

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**

[Virtual Court]

Before

**SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 338/PAT/2025
Assessment Year: 2018-19**

Sangam Almirah Private Limited	Vs.	NFAC, Delhi
(Appellant)		(Respondent)
PAN: AAYCS4686B		

Appearances:

Assessee represented by : Sanjeev Kr. Anwar, Adv.

Department represented by : Ashwani Kumar, Sr. DR.

Date of concluding the hearing : 22-September-2025

Date of pronouncing the order : 27-October-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19 dated 10.06.2025, which has been passed against the penalty order u/s 270A of the Act, dated 10.02.2022.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

"1. For that the orders of the authorities below are bad in law and fact.

2. For that the learned CIT(A) is not justified in not adjudicating the specific grounds taken with regard to limitation of penalty proceeding and the

mandatory affording of opportunity of hearing as per provision of section 270AA (4) of the I.T. Act.

3. For that the penalty order nowhere specify as to how the addition can be considered as 'Misreporting' u/s 270A (9) and falls under which particular limb of the sub-section.

4. For that it is a matter on record that the appellant themselves brought the fact of incorrect claim of expenditure in P&L A/c and as such should have been at the most considered 'Under reporting' and not 'Misreporting'.

5. For that since the addition should have been considered 'Under reporting' and therefore immunity u/s 270AA should have been allowed.

6. For that the learned CIT (A) has incorrectly observed that the appellant is making a story to cover up the failure to submit the requisite documentary evidence. The disallowance was suo-moto accepted by the appellant and as such the observation of learned CIT(A) is without any basis.

7. For that other grounds, if any, will be urged at the time of hearing.”

3. Brief facts of the case are that the assessee had filed the return of income showing total income of ₹18,95,910/- and the assessment was made on the total income of ₹22,76,000/- i.e. after making an addition of ₹3,80,091/- for amounts related to the proprietorship but which was debited to the company's account and therefore, was disallowed and added as the company had started its business from 01/07/2017 only. Therefore, the expenditure debited for the period 01/04/2017 to 30/06/2017 amounting to ₹ 3,80,091/- was held to be belonging to the proprietorship business but was debited in the account of the company and was disallowed. Penalty proceeding was also initiated and the order under section 270A was passed on 10/02/2022 treating the sum of ₹3,80,091/- as misreporting of income. In the penalty order, the Ld. AO has mentioned that in view of the provision of section 270AA(3), the assessee's case was not eligible for grant of immunity and the penalty proceeding was finalised on the basis of information available on record. In para 5 of the penalty order, the Ld. AO has only mentioned that he

is of the considered opinion that the assessee had underreported the income due to misreporting for the A.Y. 2018-19 of ₹3,80,091/- and hence committed default within the meaning of provision of section 270A(9) of the Act and as such it was a fit case to levy penalty under section 270A(9) being @ 200% of the tax payable on the income underreported due to misreporting, which amounted to ₹1,95,048/-. Aggrieved with the penalty order, the assessee filed an appeal before the Ld. CIT(A) who went through the facts of the case, the grounds of appeal, reproduced the submission of the assessee and dismissed the appeal by observing as under:

“5.1. On going through the submission of the assessee it can be seen that during the assessment proceedings the assessee company had started its business on 01.07.2017 i.e. prior to 01.07.2017, the business was under the proprietorship of Smt. Alpana Kumari. It was further seen that the assessee had debited a sum of Rs.9,23,314/- towards Provident Fund, EPS and ESI. The expenditure debited was for the period 01.04.2017 to 31.03.2018. As the assessee-company had started its business from 01.07.2017 the expenditure debited for the period 01.04.2017 to 30.06.2017 amounting to Rs.3,80,091/- (i.e. Rs.2,32,236/- towards PF and Rs.1,47,855/- towards ESI) belonging to the proprietorship is charged to the company. In view of this fact, the AO had disallowed the aforesaid amount of Rs.3.80.001/- for the year under consideration and added it to the total income of the assessee-company,

5.2. Further, during the appellate proceedings the assessee in its submission has stated that as per the penalty order, the assessee has under reported its income which is consequential to misreporting of his Income, but does not specify the limb of section 270A(9), under which the disallowance falls. However, on going through the submission of the assessee, it can be seen that the assessee stated that they themselves detected that the PF and ESI for the period of business i.e. 01.04.2017 to 30.06.2017 was by mistake debited to P & L account of the company. However, the same was being brought to the notice of the Ld. AO. It can be seen that the onus of submitting documentary evidences and declaring correct and true total income for the year under consideration lies upon the assessee and not the accountant or any other staff member of the company. The assessee during the course of appellate proceedings failed to submit the documentary evidences in respect of the PF and ESI debited to the correct P & L account which would have proven the genuineness of the transaction held which the assessee failed to do so. It was the duty of the

assessee to look after the books of accounts are filed correctly or not which the assessee failed to do so. If the scrutiny proceedings would not have been taken into consideration, the transaction regarding misreporting of PF, ESI and ESP would have been left out.

5.3. Therefore, it can be seen that the company is only making a story to cover up the inability to and failure to submit the requisite documentary evidences alongwith genuineness of the same. In view of this fact, I do not find any excuse to take a divergent view from the findings of the AO. Therefore, the penalty levied u/s.270A(8) of the Act for the year under consideration amounting to Rs. 1,95,748/- is hereby confirmed.

5.4. In view of the facts discussed above, the contentions of the appellant are rejected and the action of the AO levying penalty of Rs. 1,95,748/- u/s 270A of the Act is hereby confirmed. Accordingly Ground Nos.1 to 6 raised by the appellant are hereby dismissed.

6. In a result the appeal is dismissed.”

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival submissions were heard and the record and the submissions made have been examined. It was submitted by the Ld. AR before us that the only addition was on account of EPF which was accepted by the assessee as it did not file the appeal and the assessee had requested for immunity under section 270AA of the Act. The penalty proceeding was initiated on 29/12/2020 and the application for immunity was filed on Form No. 68 on 22/01/2021, the order for which was to be passed within a month from the end of the month in which the application was received by the Ld. AO i.e. by 28.02.2021; but the penalty order was passed much later on 10.02.2022 and no separate order for the application for immunity was passed. It was submitted that the penalty order was invalid and illegal on various grounds. It was submitted that the Ld. AO had not given any opportunity before rejecting the application for immunity filed under section 270AA, as is required by the proviso to sub-section (4) of section 270AA of the Act. The Ld. AO

has not specified as to how it was a case of misreporting as none of the limbs of sub-section (9) of section 270A have been specifically mentioned either in the penalty order or in the assessment order. The Ld. AR relied upon the order of the coordinate Bench and the order of the Hon'ble High Court of Delhi reported as **Schneider Electric South East Asia (HQ) Pte Ltd. v. ACIT(IT) (2022) 443 ITR 186 (Del)**, which was not examined by the Ld. CIT(A). As regards the merits of the case, as the assessee had accepted the income, which related to earlier year, it was not a case of misreporting. The Ld. DR, on the other hand stated that it was a case of misreporting and relied upon the order of the Ld. CIT(A).

6. We have considered the rival submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The provisions of section 270AA are reproduced as under:

“270AA. (1) An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, if he fulfils the following conditions, namely:—

(a) the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of section 143 or section 147, as the case may be, has been paid within the period specified in such notice of demand; and

(b) no appeal against the order referred to in clause (a) has been filed.

(2) An application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in clause (a) of sub-section (1) has been received and shall be made in such form and verified in such manner as may be prescribed.

(3) The Assessing Officer shall, subject to fulfilment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, where the proceedings

for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A.

(4) The Assessing Officer shall, within a period of one month from the end of the month in which the application under sub-section (1) is received, pass an order accepting or rejecting such application:

Provided that no order rejecting the application shall be passed unless the assessee has been given an opportunity of being heard.

(5) The order made under sub-section (4) shall be final.

(6) No appeal under section 246 or section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment, referred to in clause (a) of sub-section (1), in a case where an order under sub-section (4) has been made accepting the application.”

7. Since the assessee had filed the application u/s 270AA seeking immunity from imposition of penalty within time, it was incumbent upon the Ld. AO to pass an order within one month from the end of the month in which the application seeking immunity was filed, which has not been done in this case. Further, neither in the assessment/penalty order nor even in the appeal order of the Ld. CIT(A) has it been specified as to under which clause of sub-section (9) the assessee's case was falling so as to treat it as misreporting of income referred to in sub-section (8) of section 270AA. Since the assessee had substantively complied with the provision of section 270AA by not contesting the order and had paid the tax and interest payable and no appeal against the order referred to in clause (a) of sub-section (1) of section 270AA was filed, therefore, the immunity from imposition of penalty under section 270A ought to have been granted by the Ld. AO as on facts, the penalty was not imposable as it was a case of under reporting of income and not a case of the underreported income being in consequence of any misreporting thereof. This being so, therefore, relying upon the decision in the case of **Schneider Electric South East Asia (HQ) Pte Ltd.**



(supra) and the Ld. DR not being able to rebut the submission of the assessee by pointing out any counter argument, we are inclined to allow the appeal of the assessee. Accordingly, the penalty imposed is hereby cancelled and the appeal of the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 27th October, 2025.

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 27.10.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Sangam Almirah Private Limited, Patahi Rup, Pathani, Muzaffarpur, Bihar, 843113.**
2. **NFAC, Delhi.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

//True copy //

By order
Assistant Registrar
ITAT, Kolkata Benches
Kolkata