

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.2209/Mum/2025
(Assessment Year :2017-18)**

ACIT-4(2)(1) Mumbai	Vs.	Glorishine Impex Pvt. Ltd., Office No.33, Shrinaman Plaza Behind Shoppers Stop Kandivali West Mumbai- 400 067
PAN/GIR No.AABCG7050N		
(Appellant)	..	(Respondent)

Assessee by	Shri Jaideep Jain (Virtually present)
Revenue by	Shri Swapnil Choudhary, sr. DR
Date of Hearing	03/11/2025
Date of Pronouncement	14/11/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The present appeal has been filed by the Revenue against the order dated 29 January 2025 passed by the National Faceless Appeal Centre, Delhi, whereby the first appellate authority has deleted the penalty imposed under section 270A of the Income Tax Act, 1961, for the Assessment Year 2017 18. The sole grievance of the Revenue is against the deletion of penalty of Rs.14,09,72,577 imposed by the

Assessing Officer on the footing that the assessee had under reported its income.

2. Briefly stated, the assessee company is engaged in the business of trading in commodities. For the year under consideration it filed its return of income on 28 October 2017 declaring a loss of Rs.79,20,80,085. In the course of assessment proceedings, the Assessing Officer noticed that the assessee had debited to its profit and loss account a sum of Rs.79,40,12,784 on account of “claims and settlement”. The assessee had entered into forward contracts with M/s Ruchi Soya Industries Ltd and other entities for the sale of palmolein and other commodities. The assessee treated the resultant loss on settlement of such contracts as a normal business loss and claimed it as such in its return.

3. The Assessing Officer examined the nature of these transactions and, being of the view that there was no actual delivery or transfer of goods, held that the contracts were in the nature of speculative transactions within the meaning of section 43(5). He therefore re characterised the said loss of Rs.79,40,12,784 as speculation loss. On such re classification, he computed the business income of the assessee at Rs.19,32,699, allowed set off of brought forward business loss under section 72 against the said income, and allowed the impugned amount to be carried forward as speculation loss. The total income was thus ultimately assessed at Nil. The assessment order itself records that the loss has only been placed under a different head without any

disallowance of the quantum of loss or any alteration of the primary figures disclosed by the assessee.

4. It is an undisputed position on record that the return of income was processed under section 143(1)(a) by determining the loss at Rs.79,20,80,085 as declared by the assessee and that, even after the assessment under section 143(3), the tax liability of the assessee for the relevant year remained at Nil. The variation brought about by the Assessing Officer was confined exclusively to the character of the loss, from non speculative business loss to speculation loss, with a consequential impact only on the manner and year of set off, but with no incremental tax incidence for the assessment year in appeal.

5. Notwithstanding the above, the Assessing Officer initiated penalty proceedings under section 270A and, in the penalty order, proceeded on the premise that the assessee had under reported its income to the extent of Rs.79,40,12,784. He treated the entire re characterised loss as “under reported income” and levied penalty at the rate of fifty per cent of such amount, computing the penalty at Rs.14,09,72,577. According to him, since the loss claimed by the assessee as non speculative business loss had been treated as speculative loss in the assessment, the assessee had under reported its income within the sweep of section 270A.

6. In appeal, the National Faceless Appeal Centre, upon an elaborate consideration of the facts and the scheme of section

270A, held that the penalty was misconceived. It was observed that the assessee had made a full and true disclosure of all primary facts in its return as well as in the course of assessment. The entire loss was recorded, explained, and accepted. The sole dispute was as to whether such loss was to be treated as business loss or speculation loss. The appellate authority, therefore, held that a mere change of head or character of a disclosed claim, in the absence of any finding of falsity, suppression, or misrepresentation, cannot be equated with “under reporting of income” so as to attract the rigour of section 270A, and that in any event the assessee’s explanation was bona fide and fell within the protective ambit of sub section (6). The penalty was accordingly deleted.

7. We have carefully considered the impugned penalty order, the reasoning of the first appellate authority, and the submissions of the learned representatives. The controversy is a narrow though important one. The question is whether, on the admitted facts that there has been no variation in the tax liability for the year and that the quantum of loss has been accepted in its entirety, a mere re classification of such loss from non speculative to speculative can, by itself, be brought within the four corners of “under reporting of income” as legislatively defined in section 270A. The answer to this question lies in a close reading of the statutory scheme.

8. Section 270A is a self contained code that for the first time segregates “under reporting” and “misreporting” of

income and provides a structured, objective regime of penalty. Sub section (1) authorises imposition of penalty where the Assessing Officer, Commissioner (Appeals) or Principal Commissioner or Commissioner, in the course of proceedings, finds that any person has under reported his income. Sub section (2) then proceeds to define, in an exhaustive and carefully calibrated manner, the circumstances in which a person shall be considered to have under reported his income. The provision reads as under:

“A person shall be considered to have under reported his income if

(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub section (1) of section 143;

(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 148;

(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub section (1) of section 143;

(e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 148;

(f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;

(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.”

9. The architecture of sub section (2) makes it abundantly clear that the Legislature has not left it to subjective surmises or broad notions of “error” or “difference of opinion”. A person is considered to have under reported his income only if his case falls within one of the specifically enumerated situations. Clauses (a) to (f) deal with a situation where the income assessed or reassessed is greater than the income determined in the return processed or, in a no return situation, greater than the basic exemption limit. Clause (g) deals with a situation where, even though the final figure may still be a loss, the assessment or reassessment has the effect of reducing the loss or converting a loss into positive income.

10. In the present case, it is common ground that for the year under consideration the tax liability determined upon processing the return under section 143(1)(a) and the tax liability determined upon completion of assessment under section 143(3) are both Nil. There is no enhancement of income in absolute terms so far as chargeable income and tax liability for the year are concerned. The Assessing Officer has accepted the entire loss arising from settlement of forward contracts. He has neither disputed the genuineness of the underlying transactions nor doubted the source, quantum or booking of such loss in the books of account. He has not alleged any suppression of sales or inflation of purchases or fabrication of claims. The only change brought about is that, in his opinion, the loss partakes of the character of speculation loss by reason of the absence of actual delivery.

11. It is true that, viewed in a narrow arithmetical sense, the returned figure of loss and the finally assessed figure do not coincide, since, by virtue of the assessment, the business income has been computed at Rs.19,32,699 and set off against brought forward loss, resulting in total income of Nil. However, the scheme of section 270A does not treat every variation of a computational figure as under reporting. The phrase in clause (a), “the income assessed is greater than the income determined in the return processed”, contemplates a situation where the assessment has in substance brought to charge an amount of income which was not so brought to charge on the basis of the return as processed. Similarly, clause (g) addresses a situation where, by reason of disallowance or adjustment, the loss shown by the assessee is reduced or turned into positive income in a manner that alters the tax base.

12. On the peculiar facts before us, the primary loss of Rs.79,40,12,784 has been accepted in toto. The Department has not collected any additional tax for the year on account of the assessment. All that has happened is a taxonomical rearrangement within the computation, whereby what the assessee claimed as non speculative business loss has, in the Assessing Officer’s perception, been refashioned as speculation loss eligible for carry forward and set off in accordance with the provisions applicable to such loss. Thus, while there may be an impact on the future set off profile of the assessee, there is no under reporting of income for the year in the sense in which the statute understands and

employs that expression. The assessment order itself emanates that the assessee's full disclosure remains untouched and that the variation is confined to the sub head and characterisation of loss.

13. Penalty under section 270A is civil in character but nonetheless penal in consequence. It visits the assessee with a substantial monetary impost. It therefore presupposes, at the threshold, the clear existence of under reported income as legislatively defined. To convert a mere change of opinion on the head under which a disclosed and accepted loss is to be classified into "under reporting of income" would be to stretch the provision beyond its text and its discernible object. Such an approach would impermissibly convert a debatable characterisation issue into a penal trigger, which is foreign to the carefully drafted contours of section 270A.

14. Even assuming for a moment, merely for the sake of argument, that the case could be forced into clause (g) on the theory that the business loss as returned stands "reduced" by assessment, the assessee would still stand exonerated by virtue of sub section (6) of section 270A. That sub section carves out from the sweep of "under reported income" cases where the assessee has offered an explanation which is bona fide and where he has disclosed all material facts to substantiate the computation of income in the return. In the present case, the assessee has candidly disclosed the entire claim and settlement loss, furnished particulars of the forward contracts, and explained its stand that the loss arose in the ordinary course of its trading activity. The Department

has not unearthed any contrary material. The dispute is confined to whether these transactions fall on one side or the other of the statutory line dividing business transactions from speculative transactions. Where complete disclosure has been made and the issue is essentially one of legal characterisation of an admitted claim, the assessee's explanation cannot but be regarded as bona fide and well within the zone of protection created by sub section (6).

15. We therefore concur with the National Faceless Appeal Centre that, on the facts of this case, there is neither any foundational under reported income as required by sub section (2) nor any culpable conduct on the part of the assessee which could justify the invocation of the penal machinery of section 270A. Penalty cannot be the consequence of a mere semantic shift or of a purely classificatory exercise at the hands of the Assessing Officer. Where the assessee has laid all cards on the table and the Revenue has merely rearranged them under a different label without establishing any falsity or suppression, the rigorous and quantified penalty envisaged by section 270A has no application.

16. In the light of the foregoing discussion, we find no infirmity in the order of the National Faceless Appeal Centre deleting the penalty imposed under section 270A. The impugned order is thus upheld and the grounds raised by the Revenue are dismissed.

17. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 14th November, 2025.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai; Dated 14/11/2025
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai