



**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
&  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

<b>ITA No.: 2468/Bang/2025</b>
<b>Assessment Year : 2022-2023</b>

Renil E K Kumar C/o Fiscal Law Partners, Advocates, #32/2, 18 <sup>th</sup> Cross, Sadashivanagar, Bengaluru, Karnataka 560080 <b>PAN: AODPK1208F</b>	<b>Vs.</b>	Deputy Commissioner of Income Tax, Circle – 3(3)(1), Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Sri. Hemant Pai and Ms. Smrithi Athreya, Advocates
Revenue by	:	Sri. Subramanian – JCIT DR

Date of Hearing	:	24-02-2026
Date of Pronouncement	:	12-05-2026

**ORDER**

**PER KESHAV DUBEY, JUDICIAL MEMBER**

This appeal at the instance of the assessee is directed against the order of learned CIT(Appeals)/NFAC dated 27.08.2025 vide DIN and Order No. ITBA/NFAC/S/250/2025-26/1080058809(1) passed under Section 250 of the Income Tax Act, 1961 (in short “the Act”) for the AY 2022-23.

**2.** The assessee has raised the following grounds of appeal:-

1. *The order passed by the learned Commissioner of Income Tax (Appeals), NFAC ("CIT(A)"), under Section 250 of the Income Tax Act, 1961 ("the Act"), insofar as it is against the Appellant, is opposed to law, weight of evidence, natural justice and probabilities on the facts and circumstances of the Appellant's case.*
2. *The penalty show cause notice issued under Section 270A of the Act is non est and bad in law on the facts and circumstances of the case.*
3. *The purported approval granted by the Additional/Joint Commissioner of Income Tax for passing the impugned penalty order under Section 270A of the Act is non est and bad in law on the facts and circumstances of the case.*
4. *The penalty order passed under Section 270A is non est and bad in law on the facts and circumstances of the case.*
5. *The appropriate procedure necessary for passing the impugned penalty order was not followed and consequently, the impugned order is vitiated on the facts and circumstances of the case.*
6. *The Appellant denies himself liable to a penalty of Rs. 51,20,500/- under Section 270A of the Act on the facts and circumstances of the case.*
7. *The Assessing Officer erred in law in not recording proper satisfaction for levy of penalty under Section 270A of the Act on the facts and circumstances of the case.*
8. *The Assessing officer erred in law and facts in holding that the Appellant has under reported income by suppressing facts within the meaning of section 270A(9)(a) of the Act on the facts and circumstances of the case.*

9. *The authorities below failed to appreciate that the present case is not a fit case for levy of penalty under Section 270A of the Act on facts and circumstances of the case.*

**3.** Brief facts of the case are that during the year under consideration, the assessee was employed at Wipro Limited and filed his return of income for the AY 2022-23 on 30.12.2022 by declaring total income of Rs. 84,27,981/- after claiming an exemption of Rs. 82,05,931/- under Section 10(10CC) of the Act with regard to ESOPs issued to the assessee (non-monetary perquisites). During the course of assessment proceedings, Rs. 82,05,931/- claimed as exempted under Section 10(10CC) of the Act was denied and added back to the total income of the assessee. Accordingly, an order under Section 143(3) of the Act dated **19.03.2024** was passed determining the total Assessed income of Rs. 1,66,33,912/-. The AO before the completion of assessment proceedings also initiated the penalty proceedings under Section 270A of the Act **for under-reporting the income as a consequence of misreporting.**

**3.1** Thereafter, the AO issued a show cause notice under Section 274 read with Section 270A of the Act on the same day i.e. on 19.03.2024 stating that during the course of proceedings for the AY 2022-23, it appears that the assessee has **under reported income** and directed the assessee to show cause as to why an order imposing penalty under Section 270A of the Act should not be passed. The assessee filed his responses on 16/04/2024 & on 22/04/2024 (placed at 78-79 of PB) stating that as a true citizen, he had no intention to misrepresent or avoid any information pertaining to his income and not to pay tax thereon. Further, the assessee submitted that having come to know that he is not eligible to receive the refund, he immediately undertake to remit back the same to the Department shortly and humbly requested not to initiate penalty proceedings on the same. The AO thereafter on 25.04.2024, issued another show cause notice under Section 270A of the Act by alleging that the assessee had not submitted any reply till date and by referring to earlier notice requested to submit the reply/response by

13/05/2024. Thereafter, a virtual hearing was scheduled vide notice dated 08/08/2024, which was attended on 20/08/2024 followed by further submissions on 04/09/2024. During the course of penalty proceedings, the assessee admitted to have received ESOP from his employer viz. Wipro Limited towards allotment of shares to the tune of Rs. 95,11,595/- & claimed exemption u/s 10(10CC) of the Act on the basis of Form 16 issued by his employer wherein the said amount of Rs.82,05,931/- was stated to be exempt u/s 10 of the Act & no tax was deducted at source. It was also submitted that due to assessee's limited knowledge in taxation matters, complete reliance was placed upon the Form No.16 issued by the employer and the assessee in good faith & under an honest & bonafide belief claimed the exemption of Rs.82,05,931/- u/s 10(10CC) of the Act while filing the return of Income and accordingly, the assessee had declared total income of Rs. 84,27,981/- & claimed refund of Rs. 28,69,290/-. The assessee was also granted refund of Rs. 29,98,410/- at the time of passing of intimation under Section 143(1) of the Act. The assessee further contended that after passing of the assessment order on 19.03.2024, the assessee returned back the refund amount of Rs. 29,98,410/- to the Income Tax Department vide challan No. 09647 dated 10.05.2024 through HDFC Bank & did not preferred any appeal against the said assessment order. Lastly, the assessee contended that had he knew that he was not eligible to receive the refund on the tax paid by the employer; he would not have claimed the same.

**3.2** The AO however was of the opinion that the assessee did not disclose the true amount of income voluntarily and also could not furnished any reasonable cause of the same. Further, the assessee had also failed to furnish the documentary evidence that his employer had paid the tax on the perquisites on behalf of the assessee. Thus, the assessee had wrongly claimed the exempted income to the tune of Rs.82,05,931/- u/s 10(10CC) of the Act. Further, had the case not been selected for scrutiny, the income taxable to the extent of Rs. 82,05,931/- would not have been taxed in the hands of the assessee resulting into leakage of revenue for National

Exchequer. The AO was satisfied that penalty should be levied because of the following:-

(i) Assessee mis-reported the perquisites to the tune of Rs.96,16,111/- and claimed deduction u/s 10(10CC) of the Income Tax Act, 1961 to the tune of Rs. 8205931/-. The AO disallowed the exemption claimed of Rs. 82,05,931/- u/s10(10CC) of the Income Tax Act, 1961 by the assessee and added to the total income of the assessee. Further, assessee's justification that mistake was committed due to lack of knowledge is not logical. Assessee is working as vice president in Wipro and well versed with the things. Assessee intentionally mis reported the facts to evade taxes.

(ii) Assessee did not disclose true amount of income voluntarily. Further had the case not been selected for scrutiny, the income taxable to the extent of Rs. 82,05,931/- would not have been taxed in the hands of the assessee resulting into leakage of revenue for national exchequer. The assessee took chance with the department. Had the revenue not detected the under-reporting of income and misreporting of income of the assessee, the assessee could have enjoyed the fruits of filing under-reporting of income and would have caused loss to the revenue.

(iii) Not levying penalty would lead to injustice for other honest tax payers. There is also possibility repetition of offence by the assessee in case, penalty is not levied.

(iv) The assessee has not preferred an appeal against the assessment order u/s 143(3) i.e. the assessee has accepted its mis-reporting of income.

(v) Mens rea –bad intention is not prerequisite for levy of penalty and ignorance of provisions of law is not an excuse.

Further, the AO was of the opinion that as per the provisions of Section **270A(2)(a)** of the Act, a person shall be considered to have **misreported his**

**income** if “claim of expenditure not substantiated by any evidence, misrepresentation or suppression of facts, recording of any false entry in the books of account, failure to record any receipt in books of account having a bearing on total income and failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.” Thus, the AO held that the assessee has **mis-reported** its income for which the penalty proceedings under Section 270A of the Act were initiated. In view of the above discussion, the AO was satisfied that the assessee had **under reported** his income according to Section **270A(9)(a)** of the Act for **suppression of facts** for the year under consideration and accordingly, levied the penalty of Rs. 51,20,500/- as detailed below:

1.	Under-reported income	82,05,931/-
2.	Amount of Tax + EC	25,60,250/-
3.	Penalty levied @ <b>200%</b> of tax	51,20,500/-

**4.** Aggrieved by the penalty order passed under Section 270A of the Act dated 24.09.2024, the assessee preferred an appeal before the learned CIT (Appeals)/NFAC.

**5.** The learned CIT (Appeals)/NFAC dismissed the appeal of the assessee by holding that the assessee has mis-reported the non-monetary perquisite and wrongfully claimed exemption under Section 10(10CC) of the Act to the tune of Rs. 82,05,931/-. Further the assessee’s submission that it was due to lack of knowledge and also due to the mistake of employer in issuing Form 16 were also not found tenable. The learned CIT (Appeals)/NFAC seen that the assessee had not filed appeal against the assessment order and therefore, accepted the wrongful claim of exemption under Section 10(10CC) of the Act and also wrongfully claimed refund in his return of income filed under Section 139(4) of the Act. Further, the learned CIT(Appeal) held that the “ignorance of the law is no excuse” means that a person cannot escape

liability simply because they were unaware that their actions were illegal. In the present case, the assessee is a well-read technocrat who is in the top management of a Multi-National Company. Therefore, the assessee simply cannot get away with the excuse that he was not aware of the income tax provisions governing his salary and perquisites. In view of the above, the learned CIT (Appeals)/NFAC observed that the assessee has suppressed the fact of the year under consideration. Had the case not been selected for scrutiny, this facts would not have come to light, the intention of the assessee in wrongful claiming of exemption and wrongful claim of refund. Lastly, the learned CIT (Appeals)/NFAC held that the Assessing Officer has passed a detailed speaking order wherein it has been clearly established that this is a case of under reporting in consequence of misreporting of income. Thus, in view of the facts of the case & case laws, the learned CIT (Appeals)/NFAC find no infirmity in the order of the AO passed under Section 270A of the Act.

**6.** Aggrieved by the order of learned CIT (Appeals)/NFAC dated 27.08.2025, the assessee has filed the present appeal before this Tribunal. The assessee has also filed a paper book comprising 101 pages containing therein the various documents/records/order/notices in support of his case. Further, the assessee has also filed various case laws in support of his contentions.

**7.** Before us, the learned AR of the assessee vehemently submitted that the assessee had accepted the order of assessment and already paid the entire due taxes along with the interest thereon without preferring an appeal before the learned CIT (Appeals)/NFAC. Further, the AR of the assessee submitted that the show cause notice issued by the AO on 19.03.2024 was for alleging **under-reporting of income** whereas the penalty was ultimately levied on another limb i.e. under-reporting of income in consequence of misreporting thereof. It is also submitted that the impugned penalty proceedings were initiated without pointing out the applicable limb under Section 270A(2) of the Act as well as under Section 270A(9) of the Act.

Lastly, the learned AR submitted that the present case falls under the exceptions provided under Section 270A(6)(a) of the act as the assessee had provided bona fide explanations and disclosed all the material facts to substantiate such explanations.

**8.** The learned DR on the other hand supported the orders of the authorities below and vehemently submitted that the assessee himself admitted that the denial of exemption wrongly claimed under Section 10(10CC) of the Act by not preferring the appeal and therefore the penalty is fully justifiable. Further, had the case not been selected for scrutiny, this facts would not have come to light, the intention of the assessee in wrongful claiming of exemption and wrongful claim of refund.

**9.** We have heard the rival submissions and perused the materials available on record. The AO had passed an assessment order for the AY 2022-23 under Section 143(3) read with Section 144B of the Act on 19.03.2024 by denying the exemption wrongly claimed by the assessee under Section 10(10CC) of the Act amounting to Rs. 82,05,931/- and added back to the total income of the assessee. On going through the assessment order, we also observed that the AO had initiated the penalty proceedings on or before the completion of the assessment proceedings on the ground of under-reporting income as a consequence of misreporting. Further, more surprisingly, on perusal of the show cause notice issued u/s 274 r.w.s. 270A of the Act to the assessee on the same day i.e. on 19.03.2024, we find that the AO had issued the SCN on the contention of **under-reporting only**. Thus, in our considered opinion, the AO on initiation of penalty proceeding was himself not sure whether the assessee had under reported his income or under-reported income in consequence of any misreporting thereof. Our view also gets support from the fact that while passing the penalty order, the AO categorically stated that the assessee had mis-reported his income as per the provisions of sections 270A(2)(a) of the Act and he was satisfied that the assessee has under-reported his income according to section 270A(9)(a) of

the Act which are just opposite to the provisions as enumerated under section 270A of the Act.

**9.1** Further, during the course of penalty proceedings, the assessee admitted to have received ESOP from his employer viz. Wipro Limited & claimed exemption u/s 10(10CC) of the Act on the basis of Form 16 issued by his employer wherein the said amount of Rs.82,05,931/- was stated to be exempt u/s 10 of the Act & no tax was deducted at source. It was also submitted that due to assessee's limited knowledge in taxation matters, complete reliance was placed upon the Form No.16 issued by the employer and the assessee in good faith & under an honest & bonafide belief claimed the exemption of Rs.82,05,931/- u/s 10(10CC) of the Act while filing the return of Income. We are of the considered opinion that the contention of the assessee appears to be bonafide as we observed that the employer had in fact issued the salary certificate to the assessee in Form No. 16 mentioning Rs. 82,05,931/- as exemption u/s 10 of the Act. (Form 16 placed at pages 66-73 of the P.B.). Thus, when the employer itself is issuing the salary certificate by claiming the amount of Rs. 82,05,931/- as exempt u/s 10 of the Act & did not deduct TDS on the same, then obviously the employee on an honest & bonafide belief will deduce that his employer had actually paid the tax on such income on behalf of the employee. Therefore, we are of the considered opinion that the explanation offered by the assessee that he was completely unaware of the provisions of the Income Tax Act and there was no intention on his part to deprive the legitimate revenue of the Government is bonafide and the assessee had disclosed all the material facts to substantiate the explanation offered within the meaning of section 270A(6)(a) of the Act.

**9.2** For the purpose of evaluating the correctness of rival submissions addressed, we deem it apposite to extract section 270A of the Act herein below:

***“270A. Penalty for under-reporting and misreporting of income.***

(1) *The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.*

(2) *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.*

(3) *The amount of under-reported income shall be,-*

(i) *in a case where income has been assessed for the first time,-*

(a) *if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of sub-section (1) of section 143;*

(b) *in a case where no return of income has been furnished or where return has been furnished for the first time under section 148,-*

(A) *the amount of income assessed, in the case of a company, firm or local authority; and*

(B) *the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);*

(ii) *in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order;*

**Provided** *that where under-reported income arises out of determination of deemed total Income in accordance with the provisions of section 115JB or section 115JC, the amount of total under-reported income shall be determined in accordance with the following formula-*

$(A - B) + (C - D)$

*where,*

*A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);*

*B= the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;*

*C= the total income assessed as per the provisions contained in section 115JB or section 115JC;*

*D= the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income:*

***Provided further*** that where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

*Explanation.- For the purposes of this section,-*

*(a) "preceding order" means an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated;*

*(b) in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.*

*(4) Subject to the provisions of sub-section (6), where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as "preceding year") and no penalty was levied for such preceding year, then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.*

*(5) The amount referred to in sub-section (4) shall be deemed to be amount of income under-reported for the preceding year in the following order-*

*(a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and*

*(b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.*

*(6) The under-reported income, for the purposes of this section, shall not include the following, namely:-*

*(a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;*

*(b) the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the*

*Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;*

*(c) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;*

*(d) the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and*

*(e) the amount of undisclosed income referred to in section 271AAB.*

*(7) The penalty referred to in sub-section (1) shall be a sum equal to fifty per cent of the amount of tax payable on under-reported income.*

*(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income.*

*(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:-*

*(a) misrepresentation or suppression of facts;*

*(b) failure to record investments in the books of account;*

- (c) claim of expenditure not substantiated by any evidence;*
- (d) recording of any false entry in the books of account;*
- (e) failure to record any receipt in books of account having a bearing on total income; and*
- (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.*

*(10) The tax payable in respect of the under-reported income shall be-*

*(a) where no return of income has been furnished or where return has been furnished for the first time under section 148 and the income has been assessed for the first time, the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income;*

*(b) where the total income determined under clause (a) of sub-section (1) of section 143 or assessed, reassessed or recomputed in a preceding order is a loss, the amount of tax calculated on the under-reported income as if it were the total income;*

*(c) in any other case, determined in accordance with the formula-(XY) where,*

*X= the amount of tax calculated on the under-reported income as increased by the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order as if it were the total income; and*

*Y= the amount of tax calculated on the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order.*

*(11) No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.*

*(12) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by the Assessing Officer, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be."*

**9.3** On plain reading of the same, we are of the opinion that when a notice u/s 270A of the Act is issued, the following step ladder should be followed by the AO while levying penalty u/s 270A of the Act-

1. Underreporting – First the onus is on the AO to establish whether any of the contingency spoken of in clauses (a) to (g) of Section 270A(2) in the case of the assessee are attracted or not. If Yes, under which clause (limb) the assessee has underreported the income?

2. Now the onus shifted on the assessee to refute by establishing that the assessee falls within any of the clauses (a) to (e) of section 270A(6) of the Act & hence there is no underreporting of income & the proceedings end there. Section 270A(6) is a window given by the legislature to give a leave to the Assessee.

3. If the assessee is not able to controvert the charge of under reporting, the under reporting gets confirmed.

4. Once the charge of underreporting is confirmed, then the AO has to establish whether the underreporting is in consequence of any of the clauses (a) to (f) of Section 270A(9) of misreporting. If Yes, under which clause (limb) the assessee has misreported the income?

**9.4** Therefore, we are of the considered opinion that without the specific charge of under reporting of income, the AO cannot straightaway jump with the charge of misreporting of income. In the present case the AO without even a whisper as to how the ingredient of sub-section (2) of section 270A is satisfied, has also not specifically mentioned the exact limb of misreporting as per section 270A(9) of the Act. Further, in the present case, in fact the AO misdirected himself in holding that the assessee had mis-reported his income as per the provisions of sections 270A(2)(a) of the Act and he was satisfied that the assessee has under-reported his income according to section 270A(9)(a) of the Act amounting to Rs.82,05,931/- and levied 200% penalty amounting to Rs.51,20,500/-.

**9.5** We are of the considered view that failure on the part of the AO to show cause which of the specific action of the assessee from clauses (a) to (g) of section 270A(2) of the Act & further clauses (a) to (f) of Section 270A(9) of the Act which were determinant before imposing penalty u/s 270A of the Act has rendered the proceedings invalid and thus untenable in the eyes of law.

**9.6** Therefore, it goes without saying that for the applicability of Section 270A of the Act, the condition stated therein must be strictly followed. Undisputedly, in the present case, the show cause penalty notice dated 19.03.2024 was issued to the assessee alleging that the assessee has under-reported his income however we noticed that the AO has passed the penalty order by concluding that the assessee has under-reported his income in consequence of misreported of income. We are of the considered opinion that from the very beginning i.e. on or before the completion of the assessment, issue of show cause notice and finally while passing the penalty order, the AO was completely confused whether the assessee has under-reported his income or under-reported his income in consequence of misreporting of income. We are also of the considered opinion that unless the person has been communicated the specific instance viz-a-viz action triggering of imposition of penalty, it would drastically obstruct an assessee from enforcing his right to dismantle the charge alleged against him thus

resulting into a gross violation of principles of natural justice. Therefore, the ladder as discussed in Para 9.3 above has to be followed strictly for levying the penalty under Section 270A of the Act.

**9.7** We are also of the opinion that the penalty by hereditary nature is always discretionary. The legislature has used the word “may” in Section 270A(1) of the Act which clearly says that it is discretionary on the part of the AO to levy penalty or not. In our opinion, the penalty is not at par with the tax and interest and therefore, penalty should not be levied in a light-hearted manner or in a routine-manner and not every additions/disallowances are liable for penalty. The primary onus is on the revenue to prove that assessee falls under particular limb of the fault. The AO has to bring the case in the four corners of the sections in order to levy penalty, which in our opinion, the authorities below failed to do so. In view of the above & considering the fact that on an honest & bonafide belief, the assessee claimed the exemption u/s 10(10CC) of the Act on the basis of Form 16 issued by his employer wherein the said amount of Rs.82,05,931/- was stated to be exempt u/s 10 of the Act & no tax was deducted at source, we direct the AO to delete the entire penalty of Rs. 51,20,500/- levied under Section 270A of the Act.

10. **In the result appeal filed by the assessee is allowed.**

Order pronounced in the open court on 12<sup>th</sup> May, 2026.

Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER  
Bangalore,  
Dated, the 12<sup>th</sup> May, 2026.

Sd/-  
(KESHAV DUBEY)  
JUDICIAL MEMBER

\*VM\*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. CIT(A)

By order

Assistant Registrar,  
ITAT, Bangalore