IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.2176/Mum/2026
(**Assessment Year :2017-18**)

Besant Montesori School Ground Floor, The Theosophical Colony, Juhu Tara Road Vile Parle (West) Mumbai- 400 049	Vs.	ITO Exem.Ward 1(1), Mumbai
PAN/GIR No.AAATB6823E		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Vinayak R. Pandya
Revenue by	Shri Swapnil Choudhari, SR. AR
Date of Hearing	**13/05/2026**
Date of Pronouncement	**19/05/2026**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against the order dated 29.12.2025 passed by the learned NFAC, Delhi, arising out of penalty proceedings under section 270A of the Income-tax Act, 1961 for the assessment year 2017-18.

2. The assessee is aggrieved by the levy and confirmation of penalty of Rs.9,36,103/-, being 50% of the tax payable, computed with reference to the alleged under-reporting of income arising from disallowance of depreciation amounting to Rs.38,42,253/-. The grounds of appeal, as raised by the assessee, are reproduced hereunder:

1. The learned CIT (A) erred in partly confirming the penalty levied under section 270A of the Income-Tax Act, 1961.

2. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in sustaining penalty under section 270A of the Act despite the fact that the assessed total income, after giving effect to Quantam CIT (A) Order, is NIL and consequently no tax is payable, and therefore no penalty could be levied under section 270A of the Act.

3. That the learned Assessing Officer below failed to appreciate that penalty under section 270A is leviable at 50% of the tax payable on under-reported income and where the tax payable itself is NIL, the computation mechanism fails and the penalty is liable to be deleted.

In view of the above additions made by learned officer be deleted.

3. The facts, in brief, are that the assessee is a charitable trust engaged in running a Montessori school. It filed its return of income on 07.11.2017 declaring loss of Rs.13,43,655/-. The gross receipts declared by the assessee were Rs.2,97,13,513/-, against which it had claimed various expenses, including depreciation of Rs.38,42,253/-. The

Assessing Officer, while framing the assessment, held that in view of section 11(6), once the acquisition of capital asset by a trust registered under section 12A has been treated as application of income, depreciation on such asset cannot again be allowed as application or deduction. Accordingly, the claim of depreciation was disallowed. It was also noticed by the Assessing Officer that similar disallowance had been made in earlier assessment years. On the basis of such disallowance, penalty proceedings under section 270A were initiated for under-reporting of income and, thereafter, penalty was levied. The learned CIT(A) has confirmed the penalty on the premise that the assessee's claim of depreciation, being not allowable in view of section 11(6), resulted in under-reporting of income within the meaning of section 270A.

4. Before us, the learned counsel for the assessee submitted that the levy of penalty is wholly unsustainable in law as well as on facts. It was pointed out that in the quantum proceedings, the learned CIT(A) had directed the Assessing Officer to allow the benefit of accumulation under section 11(2), which had been denied in the assessment order. After giving effect to the appellate order, the income of the assessee stood computed at "Nil". Thus, according to the learned counsel, there was no tax payable, no income ultimately assessed, and no real under-reporting of income. He further

submitted that the assessee is a charitable institution whose income is governed by section 11 and, once the ultimate assessed income remains Nil, a mere disallowance of depreciation, without any tax consequence, cannot be made the foundation for penalty under section 270A. Reliance was placed on the decision of the Coordinate Bench in the case of Podar Literacy and Education Trust in ITA No.4762/Mum/2025, order dated 09.12.2025, wherein on identical facts involving disallowance of depreciation in the case of a charitable trust, penalty under section 270A was deleted. The relevant observations of the Tribunal are reproduced hereunder:

"12. In the present case, the learned CIT(A) has proceeded on the premise that the assessee's claim of depreciation, being impermissible under section 11(6), resulted in overstatement of application of income and thus constituted under-reporting of income within the meaning of section 270A(2)(a). While this line of reasoning may appear attractive at first blush, it does not withstand closer scrutiny when examined in the full factual and legal context of the case.

13. It is an admitted and undisputed position that the assessee's income, both as returned and as assessed, is Nil. The assessee is a charitable trust whose income, subject to fulfilment of statutory conditions, is exempt under section 11 of the Act. Even after the disallowance of depreciation, the assessment does not result in any taxable income. The assessed income remains Nil. Thus, in substance and effect, there is no income which has escaped assessment or has been brought to tax as a result of the disallowance.

14. The concept of "under-reporting of income" under section 270A cannot be read in isolation or in abstraction. It must be understood in the context of the charging and exemption provisions of the Act. Where an assessee's income is otherwise exempt under section 11, and the assessment, even after making the disallowance, results in Nil income, it is difficult to comprehend how the assessee can be said to have under-reported income in the statutory sense.

15. The learned CIT(A) has characterised the claim of depreciation as an impermissible deduction leading to under-reporting. However, an impermissible claim or an inadmissible deduction does not ipso facto translate into under-reporting of income for the purposes of penalty, particularly when such claim does not result in any tax advantage, reduction of tax liability, or deferment of tax.

16. Equally significant is the undisputed factual position that the assessee has categorically clarified, with supporting material, that it has not availed any benefit of carry forward or set-off of any loss arising from the impugned assessment year in subsequent years. The financial statements and the copies of ITR-7 for the relevant and subsequent assessment years placed on record demonstrate that no such benefit has been claimed. It has also been explained that the automated ITR utility itself did not permit any carry forward or set-off in the manner alleged.

17. Thus, this is not a case where the assessment has the effect of reducing a loss or converting a loss into income, nor is it a case where the assessee has secured any present or future tax advantage. In such circumstances, the essential ingredient of "under-reporting of income", as contemplated under section 270A, is conspicuously absent.

18. The reliance placed by the learned CIT(A) on section 270A(2)(a) also does not advance the Revenue's case. Clause (a) of sub-section (2) refers to a situation where the income assessed is greater than the income determined in the return.

In the present case, the income determined in the return is Nil and the income assessed is also Nil. The numerical equality of returned income and assessed income remains undisturbed. Therefore, even on a plain reading of section 270A(2)(a), the condition precedent for invoking the said clause is not satisfied.

19. Penalty provisions, though civil in nature, have serious consequences and must be construed strictly. They cannot be invoked on the basis of assumptions or perceived revenue loss divorced from the actual statutory impact. The Act does not authorise levy of penalty merely because a claim is disallowed, particularly where such disallowance does not result in any taxable income or tax payable.

20. Viewed in this backdrop, we are unable to sustain the finding of the learned CIT(A) that the assessee's claim of depreciation, though impermissible under section 11(6), automatically leads to under-reporting of income so as to trigger penalty under section 270A. The factual matrix clearly demonstrates that the assessee's income remains exempt and Nil, there is no loss reduction or conversion into income, and no benefit of carry forward or set-off has been availed.

21. In our considered view, therefore, the very foundation for levy of penalty under section 270A is absent in the present case. The confirmation of penalty by the learned CIT(A), without appreciating these crucial aspects, cannot be sustained.

22. Accordingly, we hold that the penalty levied under section 270A of the Act amounting to ₹37,61,672/- is unsustainable in law and is hereby deleted."

5. Per contra, the learned Departmental Representative relied upon the orders of the Assessing Officer and the learned CIT(A), and submitted that once the claim of depreciation was found to be inadmissible under section 11(6), the assessee

had made an incorrect claim, which resulted in under-reporting of income and, therefore, the penalty had rightly been levied.

6. We have heard the rival submissions and perused the material placed on record. The narrow controversy before us is whether penalty under section 270A can be sustained merely because the assessee's claim of depreciation has been disallowed under section 11(6), when, after giving effect to the appellate order in quantum proceedings, the income of the assessee remains Nil and no tax is ultimately payable. In our considered view, the answer has to be in the negative. Penalty under section 270A is not an automatic statutory reflex upon every disallowance made in assessment. The provision contemplates under-reporting of income in a real and statutory sense. Therefore, before the machinery of penalty is set into motion, there must exist a foundational jurisdictional fact that the income assessed is greater than the income determined in the return, or that the case otherwise falls within the specific clauses of section 270A(2). A disallowance may, in a given case, alter the computation; but unless such alteration results in assessed income, tax liability, reduction of loss with statutory consequence, or any present or future tax advantage, it cannot ipso facto be elevated to the level of under-reporting so as to invite penalty.

7. In the present case, it is not in dispute that the assessee is a charitable trust and its income is governed by the provisions of section 11. It is also not in dispute that though depreciation was disallowed by invoking section 11(6), the learned CIT(A) in the quantum proceedings directed the Assessing Officer to allow the benefit of accumulation under section 11(2), and after giving effect to the said appellate order, the income of the assessee has been computed at Nil. Thus, the ultimate tax effect of the impugned disallowance is non-existent. There is no assessed positive income, no tax payable, and no demonstrated benefit of carry forward or set-off arising from the claim of depreciation. Once the returned income and assessed income, in their ultimate statutory effect, both remain Nil, the very edifice on which the penalty for under-reporting has been erected becomes fragile and unsustainable.

8. The learned CIT(A) appears to have proceeded on the footing that since depreciation was not allowable in view of section 11(6), the claim itself constituted under-reporting. This approach, with respect, confuses disallowance of a claim with under-reporting of income. The Act does not provide that every disallowed claim shall necessarily entail penalty. Section 270A has its own conditions, contours and statutory thresholds. An inadmissible claim may be corrected in assessment; but penalty requires something more, namely a

statutory under-reporting which has tax consequence or affects the computation of taxable income in the manner contemplated by the provision. In a case of a charitable trust where, even after such disallowance, income remains exempt and assessed at Nil, the essential statutory mischief which section 270A seeks to address is conspicuously absent.

9. The Coordinate Bench in the case of Podar Literacy and Education Trust, on identical facts, has already held that penalty under section 270A cannot be sustained where disallowance of depreciation in the case of a charitable trust does not result in any taxable income and both returned and assessed income remain Nil. The ratio of the said decision squarely applies to the present case. We do not find any distinguishing feature brought on record by the Revenue. Rather, the facts here stand on the same footing, because the assessee's income, after giving effect to the appellate order in quantum proceedings, is Nil and there is no tax payable on account of the disallowance of depreciation.

10. Penalty provisions, though civil in character, carry serious fiscal consequences and therefore cannot be invoked mechanically or on a mere arithmetical disallowance divorced from its legal consequence. Where there is no tax sought to be evaded, no income ultimately brought to tax, and no benefit shown to have been obtained by the assessee either in the

present year or in subsequent years, the levy of penalty would amount to punishing a computation claim which has already been neutralised in quantum proceedings. Such an approach would be contrary to the scheme of section 270A and to the settled principle that penalty must rest on a clear statutory foundation and not on a mere assumption that every inadmissible claim is necessarily penal.

11. Accordingly, following the ratio of the Coordinate Bench and having regard to the peculiar facts of the present case, we hold that the penalty levied under section 270A on account of disallowance of depreciation is unsustainable. The orders of the authorities below are, therefore, set aside and the penalty of Rs.9,36,103/- is deleted.

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

Order pronounced on 19th May, 2026.

Sd/-	**Sd/-**
(PRABHASH SHANKAR)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 19/05/2026
KARUNA, *sr.ps*

<u>Copy of the Order forwarded to</u> :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai