

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI
SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER
AND
BEFORE SHRI. BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**ITA No. 6862/MUM/2025
(Assessment Year: 2018-19)**

Merlyn Lenin Fernandes A-101, First Floor, Surbhi Co-operative Housing Society LTD, Thakkar Complex, Malad West, Mumbai 400095	Vs.	INT Tax Ward 2(3)(1), Mumbai Room No. 603, 6 th Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra East, Mumbai 400051
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAOPF9220B		
(Appellant)		(Respondent)

निर्धारितीकीओरसे / Assessee by:	Shri. Shezad Sayed CA
/Revenue by:	Shri. Nakul Agrawal Sr. DR (virtually appear)

Date of Hearing	16.02.2026
Date of Pronouncement	06.03.2026

आदेश/ORDER

PER ANIKESH BANERJEE [J.M]:

The instant appeal of the assessee was preferred against the order of the Ld. CIT (A)-56, Mumbai [hereinafter referred to as "Ld. CIT(A)"] order passed u/s. 250 of the Income Tax Act, 1961 [hereinafter referred to as "Act"] order passed for the Assessment Year 2018-19 date of order 29.08.2025. The impugned order emanated from the order of the Assessment Unit Income Tax Department [hereinafter referred to as "Ld. AO"], order passed u/s. 270A of the Act, date of order 29.01.2025.

2. Brief facts of the case is that the assessee's case was framed u/s. 147 r.w.s. 144C of the Act. The assessee had sold an immovable property to Mr Ranjith Das Ramdas Nair for consideration of Rs. 80,00,000/-. The purchaser of the property had deducted TDS of Rs.3,29,600/- and deposited the tax amount through challan. However, the deductor had not filled Form No. 27Q and hence the credit is still not available for claim in Form No. 26AS. The assessee filed the return pursuant to the notice u/s. 148 of the Act by declaring total income of Rs. 13,39,630/- under the head income from capital gain. The assessee claimed total TDS amount to Rs. 3,35,180/-. Only the TDS related to income from other sources was reflected in the Form No. 26AS amount to Rs. 5,580/-. The rest of the TDS amount to Rs. 3,29,600/- was not reflected in the Form No. 26AS. The assessee claimed that the said TDS was duly deducted by the purchaser of the immovable property, but the Form No. 27Q was filed by the said deductor. In assessment the Ld. AO, rejected the TDS claimed by the assessee amount to Rs. 3,29,600/- and the demand was raised. The Ld. AO issued notice u/s. 270A of the Act and the penalty was levied amount to Rs. 1,07,620/-. Being aggrieved assessee filed before Ld. CIT(A) by challenging the impugned penalty order. The Ld. CIT(A) rejected the assessee's appeal. Being aggrieved the assessee filed an appeal before us.

3. The Ld. AR filed a paper book comprising **pages 1 to 61**, which has been taken on record. The Ld. AR submitted that TDS amounting to Rs.3,29,600/- had been duly deposited, and the challan evidencing such payment is placed at **APB pages 56-57**. It was contended that the said challan had also been furnished during the assessment proceedings. However, since the deductor had not filed Form No. 27Q, the corresponding TDS credit was not reflected in Form No. 26AS at the relevant time. It was argued that the lapse was attributable to

the purchaser of the flat, resulting in hardship to the assessee. Subsequently, the purchaser filed Form No. 27Q, and the TDS credit is now duly reflected in Form No. 26AS. Thereafter, the assessee filed a rectification petition before the Ld. AO. Copies of the rectification petition are placed at **APB pages 56 to 61**. It was submitted that upon granting due credit of the said challan, no demand survives against the assessee. Accordingly, it was prayed that the penalty levied under section 270A amounting to Rs.1,07,620/- be deleted.

4. The Ld. DR relied upon the orders of the revenue authorities. However, no contrary material or specific rebuttal was placed on record to controvert the submissions advanced by the Ld. AR.

5. We have heard the rival submissions and perused the material available on record. It is evident that during the assessment proceedings, the assessee had claimed TDS of Rs.3,29,600/- in respect of the sale of immovable property. However, since the challan was not reflected in Form No. 26AS at that time, the Ld. AO rejected the TDS claim without undertaking any independent verification. Subsequently, Form No. 27Q was filed by the purchaser, and the TDS credit is now reflected in Form No. 26AS. The assessee thereafter filed a rectification petition before the Ld. AO, which remains pending with the department. The rectification request, supported by the challan paid by the purchaser, is placed at **APB pages 58 to 61** and was filed on 02.09.2025. Admittedly, the rectification petition was filed after the passing of the impugned penalty order dated 29.01.2025 as well as the impugned appellate order dated 29.08.2025. The assessee has also placed on record the latest Form No. 26AS at **APB pages 52 to 55**, wherein the impugned TDS amount stands duly reflected. The Ld. DR has not raised any objection to the factual

submissions made by the Ld. AR. In view of the above factual matrix, we find that upon granting due credit of TDS amounting to Rs.3,29,600/-, no outstanding demand survives against the assessee. Consequently, the penalty levied under section 270A amounting to Rs.1,07,620/- is unsustainable and uncalled for. Accordingly, we set aside the impugned appellate order and direct deletion of the penalty levied under section 270A amounting to Rs.1,07,620/-.

6. In the result, appeal of the assessee bearing **ITA No. 6862/Mum/2025** is allowed.

Order is pronounced in the open court on 06.03.2026

Sd/-

BIJAYANANDA PRUSETH
(ACCOUNTNAT MEMBER)

Sd/-

ANIKESH BANERJEE
(JUDICIAL MEMBER)

Place: Mumbai

Dated: 06.03.2026

Divya Ramesh Nandgaonkar
Stenographer

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to:

1. **अपीलार्थी / The Appellant**
2. **प्रत्यर्थी / The Respondent.**
3. **आयकरआयुक्त / CIT**
4. **विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरणDR, ITAT, Mumbai**
5. **गार्डफाईल / Guard file.**

सत्यापितप्रति //True Copy//
आदेशानुसार / BY ORDER,

सहायकपंजीकार (Asstt. Registrar)
आयकरअपीलीयअधिकरण / ITAT, Bench,
Mumbai