theTAXtalk

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER AND SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA No. 2089/AHD/2026
Assessment Years: 2022-23

Kamalkant Bhagwatiprasad Oza, D-11, Sneha Flats, Vishramnagar, Memnagar, Ahmedabad, Gujarat - 380052 **[PAN – AAJPO8140L]**	Vs.	**Principal Commissioner of Income Tax (Central), Ahmedabad** Ahmedabad - 380009
(Appellant)		(Respondent)

Assessee by	Shri Aseem L Thakkar, AR
Revenue by	Shri Kiran Unavekar, CIT-DR
Date of Hearing	16.07.2026
Date of Pronouncement	05.08.2026

O R D E R

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal is filed by the Assessee against the order of Principal Commissioner of Income Tax (Central) - Ahmedabad [hereinafter referred to as "PCIT"] dated 22.03.2026 for the Assessment Year (A.Y.) 2022-23 passed in his revisional jurisdiction u/s. 263 of the Income Tax Act [hereinafter referred as "the Act"].

2. The brief facts of the case are that the assessee had filed his return of income for A.Y. 2022-23 on 06.10.2022 declaring income of Rs.6,06,500/-. The assessee had disclosed contract receipt of Rs.3,38,54,329/- in the P&L account and the net profit disclosed by the

assessee as per audited account was Rs. 6,41,982/-. The assessee had also claimed credit for TDS of Rs. 3,38,545/- in respect of this contractual income. The contractual receipt of the assessee was from entities of Urmin Group, in which a search action u/s. 132 of the Act was carried out on 07.03.2022 and the premises of the assessee was also covered during the search. From the evidences retrieved during the course of search, it had transpired that the assessee did not carry out any contractual work with Urmin Group and the entire contractual receipts and payments disclosed by the assessee were bogus. The AO had, therefore, rejected the books of accounts of the assessee on the ground that the contractual business shown by the assessee was bogus and held that the assessee was not entitled to claim credit of TDS on the contractual receipts. At the same time, the TDS credit of Rs. 3,38,545/- claimed by the assessee in the return, was added to income of the assessee. The assessment was completed u/s. 143(3) of the Act on 21.03.2024 at total income of Rs.9,45,045/-. Subsequently, the case record was called for and examined by the Ld. PCIT. He found that the assessee had misreported the nature and source of his income and provided inaccurate information and, therefore, provision of section 270A of the Act was attracted in the present case. The AO, however, didn't initiate penalty proceeding u/s 270A of the Act while completing the assessment. According to the Ld. PCIT, the failure of the AO to initiate penalty proceeding u/s. 270A of the Act, made the assessment order erroneous and pre-judicial to the interest of revenue. He, therefore, set aside the assessment order dated 21.03.2024 to the file of the AO with a limited direction to initiate penalty proceeding u/s. 270A of the Act.

3. Aggrieved with the order of the Ld. PCIT, the assessee is in appeal before us. The following grounds have been taken in this appeal:

1. *The Learned Pr. Commissioner of Income Tax, (Central), Ahmedabad has erred in passing an order u/s 263 of the LT. Act, 1961 setting aside the Assessment Order passed uis.143(3) of the LT. Act, 1961 dtd.21.03.2024 which is neither erroneous nor prejudicial to the interest of the Revenue.*

2. *The Learned Pr. Commissioner of Income Tax, (Central), Ahmedabad has erred in passing an order u/s.263 of the LT Act, 1961 for limited purpose of initiating penalty proceedings u/s 270A of the Act holding that the Assessing Officer has not recorded satisfaction for initiating penalty proceedings u/s 270A of the 1.T.Act, 1961*

3. *The Learned Pr. Commissioner of Income Tax, (Central) Ahmedabad has erred in not considering fact that the assessment proceedings and penalty proceedings are separate and distinct and for non-initiation of penalty proceedings during assessment proceedings by the Assessing Officer is not an error for which revision proceedings can be invoked. Hence the Revision order so passed requires to be cancelled.*

4. *The appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.*

4. We have heard Shri Aseem L Thakkar, the Ld. AR and Shri Kiran Unavekar, the Ld. CIT-DR. The sole ground on which the Ld. PCIT has set aside the order is that the AO, while completing the assessment, had failed to initiate penalty proceeding u/s. 270A of the Act. However, the Ld. PCIT has not elaborated in his order, as to how the order of the AO was erroneous and pre-judicial to the interest of revenue, in the peculiar facts of the case as discussed earlier. In the present case, the assessee had disclosed income of Rs.6,06,500/- on the contractual receipts from the concerns of Urmin Group. According to the AO, the assessee did not carry out any contractual activity and, therefore, the AO had rejected the books of accounts of the assessee u/s. 145(3) of the Act. The entire contractual receipts as well as the payments made by the assessee, as per P&L account, were treated as bogus. The AO did not estimate any other

income of the assessee and the only finding given in the assessment order was that the TDS credit claimed on the contractual receipts was to be disallowed. Having given this finding, the AO was not correct in accepting the returned income of Rs.6,06,500/- in respect of the contractual receipts, which were held as bogus. In the computation of income, the AO had proceeded from total income of Rs. 6,06,500/- as per return and made further addition of Rs.3,38,545/- in respect of disallowance of TDS credit and thus the total income was arrived at Rs. 9,45,045/- in the assessment order. In fact, the TDS credit claimed by the assessee was already part of the turnover of the assessee and was included in the income as disclosed in the return.

5. The working of total income as done by the AO is thus found to be prejudicial to the assessee and not to the revenue. When the AO had accepted the returned income of Rs.6,06,500/- while disallowing credit for TDS on contractual receipts, there was no under-reporting of income as the quantum of TDS was already part of turnover and included in the returned income. Even if the addition of Rs. 3,38,545/- in respect of disallowance of TDS is considered in isolation, this amount was less than the returned income of Rs.6,06,500/-. Under the circumstances, there was no case of under-reporting of income. In fact, the mechanism to impose the penalty, as provided u/s 270A(3) of the Act, fails in the present case and no penalty for under-reporting of income could have been levied. Further, the initiation of penalty proceeding u/s. 270A of the Act is discretionary on the satisfaction of the Assessing Officer and the Ld. PCIT was not correct in treating it as a mandatory exercise.

6. In view of the facts as discussed above, we are of the considered opinion that there was no basis for the Ld. PCIT to conclude that the order of the AO was erroneous and prejudicial to the interest of revenue. Therefore, the order u/s. 263 of the Act as passed by the Ld. PCIT, is quashed.

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

Order pronounced in the Court on 05/08/2026 at Ahmedabad.

Sd/-	***Sd/-***
(RAHUL CHAUDHARY)	**(NARENDRA PRASAD SINHA)**
Judicial Member	Accountant Member

Dated – 05th August, 2026

Neelesh, Sr. PS ***(True Copy)***

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल /Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad