

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN “DB” BENCH: DEHRADUN**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.240/DDN/2025
[Assessment Year : 2022-23]**

Rajkamal Agnihotri Shivalik View, Lane No.3, Jogiala, Ring Road, Nathanpur, Dehradun Uttarakhand -248005 PAN-AMQPA2608G	vs	ITO Ward-1(1)(3) Dehradun Uttarakhand
APPELLANT		RESPONDENT
Appellant by	Shri K. K. Juneja, Adv.	
Respondent by	Ms. Poonam Sharma, CIT DR	
Date of Hearing	10.03.2026	
Date of Pronouncement	12.03.2026	

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by assessee against the order dated 06.11.2025 by Ld. Commissioner of Income Tax (A), NFAC, Delhi [“Ld. CIT(A)”] in Appeal No. NFAC/2021-22/10408670 passed u/s 250 of the Income Tax Act, 1961[“the Act”] arising out of assessment order dated 14.03.2024 passed u/s 143(3) r.w.s. 144B of the Act pertaining to Assessment Year 2022-23.

2. Brief facts of the case are that assessee is an individual and filed his return of income on 28.07.2022, declaring total income of INR 4,89,260/-. The return was updated on 11.09.2023 u/s 139(8A) of the Act, declaring total income of INR 73,92,200/- and paid the taxes

alongwith the interest thereon. The case of the assessee was selected for scrutiny on the ground that no capital gain was reported in ITR though the assessee has sold the property thereafter, the assessment was completed u/s 143(3)/144B of the Act dated 14.03.2024 wherein income declared in the updated return filed u/s 139(8A) of the Act was accepted however, penalty proceedings u/s 270A(1) r.w.s. 270A(8) and 270A(9)(a) of the Act were initiated. The AO thereafter, proceeded with pending penalty proceedings and imposed the penalty in terms of the order dated 14.03.2024 imposing the penalty of INR 31,58,542/- u/s 270A of the Act.

3. Before us, Ld.AR for the assessee stated that at the time of filing of return inadvertently, the profit from sale of capital assets was left to be included in the total income and when this fact has come to the knowledge of assessee, immediately the return was updated u/s 139(8A) wherein additional income on account of capital gain was offered and due taxes were paid alongwith interest as per law. Ld.AR further submits that assessee had filed updated return much prior of any show cause notice issued by AO though the case of the assessee was taken up for scrutiny by issue of notice u/s 143(2) of the Act on 01.06.2023. Ld.AR submits that AO has imposed the penalty for under reporting of income as a consequence of mis-reporting as per clause (a) of section 270(A9) of the Act however, in the instant case once the updated return is accepted, there is no under reporting or mis-reporting of income on the part of the assessee. Besides this, Ld.AR submits that the notice issued for initiation of penalty proceedings does not specify under which charge

of clause (a) to (f) of sub-section 9 of section 270A the same is initiated. He placed reliance on the judgement of Co-ordinate Bench of Delhi Tribunal in the case of **Greenwoods Govt. Officers Welfare Society in ITA No.609/Del/2023** wherein vide order dated **26.10.2023** it is held that if the income is declared in the revised return and additional tax alongwith interest is paid before the issue of show cause notice, penalty is not leviable u/s 270A of the Act. Further, with respect to the defect in the penalty notice, Ld.AR placed reliance on the judgement of Co-ordinate Bench in the case of **Brij Gopal Construction Co. Pvt. Ltd. vs ACIT [2025] 213 TAXLOK.COM (IT) 565** dated **28.11.2025** and **DCIT vs Ajay Vision Education Pvt. Ltd. [2025] 213 TAXLOK.COM (IT) 400** and **G. R. Infra Projects Ltd. Vs ACIT (Rajasthan High Court)**.

4. On the other hand, Ld. CIT DR for the Revenue vehemently supported the orders of the lower authorities and submits that assessee has filed the updated return only when notice u/s 143(2) of the Act was issued and therefore, it is a clear case of under reporting as a consequence of mis-reporting. Ld. CIT DR further submits that the assessee has filed updated return and claimed the immunity from the levy of penalty however, as per the Third proviso to section 139(8A), no updated return could be filed where the assessment or re-assessment or re-computation or revision of income is pending for the relevant AY, therefore, the claim of the assessee that income has voluntarily been disclosed, cannot be accepted and thus, requested for the confirmation of the penalty levied.

5. Heard the contentions of both parties and perused the material available on record. In the instant case, originally the assessee has filed the return of income wherein the profit from sale of property of INR 68,68,739/- was not disclosed and was declared in the updated return filed on 11.09.2023. The claim of the assessee is that he had voluntarily disclosed the capital gain where the AO alleged that assessee filed updated return only after initiation of assessment proceedings u/s 143(3) of the Act and as such, the updated return so filed cannot be accepted. From the perusal of the assessment order, we find that AO has not doubted the updated return and had completed the assessment by accepting the income declared by the assessee in the revised return filed on 11.09.2023 u/s 139(8A) of the Act. If the AO was of the opinion that such updated return could be filed, he could have made separate addition of the income declared by the assessee in the return of income filed u/s 139(1) of the Act towards the capital gains. This clearly shows that AO has accepted the updated return filed by the assessee as valid return. It is further observed that in the notice issued for initiation of penalty proceedings u/s 270A of the Act dated 14.03.2024, AO has not specified the charge as provided under clause (a) to (f) of sub-section (9) of section 270A of the Act for under reporting of income as a consequence of mis-reporting thereof.

6. The Co-ordinate Bench of ITAT, Mumbai Tribunal in the case of ***Kshitij Interiors (P.) Ltd. Vs DCIT, Mumbai*** dated **21.01.2026** has held that in case where the additional income is offered in the return of income filed after the survey and the same was accepted, no

penalty could be levied u/s 270(A8) of the Act. The relevant observation of the Co-ordinate Bench are as under:-

“Penalty under & 270A-Under-reporting of income-Acceptance of returned income by AO-During the survey under s. 133A assessee declared cash receipts-Same was thereafter offered to tax in the return of income and the assessment was completed by the AO under s. 143(3) by accepting the returned income without any addition-While initiating the penalty proceedings in the assessment order, the AO has not specified as to whether the penalty is initiated for "under-reporting of income" under s. 270A(2) or for "misreporting of income" under s. 270A(9)-This assumes significance because the nature, scope, and rate of penalty under ss. 270A(7) and 270A(8) are materially different, and therefore, the assessee is entitled to know the exact charge it has to meet-Even otherwise, the basic jurisdictional requirement for levy of penalty under 270A(2) is absent, inasmuch as the income assessed is not greater than the income determined in the return processed under s. 143(1)-Thus, the statutory definition of "under-reported income" as contained in ss. 270A(2) and 270A(3) is not satisfied-As regards the allegation of misreporting under s. 270A(9), the return of income for the relevant assessment year was filed after the survey but before completion of assessment, and the income so disclosed was accepted by the AO without any modification-There is no finding that the assessee made any false entry in the books of account, or that the claim of expenditure is not substantiated by evidence, or any other ingredient specified in cls. (a) to (f) of s. 270A(9)-Assumption that, had the survey not taken place, the assessee would not have declared the income cannot substitute the statutory conditions prescribed under s. 270A, particularly when the income has ultimately been offered to tax in the return and accepted in the assessment-Once the amount offered to tax during the survey proceedings is duly incorporated in the return of income filed within the prescribed time and the assessment is completed by accepting the returned income, the foundational element of "under-reporting" itself ceases to exist-Therefore, the penalty levied under s. 270A(8) is unsustainable in law.

7. Further, the Hon’ble Rajasthan High Court in the case of G R Infra Projects Ltd. Vs ACIT (supra) has held that in case the AO has failed to specify the exact limb in the notice, penalty u/s 270A of the Act, is not valid. Similar view has been taken by the Co-ordinate Bench of Tribunal, Delhi Benches in following cases:-

- (i) *DCIT vs Ajay Vision Education Pvt. Ltd. [2025] 213 TAXLOK.COM (IT) 400*
- (ii) *Brij Gopal Construction Co. Pvt. Ltd. vs ACIT [2025] 213 TAXLOK.COM (IT) 565 and*
- (iii) *G. R. Infra Projects Ltd. Vs ACIT (Rajasthan High Court).*

8. In view of the above facts and after considering the overall circumstances of the case, we are of the view that the AO has failed to appreciate the fact that the assessee has offered capital gains in the revised return filed in the form of updated return us 139(8A) of the Act and paid the due taxes and the assessment is completed by accepting the income so declared in the updated return thus the foundational element of under reporting as a consequence of mis reporting of income itself seized to exist and accordingly, no penalty could be levied u/s 270A of the Act on such income. Therefore, the same is hereby, deleted.

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

Order pronounced in the open Court on 12.03.2026.

Sd/-

**(MAHAVIR SINGH)
VICE PRESIDENT**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Date- 12.03.2026

Amit Kumar, Sr.P.S

Copy forwarded to:

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2. Respondent
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Sr.P.S/ASSISTANT REGISTRAR
ITAT, NEW DELHI
(Dehradun Circuit Bench, Dehradun)