

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI
आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
श्री एबी टी. वर्की, न्यायिक सदस्य एवं सुश्री पदमावती यस, लेखक सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3660/Chny/2025
निर्धारण वर्ष /Assessment Year: 2017-18

The Institute of the Franciscan Missionaries of Mary Society No.14 (AOP),
No.1, Nazareth Convent,
St. Mary's Hill, Udthagamandalam,
The Nilgiris – 643 001.
PAN: AAAAT 3435B

The ITO/ACIT (Exemptions),
Coimbatore.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr. Abhishek Murali, C.A
प्रत्यर्थी की ओर से /Respondent by : Dr. M.D.Vijay Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 18.02.2026
घोषणा की तारीख /Date of Pronouncement : 27.02.2026

आदेश / ORDER

PER PADMAVATHY.S, A.M:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi, (in short "CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 (in short "the Act") dated 03.11.2025 for Assessment Year (AY) 2017-18.

2. The assessee is a charitable trust registered u/s.12AA and also got approval for claiming exemption u/s.10(23C)(vi) of the Act. The assessee filed the return of income for AY 2017-18 on 03.10.2017 declaring Nil

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income. The case was selected for scrutiny and the statutory notices duly served on the assessee. The Assessing Officer (AO) called on the assessee to furnish details regarding the donations made during the year. Since the assessee did not furnish any documentary evidences, the AO completed the assessment by disallowing donations to the tune of Rs.2,02,61,364/-. Since the disallowance was adjusted towards accumulation u/s.10(23C), the disallowance did not result in any tax demand. Therefore, the assessee did not prefer further appeal before the CIT(A). Subsequently, the AO initiated penalty proceedings u/s.270A of the Act to levy a penalty @ 200% of the tax payable amounting to Rs.1,18,06,818/-. Aggrieved, the assessee preferred further appeal before the CIT(A). There was a delay in filing the appeal before the CIT(A) and the CIT(A) dismissed the appeal in *limine* without condoning the delay. The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. We heard the parties and perused the material on record. Before us the Ld. AR raised the primary legal contention that the penalty notice u/s.270A does not specify the specific limb under which the penalty proceeding is initiated i.e. under reporting or misreporting. The ld AR in this regard argued that the judicial precedence have been consistently holding that unless the assessee is informed in the penalty notice with regard to the specific limb under which the proceedings are initiated then the penalty notice is *void-ab-initio*. In this regard, we notice that an identical issue has been considered by the Coordinate Bench in the case of St. Joseph's Educational Trust vs DCIT [2025] 175 taxmann.com 284 (Chennai - Trib.) where it is held that –

“13. We have heard both the parties on the legal issue and perused the records. The assessee has assailed the levy of penalty u/s.270A of the Act for AY 2018-19 & 2019-20 [three appeals], inter alia, on the ground that (i) the AO while passing the assessment order has merely referred to initiation of penalty proceedings u/s.270A of the Act without specifying the

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charge/limb u/s.270A of the Act, which he is satisfied in the course of assessment proceedings, the assessee has committed to impose penalty u/s.270A of the Act; and (ii) that the AO continued with the lapse by issuing notice of penalty without specifying the exact nature of fault committed by the assessee u/s.270A of the Act i.e. the SCN issued by the AO against the assessee u/s.274 r.w.s.270A of the Act dated 29.09.2021 [for 'Educational Trust' for AY 2018-19 & in the case of 'Institute of S & T Trust' SCN dated 28.09.2021 for AY 2018-19 and notice dated 28.09.2021 for AY 2019-20] are bad in law since no specific charge/fault has been spelled out in the impugned notices which according to the assessee has vitiated the entire penalty proceedings and therefore, consequent levy of penalty u/s.270A is bad in law. At this juncture, it is important to bear in mind that finding in the assessment proceedings that a particular receipt is income can't automatically be adopted to fasten penalty on the assessee. During penalty proceedings, the AO should not begin with presumption that assessee is at fault, even if the assessee doesn't agitate the addition/disallowance made in assessment order, and remember that neither imposition of penalty is automatic nor it is mandatory, it is the discretion of the AO to levy penalty. According to us, the finding given in the assessment proceedings for determining the tax, is good evidence for the AO to record his satisfaction in the course of assessment proceedings to initiate penalty proceedings against the assessee. But before penalty can be validly imposed, the procedural safeguard u/s.274 of the Act needs to be scrupulously adhered to. Procedural safeguard ensures compliance with the principles of natural justice, giving the notice an opportunity to respond & explain why penalty should not be levied upon him. Therefore, issuing proper/legally valid notice to the assessee as stipulated u/s.274 of the Act is sine qua non for valid imposition of penalty. According to the assessee, when the impugned notice of penalty issued by the AO is vague, [i.e. it doesn't spell out the specific fault for which the assessee has been called upon to defend the proposed penalty viz., 'underreporting of income'/'misreporting of income'] it is bad in law. According to us, an omnibus SCN, betrays application of mind and vitiates the issuance of such penalty notices, because, its purpose of putting the assessee on proper notice is lost. An omnibus SCN obviously confuses the assessee and he will not be able to defend the fault/charge which would be ultimately imposed upon him. Therefore, the Hon'ble Courts have held that if the notices are found to be vague, it has to be held as bad in law. Now let us examine the impugned notice, the AO had issued proposing penalty u/s.270A of the Act which we note to be either for 'underreporting of income' or for 'misreporting of income'. In other words, it doesn't specify which fault the AO is proposing the assessee to defend against levy of penalty. A perusal of the impugned notice (infra) doesn't reveal whether the AO has initiated penalty for under-reporting of income as per sub-section (1) to (7) of section 270A of the Act or misreporting of income as per section (8) to (9) of section 270A of the Act. It is noted that these are distinct faults with different consequences. Therefore, according to us, the AO was duty bound to put the assessee on proper notice as to what charge/fault, the assessee is supposed to defend against the proposed penalty. Instead, when the assessee is put to notice for both the charges/fault as discernable from the impugned notices, the assessee

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couldn't be expected to defend the omnibus faults and resultantly, the assessee would be unfairly treated and the fair hearing guaranteed u/s.274 of the Act would stand defeated. As noted, the assessee won't be able to validly defend the omnibus charges; and absence of proper charge vitiates the penalty notices. In the instant case, the AO could have proposed to levy penalty for 'underreporting of income' which fault falls under sub-sections 1-7 of section 270A of the Act or for misreporting of income and certainly not for levy of penalty for both for the faults. For easy reference, we reproduce the fault/charge against the assessee as given in the impugned SCN for both the years against both the assessees which are similarly worded and one of the same for AY 2018-19 in the lead case of 'Educational Trust' is reproduced as under:

Whereas in the course of proceedings before me for the Assessment Year 2018-19, it appears to me Under-reporting / misreporting of income

You are hereby requested to appear before me either personally or through a duly authorized representative at 11:00 AM on 13/10/2021 and show cause why an order imposing a penalty on you should not be made under section 270A of the Income Tax Act, 1961.

If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 270A of the Income Tax Act, 1961.

14. *In the light of the discussion (supra), we find considerable merit in the legal issue and find that the impugned notices doesn't spell out the specific faults for which the assessee has been called upon to defend against the proposed penalty because both the faults as specified u/s.270A of the Act has been stated therein i.e. 'underreporting of income'/misreporting of income'. Hence, the Ld.AR rightly submitted that since these are two distinct faults specified there under with different consequences, proper notices specifying the charge/fault is a must, to facilitate the assessee to meet the charge alleged against him. Failing which, the assessee would not be able to properly defend an ambiguous charge, which would vitiate assessee's right to a fair hearing guaranteed by the Constitution of India.*

15. *Further to our discussion (supra) section 270A of the Act specifies two charges/faults i.e. (i) is 'underreporting of income' & (ii) is 'underreporting as a consequence of misreporting of income'. Subsections 1-7 of section 270A deals with 'underreporting of income' whereas sub-sections 8-10 deals with 'underreporting as a consequence of misreporting of income'. For underreporting of income, penalty levied u/s.270A of the Act is sum equal to 50% of the amount of tax payable on the 'underreported income' whereas for 'misreporting of income', it shall be equal to 200% of the amount taxable on the 'underreported income'. Therefore, we find that as per the scheme of sec.270A of the Act itself it shows that there are two distinct faults/lapses for*

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which different consequences/penalty is levied. Therefore, the AO was duty bound to put the assessee on notice as to which charge/lapse/fault which is alleged against him, so that assessee can defend it in accordance to law. According to us, the assessee should have been informed in the SCN with certainty and accurately of the exact nature of the fault alleged against it, which is absent in this case. Therefore, SCN proposing penalty are found to be vague and doesn't satisfy the requirement of law and therefore, consequent levy of penalty is fragile in the eyes of law and is held to be ab initio void. Thus, assessee's appeal for AY 2018-19 & AY 2019-20 are allowed i.e. ITA Nos.3293, 3295 & 3296/Chny/2024 and the penalty imposed for these three (3) appeals are directed to be deleted."

4. The Coordinate Bench has laid down the ratio that unless the penalty notice specifies whether the proceedings are initiated for (i) 'underreporting of income' or for (ii) 'underreporting as a consequence of misreporting of income' then the notice is *void-ab-initio*.
5. The penalty notice issued in the present case is extracted below-

 GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT ACIT EXEMPTIONS, COIMBATORE			
To, THE INSTITUTE OF THE FRANCISCAN MISSIONARIES OF MARY SOCIETY NO 14 1 NAZARETH CONVENT, ST.MARY'S HILL UDHAGAMANDALAM THE NILGIRIS 643001, Tamil Nadu			
PAN: AAAAT3435B	Assessment Year: 2017-18	DIN & Notice No.: ITBA/PNL/S/270A/2019- 20/1023511522(1)	Date : 31/12/2019
Notice under section 274 read with section 270A of the Income Tax Act, 1961			
Sir/ Madam,			
Whereas in the course of proceedings before me for the Assessment Year 2017-18 , it appears to me Under-reporting / misreporting of income			
You are hereby requested to appear before me either personally or through a duly authorised representative at 11:00 AM on 03/02/2020 and show cause why an order imposing a penalty on you should not be made under section 270A of the Income Tax Act, 1961.			
If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 270A of the Income Tax Act, 1961.			
MARIMUTHU PRABHAKAR ACIT EXEMPTIONS, COIMBATORE			

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6. From the perusal of the above notice, it is clear that the AO in the penalty notice has not mentioned the specific limb and therefore we are of the considered view that the ratio laid down by the coordinate bench in the above decision is applicable to assessee's case also. Accordingly we hold that the penalty levied u/s.270A is liable to be deleted since the same is consequent to the notice that is *void-ab-initio*.

7. In result, the appeal of the assessee is allowed.

Order pronounced on 27th day of February, 2026 at Chennai.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

Sd/-
(पदमावती यस)
(Padmavathy.S)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 27th February, 2026.

EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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