

IN THE INCOME TAX APPELLATE TRIBUNAL “DB” BENCH, PATNA
(Through Virtual hearing at Kolkata)

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

ITA No. 40/PAT/2026
Assessment Year: 2020-21

BIJAY KUMAR CHANDGOTHIA ANKIT PHARMA, BENTA ROAD, BALBHADARPUR, LAHERIASARAI H.O, DARBHANGA, DARBHANGA- 846001, BIHAR PAN No. ABZPC8511A	Vs.	ITO WARD-3(1) DARBHANGA DARBHANGA-, BIHAR
APPELLANT		RESPONDENT

Assessee by	:	Shri Naman Nayak, Adv.
Revenue by	:	Shri Ravi Kant Chowdhary, DR

Date of hearing	:	30.06.2026
Date of Pronouncement	:	17.08.2026

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This appeal is filed by the assessee against the orders passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “the Ld. CIT(A)"] dated 28.11.2025, DIN & Order No:

ITBA/NFAC/S/250/2025-26/1083116357(1). The assessee has raised following grounds of appeal:

“1. For that the penalty imposed by the Assessing Officer u/s 270A of the Income Tax Act, 1961 is bad in facts and law.

2. For that on the Facts and Circumstances of the case the Assessing officer (A.O) has failed to appreciate that due to mistake on the part of the Builder Rs.11,99,000 u/s 56(2)(x) of the I.T Act, 1961 was omitted to be included in the original Return of Income filed by the assessee. It was just simply an omission not under reporting of income, the tax on which was deposited on 20.04.2023 coming into knowledge such omission much before the notice u/s 148 of the Act dated 29.03.2024 was issued to the assessee and the income was reported/included in the return furnished u/s 148 of the Act.

3. For that on the Facts and Circumstances of the case the Assessing officer has failed to appreciate the fact that the assessee has uploaded Form No. 68 on the Income Tax website/portal on 06.03.2025 within the statutory time limit of 30 days for availing Immunity u/s 270AA of the I.T Act, 1961 along with their reply of show cause notice u/s 270A of the Act dated 28.02.2025.

4. For that on the Facts and Circumstances of the case the Assessing officer has failed to appreciate that the assessee has fulfilled all the other conditions for availing benefit for Immunity from penalty as provided under the provisions of section 270AA of the I.T Act, 1961.

5. For that on the Facts and Circumstances of the case the Assessing officer has failed to understand that the assessee has filed certified copy of Form No 68 on 13.08.2025 on his instruction.

6. For that on the Facts and Circumstances of the case the Assessing officer has erred in not taking into consideration of the fact that the payment of tax demand amounting to Rs.34,100/- paid on 04.03.2025 within 30 days period, no Appeal filed against the Assessment Order and the addition being under reported income (not mis-reporting) which is a part of substantive law and merely uploaded Form No.68 on Income- Tax website/portal on 06.03.2025 along with reply of show cause Notice u/s 270A of the Act on dated 28.02.2025 is only a technical or venial breach of procedural law.

7. For that on the Facts and Circumstances of the case the Penalty u/s 270A of the I.T Act, 1961 amounting to Rs.1,87,044 for under reported income in the hands of the assessee is unjustified and illegal since the same is on the basis of merely uploaded Form No.68 on Income-tax website/portal along with the reply of show cause Notice u/s 270A of the Act which is only a technical or venial breach of procedural law without any malafide intention.

8. For that the appellant craves leave to add, alter, modify, vary, delete any ground of appeal before or at the time of hearing, if necessary.”

2. Briefly stated the facts of the case are that the assessee filed return of income u/s 139 of the Act declaring income of Rs. 14,98,960/-. Later on, notice u/s 148 of the Act was issued to the assessee, the assessee in response to notice dated 29.03.2024 u/s 148 of the Act filed return of income declaring additional income of Rs. 11,99,000/-. Accordingly, penalty proceeding u/s 270A r.w.s. 274 of the Act was initiated on 28.02.2025 for under reporting of income. In this regard, notice was issued to the assessee and assessee furnished reply from the submission, it was noticed that in response to notice u/s 148 of the Act, the assessee declared income of Rs. 26,97,960/- and offered additional income u/s 56(2)(x) of the Act at Rs. 11,99,000/- and submitted that it was only mistake on the part of builder and omitted to include Rs. 11,99,000/- in the original return of income, the assessee paid tax when he came to knowledge of such omission on 20.04.2023 before initiation of proceeding u/s 147/148 of the Act. Accordingly, there is no mens rea of any tax evasion and Form No. 68 was filed on 13.08.2025 which is beyond approximately 4.5 months the statutory deadline the AO noted that the Form 68 was filed belatedly and immunity u/s 270AA of the Act cannot be granted to the assessee, filing of Form No. 68 within the time is mandatory requirement and section 270AA do not provide for condonation of delay in filing Form 68. Accordingly, he computed penalty u/s 270A of the Act of Rs. 17,044/-.

3. Aggrieved from the above order, the assessee filed appeal before the ITAT.

4. The Ld. Counsel reiterated the submissions made before the lower authorities and submitted that the Form No. 68 was filed on 13.08.2025, however, the entire tax was paid on 04.03.2025 within 30 days of the demand notice issued by the AO and there is no appeal filed by the assessee, therefore, only filing of Form No. 68 is procedural in nature and assessee is eligible for immunity as per section 270AA of the Act since, tax and interest were paid it means i.e. entire dues to the return were paid by the assessee and before initiation of proceeding u/s 147/148, the assessee offered as income and paid tax therefore, there was no mens rea for evasion of tax.

5. On the other hand, the Ld. DR relied on the order of lower authorities.

6. Considering the rival submissions, we noted that the AO has imposed penalty u/s 270AA of the Act for under reporting of income u/s 56(2)(x) at Rs. 11,99,000/- on which the assessee paid entire tax on 04.03.2025 after passing of order u/s 147/148 of the Act within the stipulated time of 30 days and Form 68 was uploaded on 13.08.2025 which is beyond the stipulated time as per section 270AA. A similar view has been decided by the co-ordinate Bench of the ITAT, Jodhpur Bench in the case of Punam Kanwar Bhati Vs. ITO in ITA No. 454/Jod/2023

dated 21.03.2024 reported in (2024) 165 taxmann.com 286 (Jodhpur-Trib). We are reproducing relevant part of the order:

“8. We have heard the rival contentions and perused material available on record. The Bench noted that the ld. AO in the original assessment proceedings made disallowances of 40A(3) of the Act, amount of Rs.28,388/- and Rs. 26,811/- on account of interest income in the other sources and has also disallowed the claim of the assessee u/s 32 of the Act disputing the period use of the asset of the assessee for an amount of Rs. 1,00,000/-. Therefore, we find force in the arguments of the ld. AR of the assessee that the additions/disallowance made by the Assessing Officer are not in the nature of misreporting of the income of the assessee to drive home to this contention, the ld. AR of the assessee relied upon the decision of the jurisdictional high court in the case of G. R. Infraprojects Ltd. Vs. ACIT 336 CTR 249 wherein the jurisdiction high court held that the case of levy penalty without specifying the limb of under reported or misreported the income the levy of penalty is not correct. Here in this case the claim of assessee denied though assessee did not challenge it on merits. The bench noted that the ld. CIT(A) has treated assessment and penalty proceedings at par. While it is settled lat that penalty proceeding are different from assessment proceeding and that mere addition in assessment could not automatically lead to concealment. Further addition made in assessment is not conclusive in the penalty proceeding in which the assessee is free to place further material to substantiate the claim that there was no concealment. Merely non-filing of appeal by the assessee against addition made in assessment cannot be a ground to conclude that assessee accepted the concealment. Further addition made in assessment is not conclusive in the penalty proceeding in which the assessee is free to place further material to substantiate the claim that there was no concealment. Merely non-filing of appeal by the assessee against addition made in assessment cannot be a ground to conclude that assessee accepted the concealment. The ld. AR of the relied on the decision of Earth Castle vs. DCIT ITA No. 3064/Mumbai/2008 dated 17.06.2011 and decision of Hon'ble SC in the case Anantharam Veerasingaiah & Co. 123 ITR 457. Therefore in these facts the CIT Appeal has wrongly upheld the penalty imposed by the Assessing Officer. It is further submitted that the provisions of Income Tax Act as provided in section 270AA of the Act provides for immunity from imposition of penalty for underreporting of income if assessee has deposited the demand created by the Assessing Officer within 30 days from receipt of demand notice and intimated to him under rule 129 in Form No. 68. In this case assessee duly deposited the demand created against her within 30 days but she failed to file Form No. 68 within the prescribed time before the Assessing Officer but while responding to the penalty proceeding subsequently the assessee filed Form No. 68 before the Assessing Officer but he did not consider it. The CIT(Appeal) has also did not consider the filing of Form No. 68 belatedly. The delay in filing the Form is only a procedural lapse on the part of the assessee not the substantive failure. In substance the assessee deposited the demand within 30 days, which is the part of substantive law and merely filing the Form No. 68 is only a technical or venial breach of procedural law. Therefore benefit of substantive law is required to be given to the assessee. In substance the assessee deposited the demand within 30 days, which is the part of substantive law and merely filing the Form No. 68 is only a technical or venial breach of procedural law. Therefore benefit of substantive law is required to

be given to the assessee. The CIT(Appeal) has also not considered this aspect. The Assessing Officer further levied penalty @200% on account of misreporting of income on depreciation of fixed assets claimed by the assessee for full year as against half year since the asset was put to use for less than 180 days during the year. The assessee due to inadvertence claimed the depreciation for full year this is certainly not the misreporting of income. The misreporting of income is something in which mensrea on the part of assessee is required to be present. The willful default constitutes misreporting of income which is not the case. The assessee has made inadvertent wrong claim but has disclosed the facts fully and truly therefore old law in this regard hold good and the penalty imposition is not warranted. Please refer to CIT vs. Reliance Petrol Products Private Limited (2010) 322 ITR 15 Dilip Shroff 291 ITR 519(SC). Considering the fact that the nature of addition/disallowance are not in the nature of misreporting or misreporting income of the assessee and the assessee has paid the demand within 30 days and filed the required form no. 68 since that form being procedural nature we condone that aspect of the matter and direct the ld. AO to delete the penalty levied u/s. 270A of the Act. In terms of these observations, the appeal of the assessee is allowed.

7. On going through the above observation of the co-ordinate Bench of the Tribunal, it has been held that filing of Form No. 68 is procedural in nature. Accordingly, respectfully following the above judgment, we are allowing the appeal of the assessee.

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

Order pronounced on 17.08.2026.

Sd/-
(Yogesh Kumar US)
(Judicial Member)

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Dated: 17.08.2026
AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Deputy Registrar, Kolkata Benches