of Rs.6,77,03,448/-. Further, the A.O had also assessed the additional income returned by the assessee in the return of income filed under section 153A of the Act towards inflation of purchase of raw material, expenses incurred in cash and booked under the head travelling and conveyance expenses incurred in cash and booked under the head foreign travelling expenses and expenses incurred in cash and booked under the head "other expenses". The A.O had also initiated penalty proceedings under section 270A of the I.T. Act, 1961 for misreporting of the income.

6. During the course of penalty proceedings under section 270A of the Act, a show-cause notice under section 274 r.w.s. 270A of the Act dated 14/04/2023 was issued and served on the assessee and called upon the assessee to file its explanation as to why the penalty under section 270A shall not be levied for misreporting of income. During the penalty proceedings, the A.O noticed that the assessee preferred an appeal before the Ld. CIT (A)-12, Hyderabad. The Ld. CIT (A) vide its order dated 19/08/2024 partly allowed the appeal of the assessee. Aggrieved with the order of the Ld. CIT (A), the assessee preferred an appeal

before the Tribunal and the Tribunal vide its order in ITA No.1048/Hyd/ 2024, dated 26/11/2024 partly allowed the appeal of the assessee and deleted the addition of 60% of Rs.6,77,03,448/- as per the seized document found during the course of search and upheld the addition of 40% amounting to Rs.2,70,81,379/-. The AO after considering relevant facts has provided one more opportunity to the assessee vide show cause notice dated 17/06/2025 and called upon the assessee to file explanation if any, as to why penalty under section 270A of the Act shall not be levied. In response, the assessee vide letter dated 12/06/2025 submitted that subsequent to search, it has filed a return of income under section 153A of the Act and admitted income towards additional income for sale of spent solvent and scraps and unsubstantiated raw material purchases and unsubstantiated expenses etc. Further, while completing the assessment, the A.O has accepted the return of income filed under section 153A of the Act. Therefore, the voluntary admission given by the assessee company towards the sale of spent solvent and scrap and unsubstantiated expenses cannot be considered as misreporting of income for the purpose of section 270A of the Act.

7. The A.O after considering the submission of the assessee and also taking note of the income assessed towards the additional income admitted for sale of spent solvent and scraps and also additional income offered towards disallowance of unsubstantiated purchase and other expenses, observed that the disclosure made by the assessee was based on the unaccounted

sale of spent solvent and scraps. Further, the additional income offered towards unsubstantiated purchase of raw materials and expenses is not for the purpose of business. The sale of spent solvent and scrap did not form part of regular books of account and were not disclosed to the I.T. Department. Since the assessee has disclosed the additional income in consequent to search on the basis of incriminating material found which is not recorded in the books of account and further the additional income has been offered for unsubstantiated expenditure, the provisions of section 270A of the Act are squarely applicable for misreporting of income. During the course of penalty proceedings, the assessee has not provided proper explanation with regard to the default committed within the meaning of section 270A of the Act. Since the assessee has under reported income in consequent of misreporting thereof as envisaged in section 270A(9) of the Act, it is a fit case for levy of penalty under section 270A of the Act. Therefore, rejected the explanation of the assessee and levied penalty of Rs.2,66,77,675/- @ 200% of the tax payable on under reported income in consequence of misreporting thereof under section 270A(9) of the Act.

8. Aggrieved with the penalty order, the assessee preferred an appeal before the Ld. CIT (A). Before the Ld. CIT (A), the assessee has filed a detailed written submission which has been reproduced in para no. 5 on pages 14 to 16 of the Ld. CIT (A)'s order. The sum and substance of the argument of the assessee before the Ld. CIT (A) is that, voluntary admission of

additional income towards various discrepancies including disallowance of expenses cannot be considered as under reporting of income in consequence of mis-reporting thereof as per section 270A(9) of the Act.

9. The Ld. CIT (A) after considering the relevant submissions of the assessee and also taking note of various facts, rejected the explanation of the assessee and upheld the penalty levied by the A.O under section 270A(9) of the Act. Although, the assessee, has voluntarily disclosed the additional income in the return of income filed under section 153A of the Act, but fact remains that the unaccounted receipts and inflated claims of expenditure were discovered only through search action. The intention was to avoid tax through suppression of facts which is exactly what section 270A(9) seeks to penalize. Therefore, by taking note of certain judicial precedents, rejected the explanation of the assessee and upheld the penalty levied by the A.O. Further, the Ld. CIT (A) also rejected the legal ground taken by the assessee challenging the validity of the order passed by the A.O imposing penalty under section 270A of the Act in light of notice issued under section 270 r.w.s.274 of the Act dated 27/03/2023 dated 12/06/2025 by holding that, for penalty notice, the appellant has filed detailed replies dated 23/06/2025 addressing each proposed addition thereon by demonstrating that the assessee was well aware of the precise charge of the reasons for initiation of penalty. Therefore, the contention of the assessee that the A.O failed to record satisfaction or that the penalty was

mechanically initiated is without substance. The relevant findings of the Ld. CIT (A) are as under:

**6. Decision :**

6.0 I have carefully considered the penalty order passed u/s 270A, the assessment order u/s 153A, the appellant's written submissions. The grounds are adjudicated as under:

6.1 Ground Nos. 1 & 11 are general in nature without pointing out any specific legal infirmity and hence do not require separate adjudication. Dismissed.

6.2 In Ground Nos. 2 to 5, the appellant challenged the penalty of Rs. 2,66,77,674/- levied u/s 270A of the I.T.Act stating that

(i) The notice u/s 274 r.w.s. 270A does not specify the precise limb,

(ii) There is no clear basis for treating the case as "under-reporting in consequence of misreporting", and

(iii) Most items were already offered in the return u/s 153A and the solvent issue finally concluded on estimation at 40% of gross receipts as per the decision of Hon'ble ITAT.

6.2.1 The brief facts of the case are that a search u/s.132 of the I.T.Act was carried out in M/s MSN Group of cases on 24.02.2021. M/s MSN Laboratories Pvt Ltd is one of the companies covered u/s.132 of the I.T.Act. During the course of search and post search operations, the undisclosed income of the assessee was estimated and the income admitted in the return of income filed in response to notice u/s.153A of the I.T.Act is as under:

| SI.No | Particulars | Income admitted during search (Rs.) | Income admitted in ROI u/s 153A (Rs.) |
|---|---|---|---|
| 1 | Unaccounted receipts from sale of spent solvents and scrap | 6,77,03,448 | 6,77,03,448 |
| 2 | Expenses in cash booked under Travelling & Conveyance | 1,63,375 | 1,63,375 |
| 3 | Expenses in cash booked under "Foreign Travel Expenses" | 31,17,395 | 20,94,297 |
| 4 | Inflation of purchase of raw material | 68,31,920 | 68,31,920 |

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| SI.No | Particulars | Income admitted during search (Rs.) | Income admitted in ROI u/s 153A (Rs.) |
|---|---|---|---|
| 5 | Expenses in cash booked under "Other expenses" | 23,71,675 | 23,71,675 |
| | Total | 8,01,87,813 | 7,91,64,715 |

6.2.2 The appellant filed appeal before the CIT(A) on the issue of spent solvents. The CIT(A) vide order dated 19.08.2024 partly allowed the appeal of the appellant. Thereafter, the appellant filed appeal before Hon'ble ITAT on the issue of spent solvents. The Hon'ble ITAT vide order dated 26.11.2024 directed to delete of 60% of the gross solvent receipts and sustained addition to the extent of 40% as income. Accordingly, the AO treated Rs. 2,70,81,379/- as addition being 40% of Rs. 6,77,03,448/- as part of under-reported income. Apart from the above, the appellant declared other issues on its own in the return of income filed in response to notice u/s.153A of the I.T.Act. Thus, the under reporting of income aggregated to Rs. 3,85,42,646/-. The break up is as under :

(i) Spent solvents/scrap which is reduced on account of ITAT decision– Rs.2,70,81,379/-
(ii) Unsubstantiated purchases – Rs.68,31,920/-
(iii) Conveyance/travel and foreign travel -cash exp-Rs.20,94,297/-
(iv) Other expenses in cash- Rs.25,35,050/-

Total Rs. 3,85,42,646/-

Accordingly, AO initiated penalty proceedings u/s 270A in the assessment order. Thereafter, the AO vide order dated 28.06.2025 passed order u/s.270A of the I.T.Act after providing reasonable opportunity to the appellant vide show-cause notices dated 27.03.2023 and again on 12.06.2025 and after considering the reply of the appellant dated 23.06.2025 levying penalty of Rs.2,66,77,675/- being 200% of under reported income of Rs.3,85,42,646/- u/s.270A(9) of the I.T.Act. Against the said order, the appellant is in present appeal.

6.2.3 During the course of appellate proceedings, the appellant contended that the penalty levied under section 270A was unjustified both on facts and in law. It was argued that the Assessing Officer had accepted the return of income filed under section 153A wherein the appellant had already disclosed all the incomes admitted during the search proceedings, except for the issue relating to sale of spent solvents and scrap, which was further examined and settled by the Hon'ble ITAT. The appellant submitted that the penalty notice issued under section 274 read with section 270A was defective in law, as the Assessing Officer had failed to specify the precise "limb" or clause of section 270A(9) which was allegedly attracted in the appellant's case. It was contended that except for the alleged unsubstantiated purchases, the other disallowances relating to expenses booked under travelling and conveyance -Rs. 1,63,375, foreign travel -Rs. 20,94,297, and other cash expenses -Rs. 23,71,675, do not constitute "misreporting" within the meaning of section 270A(9). These disallowances were voluntarily offered to tax in the return filed under section 153A and were accepted during the assessment. Hence, penalty on such voluntary disclosures is arbitrary and beyond the scope of the provision.

6.2.4 The appellant also contended that in respect of the unsubstantiated purchases of Rs. 68,31,920, there was no evidence brought on record by the Assessing Officer to show any cash trail, flow-back of funds, or false entry in the books of account. The purchases were accepted as genuine during the course of assessment, and no defect was pointed out in the quantitative tally or stock records. Therefore, it was argued that the said addition cannot be treated as "misreporting," as there was no proof that the appellant misrepresented or suppressed facts or recorded false entries as contemplated in clauses (a), (c), or (d) of section 270A(9).

6.2.5 With regard to the issue of unaccounted sale of spent solvents and scrap, the appellant highlighted that the Hon'ble CIT(A) and the Hon'ble ITAT have both accepted that the receipts were genuine and have restricted the addition to only 40% of the gross receipts, treating it as estimated income. Hence, it was contended that such income determined purely on estimation cannot amount to "misreporting" but at best falls within the scope of "under-

reporting." The appellant argued that estimation of profit does not attract the penal provisions of section 270A(9) which are applicable only when there is deliberate falsification or suppression of income.

6.2.6 The appellant further submitted that the statement recorded under section 132(4) during search, admitting additional income, was a voluntary declaration made to settle the matter and avoid prolonged litigation. There was no seized material found to establish any unaccounted asset or receipt corresponding to the admitted income. Hence, the admission alone cannot be a basis to conclude that the appellant had misreported its income. The appellant therefore maintained that there was no element of willful concealment, false entry, or suppression of facts, and the levy of penalty was mechanical, lacking in application of mind. It was finally urged that since all disclosures were voluntary, accepted by the department, and based on bona fide intent, the penalty levied u/s 270A deserves to be deleted in its entirety.

6.2.7 I have considered the submission of the appellant on the issue wise addition and levy of penalty thereon. It is now important to go through the provisions of section *Sub-section (9) of section 270A of the Act reads as under:*

*"270A. Penalty for under-reporting and misreporting of income.-*

*(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—*

| | | |
|---|---|---|
| *(a)* | | *misrepresentation or suppression of facts;* |
| *(b)* | | *failure to record investments in the books of account;* |
| *(c)* | | *claim of expenditure not substantiated by any evidence;* |

| | | |
|---|---|---|
| *(d)* | | *recording of any false entry in the books of account;* |
| *(e)* | | *failure to record any receipt in books of account having a bearing on total income; and* |
| *(f)* | | *failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply."* |

6.2.8 The AO has specifically recorded that while computing the income of the assessee and its return of income, it was not just under-reported the income, but also misrepresented the facts stating that the appellant himself admitted in the return of income filed u/s.153A of the I.T.Act, and therefore, it was a fit case for penalty proceedings under section 270A of the Act. It was also stated that penalty proceedings should be initiated separately under section 270A of the Act.

6.2.9 The facts of the case do support that the appellant has not disclosed the income voluntarily in the return of income filed u/s.139(1) of the I.T.Act. There was a search action in the group cases of the appellant and appellant is one of the group concern. The suppressed income was detected on account of search action. Had there been no search action, the income to that extent would have been suppressed and remained unaccounted. Thus, this is a case of clear under reporting of income, leading to mis-reporting of income.

6.2.10 The appellant had consistently failed to disclose material particulars of income in the regular return filed under section 139(1). The undisclosed income relating to sale of spent solvents, inflation of purchases, and cash expenditure was not voluntarily declared, but was detected only

because of the search conducted under section 132. The seized materials, including the digital evidence in the form of Excel sheets retrieved from the cashier's pen drive, clearly indicated systematic off-book transactions, manipulation of expenditure, and diversion of cash receipts. Thus, this is not a case of inadvertent omission or technical error, but of **active concealment and false representation of the true state of accounts**, which is precisely the kind of misreporting envisaged by section 270A(9).

6.2.11 The Hon'ble Supreme Court in McDowell & Co. Ltd. v. CTO (154 ITR 148) laid down the fundamental proposition that while legitimate tax planning within the framework of law is permissible, **colourable devices and sham arrangements used for tax evasion cannot be condoned**. In the present case, the appellant's attempt to pass off the unaccounted receipts and fabricated expenditure as normal business transactions amounts to a colourable device intended to suppress true profits and evade tax liability. Similarly, the principle laid down in Sumati Dayal v. CIT (214 ITR 801) that income tax authorities must apply the "test of human probabilities" to detect sham explanations is fully applicable here. The appellant's version that all receipts and expenses were "voluntarily" offered after the search, or that they were purely estimation-based, defies common sense and fails the test of human probability. Such explanations are merely afterthoughts and do not rebut the clear evidence of intentional concealment revealed by the seized data.

6.2.12 The Hon'ble Delhi Tribunal in Dy. CIT v. Pawan Kumar Malhotra (2 ITR (Trib) 250) has also held that where the Assessing Officer arrives at a conclusion based on meticulous inquiry that the transactions were sham, the difference has to be treated as undisclosed income, and penalty would be justified. The same rationale applies here, as the Assessing Officer has arrived at his conclusion only after detailed verification of the seized records and post-search statements. Further, in Friends Trading Company v. Union of India (Civil Appeal No. 5608/2011), the Hon'ble Supreme Court reaffirmed the principle that **fraud vitiates everything** and that benefits obtained by deceit or by producing forged or false records are void ab initio. The conduct of the present appellant in concealing unaccounted sales, fabricating inflated purchase claims, and showing false cash expenses, clearly reflects fraudulent intent, and

therefore, the voluntary disclosure after detection cannot absolve it from penal liability.

6.2.13 The same doctrine has been reiterated in Badami (deceased) by her LRs v. Bhali (Civil Appeal No. 1723/2008) and earlier in S.P. Chengalvaraya Naidu v. Jagannath (AIR 1994 SC 853), where the Hon'ble Supreme Court categorically held that **fraud and concealment render all acts and proceedings null and void**, and that one who approaches an authority must do so with clean hands. The appellant here did not come forward with full disclosure but rather attempted to conceal income until confronted with irrefutable evidence found during search. Such conduct amounts to deceit on the revenue authorities and constitutes fraud upon the law.

6.2.14 In view of the above, the appellant's explanation that the disclosures were voluntary or that the additions were based on estimation is unacceptable. The very fact that the unaccounted receipts and inflated claims were discovered only through search action proves that they were never meant to be disclosed. The intention was to evade tax through suppression and falsification, which is exactly what section 270A(9) seeks to penalize. Therefore, relying on the authoritative pronouncements in McDowell & Co., Sumati Dayal, Pawan Kumar Malhotra, Friends Trading Company, and Badami v. Bhali, I find that the appellant's case represents a **classic instance of deliberate misreporting of income through false claims and suppression of facts**. The conduct is not an innocent omission but a calculated act of deception against the Revenue. Accordingly, the penalty levied by the Assessing Officer at 200% of the tax on misreported income under section 270A(9) is fully justified and calls for no interference.

6.2.15 Based on the facts as discussed above, I am of the view that the assessee has clearly mis-reported his income as defined in sec 270A(9) and therefore the AO has correctly levied penalty @200% as prescribed. The scheme of the section as evident from the language is that a mere under reporting attracts penalty of 50% with certain exclusions, while mis-reportinq attracts a higher penalty of 200%. The legislature has intentionally distinguished between misreporting and under reporting by providing specific definition of misreporting and exclusions to under reporting. In my view by suppressing its

income on account of various head of additions i.e. (i) Spent solvents/scrap which is reduced on account of ITAT decision– Rs.2,70,81,379/-, (ii)Unsubstantiated purchases – Rs.68,31,920/-, (iii) Conveyance/travel and foreign travel -cash exp-Rs.20,94,297/-, (iv) Other expenses in cash-Rs.25,35,050/-, aggregating to Rs. 3,85,42,646/-, which the appellant has mis-reported its taxable income. These actions of the assessee would fall under clauses (a) and (c) of sec 270A(9). I therefore uphold the levy of penalty of Rs.2,66,77,675/- u/s 270A(9) of the I.T.Act.

6.3 In Ground No. 6, the appellant has contended that the Assessing Officer did not record proper satisfaction in the assessment order before initiating penalty proceedings under section 270A of the Income Tax Act.

6.3.1 The appellant submitted that the Assessing Officer merely stated in the assessment order that "penalty proceedings are initiated separately on each issue of disclosure," which according to the appellant is a general and mechanical remark and does not satisfy the statutory mandate of recording satisfaction. It was further argued that it is well settled through judicial precedents that the Assessing Officer must clearly indicate the nature of default and the exact basis on which the penalty is proposed, whether it is a case of "under-reporting" or "misreporting." The appellant contended that in absence of such clear satisfaction, the entire penalty proceeding is vitiated and becomes void ab initio.

6.3.2 I have considered the submissions of the appellant, however, upon careful examination of the records, it is observed that the Assessing Officer had duly initiated penalty proceedings in respect of each addition derived from seized materials unearthed during the search. The assessment order under section 153A specifically refers to initiation of penalty under section 270A for misreporting, and this was followed by separate show-cause notices issued under section 274 r.w.s. 270A, dated 27.03.2023 and 12.06.2025. The appellant also filed detailed replies dated 23.06.2025 addressing each proposed addition, thereby demonstrating that the appellant was well aware of the precise charge and the reasons for initiation of penalty. Therefore, the contention that the Assessing Officer failed to record satisfaction or that the penalty was mechanically initiated is without substance.

6.3.3 In this context, it is pertinent to note that satisfaction for initiation of penalty need not be in a particular format or language, so long as the assessment order reflects that the Assessing Officer had applied his mind to the facts and consciously decided to initiate penalty proceedings. Courts have consistently held that what is material is the substance of satisfaction and not the mere form. In the present case, the Assessing Officer has clearly applied his mind, identified specific additions emerging from incriminating material, and proceeded to issue show-cause notices specifying that the default falls under "misreporting" of income. Hence, there is no procedural or legal defect in the initiation of penalty. Accordingly, Ground No. 6 is **dismissed**.

6.4 In Ground Nos. 7 to 10, the appellant has challenged the levy of penalty on multiple grounds, such as (i) there being no difference between the income returned under section 153A and assessed income except for the issue of spent solvents, (ii) that the assessed income was determined on an estimated basis and hence cannot attract penalty, (iii) that penalty, if at all leviable, should be restricted only to the profit component of unsubstantiated purchases, and (iv) that disallowances under sections 40A(3) and 37(1) being inherently penal, cannot form part of misreporting.

6.4.1 I have considered the submissions of the appellant. The plea that there was no variation between returned and assessed income is factually incorrect. The disclosure made in the return filed under section 153A was not voluntary but came only after the search operation and seizure of incriminating evidence. Such post-search admission does not cure the earlier concealment in the original return filed under section 139(1). Hence, the argument that penalty cannot be imposed because the 153A return was accepted is without merit.

6.4.2 Regarding the addition relating to unaccounted sale of spent solvents and scrap, it is not in dispute that these receipts were never recorded in the regular books of account. The seized digital evidence from the pen drive, coupled with the statement of the cashier and the Managing Director, clearly establish that such transactions were kept outside the books and represented real business receipts. Even though the Hon'ble ITAT estimated the profit

element at 40% of gross receipts, the underlying nature of the transaction continues to be an unrecorded receipt squarely covered by clause (e) of section 270A(9). Estimation by appellate authorities affects only the quantum of income but does not alter the character of the offence of non-disclosure.

6.4.3 Similarly, the unsubstantiated purchases of Rs. 68,31,920/- were found to be accommodation entries, unsupported by indents, stock entries, or transport documentation. The admission by the company's senior officials during search corroborated that such purchases were inflated. This conduct clearly falls within clauses (a) and (c) of section 270A(9), being "misrepresentation or suppression of facts" and "claim of expenditure not substantiated by any evidence." The plea that penalty should apply only to profit element on such purchases cannot be accepted, as penalty proceedings under section 270A deal with the nature of the default, not the percentage of profit assessed.

6.4.4 The same principle applies to the cash expenses under travelling, foreign travel, and "other expenses." The seized ledgers and statements revealed personal expenses booked under business heads, funded through unaccounted cash generated from solvent sales. The assessee's subsequent disclosure of these expenses does not convert them into bona fide claims. Such false entries and unverified expenditure claims are squarely covered by clause (c) of section 270A(9). Therefore, the appellant's plea that disallowance under sections 40A(3) and 37(1) itself is "penal" and cannot attract penalty under section 270A is legally untenable.

6.4.5 In light of these facts, the appellant's case goes far beyond a mere estimation or accounting lapse. The pattern of concealment, unrecorded receipts, and fabricated expenditure entries establishes a deliberate attempt to suppress income. The search and subsequent findings brought out a systematic scheme of evasion across multiple heads of income. The appellant's conduct, therefore, amounts to clear "misreporting of income" under clauses (a), (c), and (e) of section 270A(9).

6.4.6 It is important to recognize that the legislative intent behind section 270A distinguishes between "under-reporting" and "misreporting." While under-

reporting may result from bona fide error or omission and attracts penalty at 50%, misreporting arises from deliberate falsification and suppression, attracting a higher penalty of 200%. The facts of this case firmly place the appellant within the latter category. The explanations offered are neither credible nor supported by any material evidence. The disclosures made post-search cannot be termed voluntary, as they were a direct consequence of detection.

6.4.7 Therefore, based on the cumulative analysis of the seized evidence, statements recorded, and the judicial principles discussed earlier, I find that the levy of penalty at 200% of the tax on misreported income of Rs. 3,85,42,646/- is fully justified. The Assessing Officer has applied the correct provisions of law, and there is no error in computation or in identifying the nature of the default. Accordingly, Ground Nos. 7, 8, 9, and 10 are **dismissed** and the penalty levied under section 270A(9) of the Income Tax Act is hereby confirmed in full.

10. Aggrieved by the order of the Ld. CIT (A), the assessee is in appeal before the Tribunal.

11. The learned Counsel for the assessee, Shri. M.V. Prasad, CA, referring to Ground No.4 of the assessee's appeal with regard to the validity of penalty orders passed under section 270A of the Act submitted that, the show cause notice issued by the A.O under section 274 r.w.s. 270A of the Act dated 20/07/2023 and 12/06/2025 is vague, without any application of mind and thereby penalty proceedings without recording mandatory satisfaction as required under law before initiating penalty proceedings under section 270A of the Act is bad in law and void

ab-initio. The learned Counsel for the assessee further submitted that the A.O initiated penalty proceedings under section 270A of the Act for misreporting of income which is evident from the assessment order passed by the A.O. The misreporting of income referred to in sub-section (8) has 6 limbs from (a) to (f). The A.O initiated the penalty proceedings and issued show cause notice under section 274 r.w.s. 270A of the Act, without specifying particular clause under which penalty proceedings has been initiated, whether it is for misrepresentation or suppression of facts or claim of expenditure not substantiated by evidence or failed to record any expenses in the books of account having a bearing on total income etc. Since the additions considered by the A.O for the purpose of levy of penalty under section 270A(9) of the Act, falls under different categories of misreporting, it is the duty of the of the A.O to specifically refer to sub clause and issue a show cause notice to the assessee for its explanation. Since the A.O has not specified in the notice under which clause the assessee company is liable for underreporting of income in consequent to misreporting thereon, the notice issued by the A.O is bad in law and consequent penalty proceedings are abinitio. The learned Counsel for the assessee further submitted that it is a settled law that under provisions of section 271(1)(c) of the Act, the notice issued for initiating penalty should specifically set out grounds for such initiation as to whether for furnishing any inaccurate particulars of income or concealment of particulars of income. Provisions of section 270A of the Act is para materia to section 271(1)(c) of the Act, because it has 2 limbs of penalty i.e.

one for underreporting of income and another for misreporting of income. Therefore, the A.O is bound to issue show cause notice and specify the charge under which he propose to initiate the penalty proceedings, whether it is for under reporting of income or misreporting of income and in case it is for misreporting, then he must specify the sub clause provided thereon. Since the show cause notice issued by the A.O is vague without application of mind, the entire proceedings become vitiate and consequently, the penalty levied by the A.O cannot be upheld. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 248 (SC) wherein the SLP filed against the judgement of the Hon'ble Karnataka High Court in the said case was dismissed. The said judgement of the Hon'ble Karnataka High Court was rendered by following the earlier judgment of the same Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 35 taxmann.com 250 (Kar.). The assessee also relied on the decision of Hon'ble Delhi High Court in the case of Prem Brothers Infrastructure LLP vs. National Faceless Assessment Centre (2022) 142 taxmann.com 38 and the decision in the case of Schneider Electric South East Asia (HQ) PTE Ltd vs. Assistant Commissioner of Income Tax (International Taxation) 2022(443 ITR 186). The appellant had also relied upon the decision of Chennai Bench in the case of M/s. Enrica Enterprises (P) Ltd vs. DCIT (2024) 163 Taxmann.com 105,

12. The learned Counsel for the assessee referring to grounds 5 & 6 of the assessee's appeal, which deals with the case on merits submitted that the assessee company had admitted additional income during the course of search proceedings and the same is being disclosed while filing the return of income u/s 153A of the Act. There is no difference between the returned income and assessed income. The assessment and return of income has been considered under section 153A of the Act. As per section 153A, once a return of income was filed, and then it is as good as if such return were required to be furnished under section 139(1) of the Act. As per the provisions of section 270A, the underreported income shall be in a case where the income has been assessed for the first time, if the return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of sub-section (1) of section 143. Since there was no provisions of assessing income under section 143(1) of the Act after filing the return of income under section 153A of the Act, and further return filed under section 153A partakes the nature of return filed under section 139(1) of the Act, unless there is a difference in returned income and assessed income, penalty under section 270A cannot be levied for under reported income. In this regard, he relied upon the decision of the Hon'ble Gujarat High Court in the case of Kirit Dahyabhai Patel vs. Assistant Commissioner of Income Tax (2017) 80 taxmann.com 162 and the Hon'ble Delhi High Court in the case of Pr. CIT vs. Neeraj Jindal (2017) 79 taxmann.com 96.

13. The learned Counsel for the assessee further submitted that the voluntary surrender of income towards various discrepancies cannot per-se leads to a conclusion that the assessee has under reported income as a consequence of misreporting thereon. Further, once the income has been determined on estimation basis, there is no question of imposition of penalty under section 270A (6) of the Act. Since the assessee has explained the issue to the satisfaction of the A.O, the assessee's case falls under the provisions of section 270A(6) of the Act and thus, the A.O ought not to have levied penalty under section 270A(9) of the Act. In this regard, he relied upon the decision of the Chennai Bench in the case of Enrica Enterprises Pvt Ltd Vs DCIT [2024] 163 taxmann.com 105 (Chennai - Trib.).

14. The learned Sr. AR, Dr. Sachin Kumar appeared for the Revenue, supporting the order of the Ld. CIT (A) submitted that, it is a clear case of under reporting of income as a consequence of misreporting of income which is evident from the assessment order passed by the A.O, where the A.O has assessed the additional income disclosed by the assessee in the return of income filed under section 153A of the Act and initiated penalty proceedings under section 270A of the Act for misreporting of income. Further, the assessee had admitted additional income towards sale of spent solvent and scraps on the basis of evidence found during the course of search which clearly shows misreporting of income or not recording the receipts in the books of account which clearly falls under section 270A(9) of the Act.

Further, the assessee had offered additional income towards unsubstantiated purchase of raw material and other expenditure in cash and the same is falls under section 270A(9) of the Act. Since the assessee has under reported income as a consequence of misreporting of income thereof, the A.O has rightly initiated penalty proceedings for misreporting of income. Therefore, there is no merit in the argument of the assessee that the assessee's case falls under section 270A(6) of the Act.

15. The Ld. Sr. AR, further referring to the show cause notice issued under section 274 r.w.s 270A of the act submitted that there is no merit in the argument of the assessee that the notice issued under section 270A of the Act is vague and without any application of mind, because the A.O has arrived at clear satisfaction of under reporting of income as a consequence of mis reporting thereof which is clearly evidenced from the assessment order passed by the A.O. Further, the A.O had also issued a show cause notice for misreporting of income as per section 270A(9) of the Act, therefore, not referring sub clause referred to under section 270A(9) will not invalidate the penalty proceedings. Therefore, he submitted that there is no merit in the legal ground taken by the assessee and the caselaw relied upon by the learned Counsel for the assessee are also on the issue of penalty proceedings under section 271(1)(c) of the Act which stands on different footing and at any stretch of imagination cannot be applied to the case of penalty under section 270A of the Act. The ld. Sr. AR further referring to the scheme of assessment provided

under section 153A of the Act submitted that once there is a search, the assessment of relevant A.Ys is mandatory and filing of return of income under section 153A of the Act and consequent treatment of said return of income as if such returns were filed under section 139(1) is applicable to the limited purpose and therefore, the same cannot be stretched to the extent there is no difference between the assessed income and the reported income. The under reporting of income has been defined under section 270A of the Act in light of original return of income filed under section 139(1) of the Act and subsequent assessment of income under section 143(3) or under section 153A of the Act. In the present case, since there is a clear difference between the returned income and the assessed income, it is a clear case of under reporting of income as a consequence of misreporting thereof. The Ld. CIT (A) after considering the relevant facts has rightly sustained the penalty levied by the A.O. Therefore, he submitted that the order of the Ld. CIT (A) should be upheld.

16. We have heard both the parties, perused the materials on record and had gone through the orders of the authorities below. We have also carefully considered the relevant show cause notice under section 274 r.w.s 270A of the I.T. Act, 1961 dated 27/03/2023 and 12/06/2025 in light of provisions of section 270A of the I.T. Act, 1961. The A.O levied penalty under section 270A(9) of the Act, for under reporting of income in consequence of misreporting of income thereof on additional income admitted by the assessee in the return of income filed under section 153A

of the Act towards receipts from sale of spent solvent and scraps, unsubstantiated inflation of purchase of raw material and unsubstantiated expenses incurred in cash and booked under the head “travelling and conveyance, foreign travel expenses and other expenses. Out of the additions considered by the A.O for the purpose of levy of penalty under section 270A of the Act, the first addition was unaccounted receipts from sale of spent solvent and scraps for Rs.2,70,81,379/-. The assessee company had admitted unaccounted income of Rs.6,77,03,448/- on the basis of evidence found during the course of search coupled with the statement recorded from the M.D of the assessee company, where the company had admitted unaccounted income from sale of spent solvent and scraps and also filed return of income under section 153A of the Act and paid taxes. However, in the appellate proceedings, the appellant has claimed deduction for expenditure incurred for handling the spent solvent and scraps which is also available in the very same seized material which has been considered for the purpose of ascertaining unaccounted receipts from sale of spent solvent and scraps. The ITAT, Hyderabad Benches had considered the issue in light of relevant incriminating material found during the source of search and has allowed deduction towards various expenditure for handing spent solvent and scraps to the extent of 60% of receipts and directed the A.O to sustain the additions to the extent of 40% of receipts admitted by the assessee. In other words, out of the gross receipts admitted by the assessee towards sale of spent solvent and scraps for Rs. 6,77,03,448/-, finally the addition has been reduced to the

extent of Rs.2,70,81,379/-. The other additions considered by the A.O for the purpose of levy of penalty under section 270A(9) of the Act is additions towards unsubstantiated inflation of purchase of raw material and expenses incurred in cash and booked under the head travelling and conveying expenses, foreign travel expenses and other expenses. The additional income offered towards the disallowance of unsubstantiated expenditure was already recorded in the regular books of account of the assessee and were also part of return of income filed for the year under consideration on or before the due date provided under section 139(1) of the Act. Therefore, it is necessary for us to adjudicate the issue of penalty levied under section 270A(9) of the Act, for under reporting of income as a consequence of misreporting of income thereof in light of provisions of section 270A of the Act, the arguments of the learned Counsel for the assessee and the Sr. AR present for the revenue and the facts available on record.

17. The assessee has raised a preliminary objection and questioned validity of penalty proceedings in light of notice issued under section 274 r.w.s. 270A of he I.T. Act and claimed that the show cause notice issued by the A.O without specifying a particular charge under which penalty is initiated, vitiate the entire penalty proceedings and consequently, the order passed by the A.O under section 270A of the Act is bad in law and liable to be quashed. In light of above factual back ground, if we examine the order passed by the AO, imposing penalty u/s.270A(9) of the Act, it is necessary to refer to provisions of Sec.270A of the Act,

and the reasons given by the AO to impose penalty u/s.270A(9) of the Act. The provisions of Sec.270A of the Act, deals with penalty for 'under reporting of income and under reporting as a consequence of misreporting of income'. Sub-section (1) to (6) of Sec.270A of the Act deals with 'under reporting of income and under reporting as a consequence of misreporting of income', has been specified in sub-section (7) to Sec.270A of the Act. Sub-section (8) & (9) deals with 'under reporting of income and under reporting as a consequence of misreporting of income' thereof by any person and such case of 'misreporting of income' referred to in sub-sec.(8) has been specified in Sec.(9) of Sec.270A of the Act. From the above, it is manifestly clear that a provision of Sec.270A of the Act has two limbs or two charges for which penalty can be levied. The first limb or first charge is 'under reporting of income and such under reporting of income' has been specifically referred to in sub-sections (2) of Sec.270A of the Act. In the present case, these provisions are not relevant, because the AO has not invoked under reporting of income. The second limb or charge is 'under reporting of income as consequence of misreporting of income' thereof and in the present case, the AO invoked the second limb of provisions of Sec.270A of the Act. Admittedly, these provisions have been substituted by the Finance Act, 2016 w.e.f.01.04.2017 and applicable for AY 2017-18 onwards. Prior to insertion of Sec.270A of the Act, a similar provision was existed in the statue by way of sec.271(1)(c) of the Act, for concealment of particulars of income or furnishing of inaccurate particulars of income. Provisions of Sec.271(1)(c) of the Act, was also having two limbs or

two charges i.e. i) for concealment of particular of income and ii) furnishing of inaccurate particulars of income. If you go by provisions of Sec. 271(1)(c) of the Act & Sec.270A of the Act, and wordings therein, both provisions are similar and para materia to each other. Although, the term 'tax evasion' has been redefined by way of 'under reporting of income and under reporting as a consequence of misreporting of income' but it is synonymous with concealment of particular of income or furnishing of inaccurate particulars of income. Therefore, it is necessary to examine, whether penalty proceedings u/s.270A of the Act, is mandatory in nature and further, such penalty can be invoked without providing an opportunity to the assessee as required u/s.274 of the Act.

18. The order passed u/s.270A of the Act, is an appealable order u/s.246A of the Act before the First Appellate Authority. If the penalty u/s.270A of the Act had been mandatory, then there cannot be any provision of appeal u/s.246A of the Act. Since, the order passed Sec.270A of the Act, is an appealable order, it cannot be said that penalty u/s.270A of the Act, is mandatory in nature. Since, penalty u/s.270A of the Act, is not mandatory in nature, the AO is required to give an opportunity to the assessee to show cause 'as to why' penalty should be levied in terms of sec.274 of the Act, therefore, it is important to see the reasons given by the in the order in light of show cause notice u/s 274 r.w.s 270A of the Act. Admittedly, the AO issued notice u/s.274 r.w.s.270A of the Act. Sec.274 of the Act deals with the procedure

for levy of penalty, wherein, it directs that no order imposing penalty shall be made unless the assessee has been heard or has been given a reasonable opportunity of hearing. Thus, it is evident that the penalty u/s.270A of the Act, cannot be imposed unless the assessee has given a reasonable opportunity and the assessee is being heard. Once, the AO is bound to act to hear the assessee and give reasonable opportunity to explain its case, then, there is no mandatory requirement of imposing penalty, because the opportunity of hearing is not a mere formality, and it is in order to the principle of natural justice. Therefore, in our considered view, the penalty u/s.270A of the Act, is not mandatory and it is based on the facts and explanation placed before the AO.

19. Having said so, let us come back to notice issued u/s.274 r.w.s.270A of the Act. We have gone through relevant show cause notice issued by the AO, wherein, the AO has stated that 'under reporting of income and under reporting as a consequence of misreporting of income'. From the above, it is not discernable, whether penalty has been initiated for 'under reporting of income' as per section 270A (1) to (6) or 'misreporting of income' as per section (8) & (9) of Sec.270A of the Act. The AO issued a notice in a routine manner without specifying under which clause of Sec.270A of the Act, the assessee is liable for penalty. Though, the AO while passing the impugned order has imposed penalty u/s.270A(9) of the Act, but no such ground was specified in the show cause notice. In our considered view, notice u/s.274 r.w.s.270A of the Act, is not valid for the reason that the

AO did not specify the satisfaction as to whether assessee had either 'under reporting of income' or 'misreporting of income'. In absence of proper notice, which is mandatory, the AO cannot impose penalty, because, it is a clear violation of principles of natural justice. Further, issuing a vague notice without specifying the charge under which limb the proposed penalty proceedings is initiated, would vitiate the entire proceedings, because the assessee was not given an opportunity to explain its case on specific charge. Therefore, in our considered view, penalty levied on the basis of invalid or vague notice is invalid and void *ab initio*. The concept of 'under reporting of income' and 'misreporting of income' are two different charges with very clear boundaries. As we have already discussed in earlier part of this order, sub-section (2) to (6) of sec Sec.270A of the Act, deals with concept of 'under reporting of income', for which separate rate of penalty is provided. Sub-sec.(9) deals with a concept of 'misreporting of income' and for this cases separate rate of penalty is provided. Therefore, 'under reporting of income' and 'misreporting of income' shall not be used interchangeably, nor are they synonymous, but each operates under strict definition and do not overlap each other. Since, 'under reporting of income' and 'misreporting of income' are two concepts and separate charges, the AO before initiating penalty proceedings should specifically arrive at a satisfaction to the effect that, for which charge, he has initiated penalty Sec.270A of the Act. In the present case, if you go by the assessment order passed by the AO, there is no satisfaction in respect of initiation of penalty proceedings

u/s.270A of the Act, whether it is for 'under reporting of income and under reporting as a consequence of misreporting of income' thereof which is clearly evident from the assessment order passed by the AO, where, the AO simply referred to initiation of penalty proceedings u/s.270A of the Act for misreporting of income. Then, said lapse is even continued while issuing show cause notice u/s.274 r.w.s.270A of the Act, where the AO specified 'under reporting of income and under reporting as a consequence of misreporting of income', without specifying for which charge the assessee is directed to pay penalty u/s.270A of the Act. There is no whisper as to which limb of Sec.270A of the Act, is attracted and how the ingredients of clause (a) to (f) of sub-sec.(9) of Sec.270A of the Act specified. In absence of such particulars, the mere reference to the word 'misreporting of income' in the assessment order or in the show cause notice makes the impugned order manifestly arbitrarily.

20. In the present case, the A.O initiated penalty proceedings under section 270A of the Act for misreporting of income, which is evident from the assessment order passed by the A.O. The misreporting of income referred to in sub-section (8) has Six limbs from (a) to (f). The A.O initiated the penalty proceedings and issued show cause notice under section 274 r.w.s. 270A of the Act, without specifying particular clause under which penalty proceedings has been initiated, whether it is for misrepresentation or suppression of facts or claim of expenditure not substantiated by evidence or failed to record any expenses in the books of

account having a bearing on total income etc. Since the additions considered by the A.O for the purpose of levy of penalty under section 270A(9) of the Act, falls under different categories of misreporting, it is the duty of the of the A.O to specifically refer to sub clause and issue a show cause notice to the assessee for its explanation. Since the A.O has not specified in the notice under which clause the assessee company is liable for underreporting of income in consequent to misreporting thereon, the notice issued by the A.O is bad in law and consequent penalty proceedings are abinitio. It is a settled law that under provisions of section 271(1)(c) of the Act, the notice issued for initiating penalty should specifically set out grounds for such initiation as to whether for furnishing any inaccurate particulars of income or concealment of particulars of income. Provisions of section 270A of the Act is para materia to section 271(1)(c) of the Act, because it has two limbs of penalty i.e. one for underreporting of income and another for misreporting of income. Therefore, the A.O is bound to issue show cause notice and specify the charge under which he propose to initiate the penalty proceedings, whether it is for under reporting of income or misreporting of income and in case, it is for misreporting, then he must specify the sub clause provided thereon. Since the show cause notice issued by the A.O is vague and without application of mind, the entire proceedings become vitiate and consequently, the penalty levied by the A.O cannot be upheld. This legal principle is supported by the decision of the Hon'ble Supreme Court in the case of CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 248 (SC) wherein the SLP filed

against the judgement of the Hon'ble Karnataka High Court in the said case was dismissed. The said judgement of the Hon'ble Karnataka High Court was rendered by following the earlier judgment of the same Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 35 taxmann.com 250 (Kar.). Therefore, we are of the considered view that, show cause notice issued by the AO u/s.274 r.w.s.270A of the Act, without specifying the charge under which penalty is proposed u/s.270A of the Act, is a clear case of non-application of mind at the time of issuing show cause notice and thus, in absence of specific charge against the assessee, the assessee is not in a position to counter the show cause notice issued by the AO as well as cogent reply to the show cause notice and thus, entire proceedings becomes invalid and ab-initio.

21. The ld. Counsel for the assessee relied upon the decision of Hon'ble Delhi High Court in the case of Prem Brothers Infrastructure LLP (supra), where the Hon'ble Delhi High Court by following the earlier decision in the case of Schneider Electric South East Asia (HQ) Pte Ltd. v. ACIT, International Taxation in WP (C) No.5111 of 2022 dated 28.03.2022, held that in view of vague notice without any whisper as to which limb of section 270A of the Act is attracted and how ingredients of sub-section (9) is satisfied, initiation of penalty u/s.270A of the Act for 'misreporting of income' is not only erroneous, but also arbitrary and bereft of any reason and consequently, penalty order passed

by the AO, cannot be sustained. The relevant findings of the Hon'ble Delhi High Court are as under:

> *6. This court in the case of Schneider Electric South East Asia (HQ) PTE Ltd. Vs. ACIT, International Taxation Circle 3(1)(2), New Delhi and Ors. W.P.(C) No. 5111/2022 vide judgment dated 28.03.2022 observed as under:-*
>
> *"6. Having perused the impugned order dated 9th March, 2022, this Court is of the view that the Respondents' action of denying the benefit of immunity on the ground that the penalty was initiated under Section 270A of the Act for misreporting of income is not only erroneous but also arbitrary and bereft of any W.P.(C) 7092/2022 Page 4 of 6 reason as in the penalty notice the Respondents have failed to specify the limb - "underreporting" or "misreporting" of income, under which the penalty proceedings had been initiated.*
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> *7. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the assessment order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary.*
>
> *8. This Court is of the opinion that the entire edifice of the assessment order framed by Respondent No.1 was actually voluntary computation of income filed by the Petitioner to buy peace and avoid litigation, which fact has been duly noted and accepted in the assessment order as well and consequently, there is no question of any misreporting.*
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> *9. This Court is further of the view that the impugned action of Respondent No.1 is contrary to the avowed Legislative intent of Section 270AA of the Act to encourage/incentivize a taxpayer to (i) fast-track settlement of issue, (ii) recover tax demand; and (iii) reduce protracted litigation.*
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> *10. Consequently, the impugned order dated 09th W.P.(C) 7092/2022 Page 5 of 6 March 2022 passed by Respondent No.1 under Section 270AA (4) of the Act is set aside and Respondent No.1 is directed to grant immunity under Section 270AA of the Act to the Petitioner."*
>
> *7. This Court is of the opinion that the only addition in the assessment order framed by Respondent No.1 is in respect of disallowance under section 14A of the Act. The Petitioner has made a disallowance of Rs.3,20,14,010/- which was recomputed by the Assessing Officer at Rs.6,82,45,759/-. Thus, this is a case where the amount of underreporting of income is consequent to increase in the disallowance voluntarily estimated by the assessee. This court is conscious of the fact that there can be cases where underreporting of income may result in misreporting of income, however, in peculiar facts of the present case, the*

*underreporting allegedly done by the assessee cannot amount to misreporting as the assessee had furnished all the details of the transactions relating to disallowance made under Section 14A of the Act and the AO as well as assessee has used the same details to arrive at different conclusions i.e. differing quantum of disallowances under Section 14A of the Act. This by no stretch of imagination can be held to be 'misreporting'.*

*8. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the penalty order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary. W.P.(C)*

*9. Consequently, the impugned penalty order dated 28th March 2022 passed by Respondent No.1 under Section 270A of the Act is quashed and Respondent No.1 is directed to grant immunity under Section 270AA of the Act to the Petitioner.*

22. The appellant had also relied upon the decision of the ITAT, Chennai Benches in the case of Enrica Enterprises Pvt Ltd Vs DCIT (Supra). The Chennai Benches of the Tribunal has considered an identical issue of penalty levied under section 270A of the Act for under reporting of income, in consequence of misreporting thereof and after considering the relevant facts, including the show cause notice issued under section 274 r.w.s. 270A of the Act held as under:

*"12. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The AO levied penalty u/s.270A of the Act, for both the assessment years on the ground that the assessee has 'under reporting of income and under reporting as a consequence of misreporting of income'. The AO invoked provisions of clauses (c) & (d) of Sec.270A(9) of the Act, which deals with claim of expenditure not substantiated by any evidence and recording of any false entry in the books of accounts. The AO has arrived at the above conclusion on the basis of findings in the assessment order, where income admitted by the assessee in the return of income filed in response to notice u/s.153A of the Act, has been accepted.*

*In the revised return u/s.153A of the Act, the assessee has admitted taxable income of Rs.2,55,35,485/- which is higher than the last return filed u/s.139 of the Act. According to the AO, the assessee has 'under reporting of income and under reporting as a consequence of misreporting of income' in respect of marketing expenses, which is clearly evident from information gathered during the course of search coupled with statement recorded from the Director of the assessee company and also enquiries conducted with suppliers of 'gift articles during the course of assessment proceedings. The AO further observed that search was not taken place u/s.132 of the Act and hence, the 'under reporting of income and under reporting as a consequence of misreporting of income' would not have come to light. Therefore, the AO opined that it is a clear case of 'under reporting of income and under reporting as a consequence of misreporting of income' which attracts provisions of Sec.270A(9) of the Act, and thus, levied penalty for both the assessment years for 'under reporting of income and under reporting as a consequence of misreporting of income'.*

*13. The facts with regard to seizure of huge unaccounted cash during the course of search on __ was not disputed. It is also an admitted fact that the assessee company has offered additional income of Rs.16.39 Crs. & Rs.23.62 Crs. towards disallowance of estimated marketing expenses @ 1/3rd of total expenses incurred under the head 'marketing expenses' for both the assessment years. The cash seized during the course of search was telescoped against additional income offered by the assessee towards estimated disallowance of marketing expenses. The assessee has filed return in response to notice u/s.153A of the Act, for both the assessment years and offered additional income admitted during the course of search in respect of disallowance of marketing expenses and paid taxes. The AO has also accepted retuned income filed by the assessee in response to notice u/s.153A of the Act, without any further addition and also recorded a clear finding in the assessment order that after going through the circumstances in its entirety, the income offered by the assessee, including estimated disallowance of portion of marketing expenses, is found to be in order and accepted. In other words, there is no separate addition towards marketing expenses, but the assessment has been completed by accepting additional income offered by the assessee towards estimated disallowance of marketing expenses for both the assessment years.*

*14. In light of above factual back ground, if we examine the order passed by the AO imposing penalty u/s.270A(9) of the Act, it is necessary to refer to provisions of Sec.270A of the Act, and the reasons given by the AO to impose penalty u/s.270A(9) of the Act. Provisions of Sec.270A of the Act, deals with penalty for 'under reporting of income and under reporting as a consequence of misreporting of income'. Sub-section 1 to 6 of Sec.270A of the Act deals with 'under reporting of income and under reporting as a consequence of misreporting of income', has been specified in sub-section 7 to Sec.270A of the Act. Sub-section 8 & 9 deals with 'under reporting of income and under reporting as a consequence of misreporting of income' thereof by any person and such case of 'misreporting of income' referred to sub-sec.8 has been specified in Sec.9 of Sec.270A of the Act. From the above, it is manifestly clear that provisions of Sec.270A of the Act has two limbs or two charges for which penalty can be levied. The first limb or first charge is 'under reporting of income and such under reporting of income' has been specifically referred to in two sub-sections of Sec.270A of the Act. In the present case, these provisions are not relevant because the AO has not invoked under reporting of income. The second limb or charge is 'under reporting of income as consequence of misreporting of income' thereof and in the present case, the AO invoked the second limb of provisions of Sec.270A of the Act. Admittedly, these provisions have been substituted by the Finance Act, 2016 w.e.f.01.04.2017 and applicable for AY 2017-18 onwards. Prior to insertion of Sec.270A of the Act, a similar provision was existed in the statue by way of sec.271(1)(c) of the Act, for concealment of particulars of income or furnishing of inaccurate particulars of income. Provisions of Sec.271(1)(c) of the Act, was also having two limbs or two charges i.e. i) for concealment of particular of income and ii) furnishing of inaccurate particulars of income. If you go by provisions of Sec. 271(1)(c) of the Act & Sec.270A of the Act, and wordings therein both provisions are similar and para materia to each other. Although, the term 'tax evasion' has been redefined by way of 'under reporting of income and under reporting as a consequence of misreporting of income' but it is synonymous concealment of particular of income or furnishing of inaccurate particulars of income. Therefore, it is necessary to examine whether penalty proceedings u/s.270A of the Act, is mandatory in nature and further, such penalty can be invoked without providing an opportunity to the assessee as required u/s.274 of the Act.*

*15. The order imposing penalty u/s.270A of the Act, is an appealable order u/s.246A of the Act before the First Appellate Authority. If the penalty u/s.270A of the Act, had been mandatory, there have not been any provision of appeal u/s.246A of the Act. Since, the order imposing penalty Sec.270A of the Act, is an appealable order, then, it cannot be said that penalty u/s.270A of the Act, is not mandatory in nature. Since, penalty u/s.270A of the Act, is not mandatory in nature, the AO is required to give an opportunity to the assessee to show cause 'as to why' penalty should be levied in terms of sec.274 of the Act. Admittedly, the AO issued notice u/s.274 r.w.s.270A of the Act. Sec.274 of the Act deals with the procedure for levy of penalty, wherein, it directs that no order imposing penalty shall be made unless the assessee has been heard or has been given a reasonable opportunity of hearing. Thus, it is evident that the penalty u/s.270A of the Act, cannot be imposed unless the assessee has given a reasonable opportunity and the assessee is being heard. Once, the AO is bound to act to hear the assessee and give reasonable opportunity to explain its case, then, there is no mandatory requirement of imposing penalty, because the opportunity of hearing is not a mere formality, it is to order to the principle of natural justice. Therefore, in our considered view, the penalty u/s.270A of the Act, is not mandatory and it is based on the facts and merits placed before the AO.*

*16. Having said so, let us come back to notice issued u/s.274 r.w.s.270A of the Act. We have gone through notice dated 26.07.2021, wherein, the AO has stated that 'under reporting of income and under reporting as a consequence of misreporting of income'. From the above, it is not discernable whether penalty has been initiated for 'under reporting of income' as per section 270A (1) to (6) or 'misreporting of income' as per section 8 & 9 of Sec.270A of the Act. The AO issued a notice in a routine manner without specifying under which clause of Sec.270A of the Act, the assessee is liable for penalty. Though, the AO while passing the impugned order has imposed penalty u/s.270A(9) of the Act, but no such ground was specified in the show cause notice dated 26.07.2021. In our considered view, notice u/s.274 r.w.s.270A of the Act, is not a valid for the reason that the AO did not specify the satisfaction as to whether assessee had either 'under reporting of income' or 'misreporting of income'. In absence of proper notice, which is mandatory, the AO cannot impose penalty, because, it is a clear violation of principles of natural justice, because,*

*issuing a vague notice without specifying the charge under which limb the proposed penalty proceedings is initiated, would vitiate the entire proceedings, because, the assessee was not given an opportunity to explain its case on specific charge. Therefore, in our considered view, penalty levied on the basis of invalid or vague notice is invalid void ab initio. The concept of 'under reporting of income' and 'misreporting of income' are two different charges with very clear boundaries. As we have already discussed in earlier part of this order, sub-section 2 to 6 of sec Sec.270A of the Act, deals with concept of 'under reporting of income', then, separate rate of penalty is provided. Sub-sec.9 deals with a concept of 'misreporting of income' and for those a separate rate of penalty is provided. Therefore, 'under reporting of income' and 'misreporting of income' shall not be used interchangeably nor are they synonymous, but each operates under strict definition and do not overlap each other. Since, 'under reporting of income' and 'misreporting of income' are two concepts and separate charges, the AO before initiating penalty proceedings should specifically arrived at a satisfaction to the effect that, for which charge, he has initiated penalty Sec.270A of the Act. In the present case, if you go by the assessment order passed by the AO, there is no satisfaction in respect of initiation of penalty proceedings u/s.270A of the Act, whether it is for 'under reporting of income and under reporting as a consequence of misreporting of income' thereof which is clearly evident from the assessment order passed by the AO, where, the AO simply referred to initiation of penalty proceedings u/s.270A of the Act. Then, said lapse is even continued while issuing show cause notice u/s.274 r.w.s.270A of the Act, where, the AO specified 'under reporting of income and under reporting as a consequence of misreporting of income', without specifying for which charge the assessee is directed to pay penalty u/s.270A of the Act. There is no whisper as to which limb of Sec.270A of the Act, is attracted and how the ingredients of the sub-sec.9 of Sec.270A of the Act specified. In absence of such particulars, the mere reference to the word 'misreporting of income' in the assessment order or in the show cause notice makes the impugned order manifestly arbitrarily. Therefore, we are of the considered view that show cause notice issued by the AO u/s.274 r.w.s.270A of the Act, without specifying the charge under which penalty is proposed u/s.270A of the Act, is a clear case of non-application of mind at the time of issuing show cause notice and thus, in absence of specific charge against the assessee. The assessee is not in a position to counter the show cause*

*notice issued by the AO as well as cogent reply to the show cause notice. This legal position is strengthened by the decision of the Hon'ble Delhi High Court in the case of Prem Brothers Infrastructure LLP (supra), where the Hon'ble Delhi High Court by following the earlier decision in the case of Schneider Electric South East Asia (HQ) Pte Ltd. v. ACIT, International Taxation in WP (C) No.5111 of 2022 dated 28.03.2022, held that in view of vague notice without any whisper as to which limb of section 270A of the Act is attracted and how ingredients of sub-section 9 is specified, initiation of penalty u/s.270A of the Act for 'misreporting of income' is not erroneous but also arbitrary and bereft of any reason and consequently, penalty order passed by the AO, cannot be sustained. The relevant findings of the Hon'ble Delhi High Court are as under:*

> *6. This court in the case of Schneider Electric South East Asia (HQ) PTE Ltd. Vs. ACIT, International Taxation Circle 3(1)(2), New Delhi and Ors. W.P.(C) No. 5111/2022 vide judgment dated 28.03.2022 observed as under:-*
>
> *"6. Having perused the impugned order dated 9th March, 2022, this Court is of the view that the Respondents' action of denying the benefit of immunity on the ground that the penalty was initiated under Section 270A of the Act for misreporting of income is not only erroneous but also arbitrary and bereft of any W.P.(C) 7092/2022 Page 4 of 6 reason as in the penalty notice the Respondents have failed to specify the limb - "underreporting" or "misreporting" of income, under which the penalty proceedings had been initiated.*
>
> *7. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the assessment order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary.*
>
> *8. This Court is of the opinion that the entire edifice of the assessment order framed by Respondent No.1 was actually voluntary computation of income filed by the Petitioner to buy peace and avoid litigation, which fact has been duly noted and accepted in the assessment order as well and consequently, there is no question of any misreporting.*

*9. This Court is further of the view that the impugned action of Respondent No.1 is contrary to the avowed Legislative intent of Section 270AA of the Act to encourage/incentivize a taxpayer to (i) fast-track settlement of issue, (ii) recover tax demand; and (iii) reduce protracted litigation.*

*10. Consequently, the impugned order dated 09th W.P.(C) 7092/2022 Page 5 of 6 March 2022 passed by Respondent No.1 under Section 270AA (4) of the Act is set aside and Respondent No.1 is directed to grant immunity under Section 270AA of the Act to the Petitioner."*

*7. This Court is of the opinion that the only addition in the assessment order framed by Respondent No.1 is in respect of disallowance under section 14A of the Act. The Petitioner has made a disallowance of Rs.3,20,14,010/- which was recomputed by the Assessing Officer at Rs.6,82,45,759/-. Thus, this is a case where the amount of underreporting of income is consequent to increase in the disallowance voluntarily estimated by the assessee. This court is conscious of the fact that there can be cases where underreporting of income may result in misreporting of income, however, in peculiar facts of the present case, the underreporting allegedly done by the assessee cannot amount to misreporting as the assessee had furnished all the details of the transactions relating to disallowance made under Section 14A of the Act and the AO as well as assessee has used the same details to arrive at different conclusions i.e. differing quantum of disallowances under Section 14A of the Act. This by no stretch of imagination can be held to be 'misreporting'.*

*8. This Court also finds that there is not even a whisper as to which limb of Section 270A of the Act is attracted and how the ingredient of sub-section (9) of Section 270A is satisfied. In the absence of such particulars, the mere reference to the word "misreporting" by the Respondents in the penalty order to deny immunity from imposition of penalty and prosecution makes the impugned order manifestly arbitrary. W.P.(C)*

*9. Consequently, the impugned penalty order dated 28th March 2022 passed by Respondent No.1 under Section 270A of the Act is quashed and Respondent No.1 is directed to grant immunity under Section 270AA of the Act to the Petitioner.*

*17. At this stage, it is relevant to consider the decision of jurisdictional the Hon'ble Madras High Court in the*

*case of Babuji reported in 430 237 where, the Hon'ble jurisdictional Madras High Court in the case of Babuji Jacob v. ITO reported in [2021] 430 ITR 259 (Madras) has dealt with the issue of show cause notice u/s.274 r.w.s.271(1)(c) of the Act, after considering its earlier decision in the case of Sundaram Finance Ltd. v. ACIT reported in [2018] 93 taxmann.com 250, held that issuing a printed form of notice without striking inapplicable portion in the notice and not charging the assessee for particular evasion vitiates the entire penalty proceedings, including the order passed by the AO imposing penalty u/s.271(1)(c) of the Act. A similar view has been taken by the Hon'ble Karnataka High Court in the case of CIT v. Manjunatha Cotton & Ginning Factory reported in [2013] 359 ITR 565, where the issue of show cause notice and consequent penalty proceedings has been dealt in the issue by the Hon'ble Madras High Court and held that penalty proceedings consequent to vague and invalid notice becomes invalid and liable to be quashed. The Hon'ble Supreme Court has upheld the decision of the Hon'ble Supreme Court of Karnataka in the case of CIT v. SSA's Emerald Meadows reported in [2016] 73 taxmann.com 241. From the ratio of above case laws, it is undisputedly clear that the satisfaction of the AO should be discernable from the show cause notice issued by the AO u/s.274 r.w.s.270A of the Act. In absence of any particular charge for which, the assessee is directed to pay penalty to the entire proceedings becomes invalid and liable to be quashed.*

*18. In this view of the matter and by following the ratio laid down by the Hon'ble Supreme Court and various High Courts referred to hereinabove, we are of the considered view that show cause notice issued by the AO u/s.274 r.w.s.270A of the Act, is illegal and liable to be quashed an thus, we quashed the order of the AO u/s.270A(9) of the Act. The assessment proceedings and penalty proceedings are two separate proceedings. The findings in the assessment proceedings cannot be considered as conclusive and final for the purpose of imposing penalty. The Hon'ble Supreme Court in the case of CIT v. Anwar Ali, reported in [1970] 76 ITR 696 (SC) observed that the findings in assessment proceedings may constitute co-evidence in the penalty proceedings, but it does not follow that penalty is mandatory whenever addition or disallowance is made. Further, the jurisdictional High Court in the case of CIT v. Gem Granites reported in [2013] 86 CCH 160 (Madras), observed that merely because, the assessment proceedings namely the quantum assessment having been confirmed, cannot automatically lead to the conclusion that the*

> *penalty proceedings are justified. In other words, there should be an independent finding from the AO regarding under reporting of income or misreporting of income in the penalty proceedings which alone can lead to conclusion that it is a fit case for levy of penalty."*

23. In the present case, there is no dispute with regard to the fact that the show cause notice issued by the A.O under section 274 r.w.s. 270A of the Act dated 27/03/2023 and 12/06/2025 is issued without any specific charge as to which clause, whether it is clause (a) or clause (c) or clause (e) of sub section (9) of section 270A of the Act is applicable. Further, in the assessment order also, the A.O simply stated that the penalty proceedings under section 270A is initiated for misreporting of income without any satisfaction as to for which default the assessee is liable to pay penalty under section 270A of the Act. Since the notice issued by the A.O is vague in nature, without satisfying specific charge under which the proposed penalty proceedings are initiated, in our considered view the order passed by the A.O under section 270A of the Act on the basis of vague show cause notice vitiate the entire penalty proceedings. Therefore, in our considered view, penalty levied by the A.O under section 270A(9) of the Act cannot be upheld on this ground itself.

24. Having said so, let us come back whether penalty levied under section 270A of the Act is sustainable in law. Admittedly, the A.O initiated penalty proceedings under section 270A(9) of the Act, for under reporting of income is in consequence of misreporting thereof. The A.O had considered five additions for the purpose of levy of penalty under section 270A(9)

of the Act. The first addition considered by the A.O is additional income offered by the assessee towards unaccounted receipts from sale of spent solvent and scraps. There is no dispute that the assessee had admitted additional income of Rs.6,77,03,448/- in the return of income filed under section 153A of the Act. However, finally the additional income offered by the assessee on this account has finally reduced to Rs.2,71,81,379/- and such additional income has been determined on estimation basis. The additional income considered by the A.O towards unaccounted receipts from sale of spent solvent and scraps has been finally determined on the basis of estimation of income, where the Tribunal has sustained unaccounted income from sale of spent solvent and scraps of Rs.2,70,81,379/- by estimating 40% profit from receipts from sale of spent solvent and scraps. Further, the A.O had considered various expenses incurred in cash and booked under the head travelling and conveyance, foreign travel expenses, purchase of raw material and other expenses for the purpose of levy of penalty under section 270A(9) of the Act. Admittedly, except the additional income from unaccounted receipts from sale of spent solvent and scraps, remaining additions like expenses incurred in cash and booked under the head travelling and conveyance, foreign travel expenses, purchase of raw material and other expenses are recorded in the regular books of account maintained by the assessee for the A.Y under consideration. The disallowed above expenditures either for not substantiating said expenditure with supporting evidence or for violation of section 40A(3) and for personal nature of expenses. The assessee

explained that mere admission of additional income towards sale of spent solvent and scraps and also disallowance of unsubstantiated expenses cannot per se lead to a conclusion that the assessee had under reported income is in consequence of misreporting thereof. Admittedly, there is no finding from the A.O in the assessment order about the incorrectness in additional income admitted by the assessee towards unaccounted receipts and spent solvent and scraps and also unsubstantiated expenses incurred in cash. The A.O has accepted the additional income declared by the assessee without any modification and also not made any observation with regard to expenditure claimed by the assessee and its correctness. Therefore, it is necessary to examine the argument of the learned Counsel for the assessee in light of sub-section (6) of section 270A which deals with a case, where the under reported income for the purpose of this section 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 bonafide and the assessee has disclosed all the material facts to substantiate the explanation offered.

25. Sub-section (6) of section 270A deals with the cases of income determined on the basis of estimation. In the present case, admittedly, the addition considered by the A.O for the purpose of levy of penalty under section 270A of the Act in respect of unaccounted receipts from sale of spent solvent and scraps is determined on the basis of estimation only. Further, the addition considered by the AO towards unsubstantiated expenditure

incurred in cash and accounted in the books are also on the basis of books of account maintained by the assessee. The A.O neither made out a case of incorrectness in the books of account nor find fault with the explanation of the assessee. Since the explanation offered by the assessee is bonafide and the assessee has disclosed all the material facts to substantiate the explanation, in our considered view, mere disclosure of additional income in the return of income filed under section 153A of the Act does not warrants levy of penalty under section 270A of the Act. Further, other additions considered by the AO for levy of penalty u/s 270A are various expenditure incurred in cash and accounted under the heads travelling and conveyance, foreign travel expenses and other expenses. Admittedly, these expenditures have been identified from regular books of accounts of the assessee. Further, the above expenditures are supported by necessary bills and vouchers. The only observation of the AO is above expenditures had been incurred in cash. In our considered view, expenditure incurred in cash, per se does not lead to a cases of un-substantiating nature of expenses. Since, the assessee explained the expenditure in cash and further, the explanation of the assessee is bonafied, in our considered view, the case of the assessee clearly falls under sub section (6) of section 270A of the Act, and therefore, the A.O ought not to have levied the penalty under section 270A of the I.T. Act, 1961. Therefore, on this ground itself, penalty levied by the AO cannot be sustained.

26. Coming to ground Nos. 5 & 6 of assessee's appeal, which relates to challenging the levy of penalty under section 270A(9) of the Act, in light of return of income filed in response to notice under section 153A of the Act and income returned thereon and the assessment order passed by the A.O under section 143(3) r.w.s. 153A of the Act dated 31/03/2023 and income assessed thereon. The learned Counsel for the assessee argued that the admission of income during the course of search proceedings and filed by return of income under section 153A of the Act does not lead to under reporting is in consequence of misreporting of income for the purpose of section 270A(9) of the Act. The learned Counsel for the assessee had also supported his argument in light of certain judicial precedents including the decision of the Hon'ble Gujarat High Court in the case of Kirit Dahyabhai Patel vs. Assistant Commissioner of Income Tax (Supra) and the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Pr. CIT vs. Neeraj Jindal (Supra). The Hon'ble Delhi High Court had considered an identical issue of levy of penalty under section 271(1)(c) of the Act in light of difference between the assessed income and income returned as per return of income filed under section 153A of the Act, and after considering relevant facts had held as under:

> "*21. Thus, it is clear that when the A.O. has accepted the revised return filed by the assessee under Section 153A, no occasion arises to refer to the previous return filed under Section 139 of the Act. For all purposes, including for the purpose of levying penalty under Section 271(1)(c) of the Act, the return that has to be looked at is the one filed under Section 153A. In fact, the second proviso to Section 153A(1) provides that "assessment or reassessment, if any, relating*

> *to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate." What is clear from this is that Section 153A is in the nature of a second chance given to the assessee, which incidentally gives him an opportunity to make good omission, if any, in the original return. Once the A.O. accepts the revised return filed under Section 153A, the original return under Section 139 abates and becomes non-est. Now, it is trite to say that the "concealment" has to be seen with reference to the return that it is filed by the assessee. Thus, for the purpose of levying penalty under Section 271(1)(c), what has to be seen is whether there is any concealment in the return filed by the assessee under Section 153A, and not vis-a vis the original return under Section 139."*

27. A similar view has been taken by the Hon'ble Gujrat High Court in the case of Kirit Dahyabhai Patel vs. Assistant Commissioner of Income Tax (Supra), where under identical set of facts and in light of penalty levied under section 271(1)(c) of the Act, on the basis of difference between assessed income and income returned as per return of income filed under section 153A of the Act had held as under:

> *13. Considering the facts and circumstances of the case and also considering the decisions relied upon by learned senior advocate for the appellant, we are of the considered opinion that the view taken by the Tribunal is erroneous. The CIT (A) rightly held that it is not relevant whether any return of income was filed by the assessee prior to the date of search and whether any income was undisclosed in that return of income. In view of specific provision of Section 153A of the I.T. Act, the return of income filed in response to notice under Section 153(a) of the I.T. Act is to be considered as return filed under Section 139 of the Act, as the Assessing Officer has made assessment on the said return and therefore, the return is to be considered for the purpose of penalty under Section 271(1)(c ) of the I.T. Act and the penalty is to be levied on the income assessed over and above the income returned under Section 153A, if any.*

> *14. Further, in the present case, it appears from the record that the assessees had satisfied all the conditions which are required for claiming immunity from payment of penalty under Section 271(1) of the Act. The provision does not specify any time limit during which the aforesaid amount i.e., the amount of penalty with interest has to be paid. Admittedly when the assessees herein have paid the entire amount with interest, the Assessing Officer ought to have granted them immunity available under Section 271(1)(C ) of the Income Tax Act."*

28. The sum and substance of ratios laid down by the Hon'ble Delhi High Court in the case of Pr. CIT vs. Neeraj Jindal (Supra) and The Hon'ble Gujrat High Court in the case of Kirit Dahyabhai Patel vs. Assistant Commissioner of Income Tax (Supra) is that, once there is no difference between the assessed income and returned income as per the return of income filed under section 153A of the Act, then for the purpose of levy of penalty under section 271(1)(c) of the Act, what is to be seen whether any concealment in the return filed by the assessee under section 153A of the Act and not vis-à-vis the original return filed under section 139 of the Act. The Hon'ble Courts further held that once the A.O accepted the revised return filed by the assessee under section 153A of the Act, no occasion arises to refer to the previous return filed under section 139 of the Act. For all the purpose including for the purpose of levy of penalty, the return that has to be looked at is one filed under section 153A (1) of the Act, and any return filed in response to notice under section 153A of the Act shall so far as be treated as such returns where a return is required to be furnished under section 139 of

the Act. Once the A.O accepted the revised return filed under section 153A of the Act, then under reporting of income if any should be considered in light of assessed income and returned income as per section 153A of the Act, and if there is no difference between the assessed income and returned income, the question of under reporting of income does not arise for the purpose of section 270A of the Act.

29. In the present case, going by the facts available on record, we find that the assessee had admitted additional income in the course of search and also filed return of income in response to notice under section 153A of the Act and disclosed additional income offered during the course of search and the same has been accepted by the A.O without any further addition. In other words, there is no difference between the income returned as per the return of income filed in response to notice under section 153A of the Act on 2/11/2021 which was at Rs.67,30,91,940/- and assessed income as per assessment order under section 143(3) r.w.s. 153A of the act dated 31/03/2023, it was at Rs.67,30,91,940/-. Therefore, as per the provisions of section 270A of the Act, the amount of under reported income shall be in a case where income has been assessed for the first time, if return has been furnished, the difference between the amount of income assessed and the amount of income determined u/s 143(1) of the Act. Since there is no provision under the Act to assess or to process the return of income filed in response to notice under section 153A as per the provisions of section 143(1) of the Act and

further once the return of income filed under section 153A of the Act, has been treated as return filed u/s 139(1), in our considered view when when there is no difference between the assessed income and the returned income, the concept of under reporting of income cannot be applied for the purpose of levy of penalty under section 270A of the Act. Therefore, in our considered view, on this ground also, the penalty levied under section 270A of the Act cannot be sustained.

30. In this view of the matter and considering the facts and circumstances of the case and also by considering the ratios of various case laws discussed herein above, we are of the considered view that penalty levied by the A.O under section 270A(9) of the Act is unsustainable in law. Thus, we direct the A.O to delete the penalty under section 270A(9) of the Act for the A.Y 2018-19.

**ITA No 2305/Hyd/2025 A.Y 2019-20**

31. The facts and issues involved in this appeal are identical to the facts and issues, which we had considered in assessee's appeal in ITA No.2304/Hyd/2025 for the A.Y 2018-19. The reasons given by us in preceding paragraph Nos. 16 to 31 of this order shall equally, applies to this appeal as well. Therefore, for similar reasons, we direct the A.O to delete the penalty under section 270A(9) of the Act for the A.Y 2019-20.

32. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 25th February 2026.

| Sd/- | Sd/- |
|---|---|
| **(VIJAY PAL RAO)**<br>**VICE PRESIDENT** | **(MANJUNATHA, G.)**<br>**ACCOUNTANT MEMBER** |

Hyderabad, dated 25th February 2026.

***VBP/sps***

Copy to:

| S.No | Addresses |
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| 3 | Pr. CIT – Central, Hyderabad |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

*By Order*

VADREVU PRASADA RAO

Digitally signed by VADREVU PRASADA RAO
Date: 2026.02.25 13:10:50 +05'30'