**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"C" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT**
**SHRI SANJAY KUMAR, JUDICIAL MEMBER**

ITA No. 2906/AHD/2026
(Assessment Year: 2017-18)

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| Nascent Info Technologies Pvt. Ltd,<br>A/805, Sapatha Tower IV,<br>Opp. Karnavati,<br>Club SG Highway,<br>Ahmedabad-380051.<br><br>[PAN : AACCN3670 J] | Vs. | Income Tax Officer,<br>Ward 3(1)(1),<br>Ahmedabad. |
| (**Appellant**) | .. | (**Respondent**) |

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| **Appellant represented by :** | Shri Satyaprakash, AR |
| **Respondent represented by:** | Shri Kalpesh Rupavatia, Sr. DR |

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| **Date of Hearing** | 22.10.2026 |
| **Date of Pronouncement** | 23.10.2026 |

**O R D E R**

**PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-**

This appeal has been filed by the assessee against the order dated 19.07.2026 passed by the Commissioner of Income-Tax (Appeals)/National Faceless Appeal Centre, Delhi (hereinafter referred to as 'Ld. CIT (A)' in short), under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act' in short) for Assessment Year 2017-2018.

2. The Assessee has raised the following grounds of Appeal:-

1. *On the facts and in the circumstances of the case and in law, the order passed by the Ld. CIT(A) confirming the penalty of Rs.4,42,866/-under section 270A of the Income-tax Act, 1961 ("the Act") is erroneous, contrary to the material on record and the applicable provisions of law, and ought to be quashed.*

2. *On the facts and in the 0 circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that the impugned penalty order dated 20.03.2025 was barred by limitation under section 275(1)(a) of the Act.*

3. *On the facts and in the 0 circumstances of the case and in law, the Ld. CIT(A) erred in sustaining the penalty for "misreporting" without there being a clear and specific charge in the notice and without establishing that the Appellant's case falls within any particular clause of section 270A(9) of the Act.*

4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in treating the disallowance of employees' contribution towards PF/ESIC amounting to Rs.7,16,611/-"misreporting" of income.*

5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in failing to give effect to the specific statutory exclusion contained in section 270A(6)(a) of the Act.*

6. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the penalty without properly considering the detailed replies and specific legal objections raised by the Appellant during the penalty proceedings.*

7. *Without prejudice to the above grounds, even assuming that the amount constituted under-reported income, the Revenue has failed to establish that such under-reporting was "in consequence of misreporting" within the meaning of section 270A(8) read with section 270A(9) of the Act.*

8. *The Appellant craves leave to add, amend, alter, substitute, modify or withdraw any of the above grounds of appeal before or at the time of hearing.*

3. The assessee filed its return of income for A.Y 2017-18 declaring total income of Rs.6,14,25,720/-. Assessment under section 143(3) was completed on 05.12.2019 determining total income at Rs.6,21,42,330/- after disallowance of employee's contribution of PF/ESI amounting to Rs.7,16,611/-. Thereafter, penalty proceedings u/s. 270A were initiated alleging misreporting of income and penalty of Rs.4,42,866/- was levied by order dated 20.03.2025

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who dismissed the appeal of the assessee by observing as follows:

> *"...I have carefully considered the penalty order passed under section 270A of the Act, the assessment records, the grounds of appeal, the written. submissions filed by the appellant and the material available on record. The appellant has challenged the levy of penalty of 4,42,866/- imposed under section 270A of the Act in respect of the disallowance of employees' contribution to PF and ESI amounting to 7,16,611/-.*
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> *At the outset, it is necessary to appreciate the legislative scheme governing penalty under the Income-tax Act. Prior to the Finance Act. 2016, penalty for concealment of income or furnishing of inaccurate particulars was governed by section 271(1)(c) of the Act. The Finance Act, 2016 substituted the earlier regime by introducing section 270A with effect from Assessment Year 2017-18. Thus, the present case, pertaining to A.Y. 2017-18, is governed exclusively by section 270A and not by section 271(1)(c).*
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> *The substitution of section 271(1)(c) by section 270A was not merely a change in numbering but represented a complete legislative shift in the scheme of levy of penalty. Under the erstwhile section 271(1)(c), penalty could be levied where the assessee had concealed the particulars of income or furnished inaccurate particulars thereof. The expression "concealment" and "furnishing inaccurate particulars" had been the subject matter of extensive litigation over several decades. Courts repeatedly held that every disallowance or every addition made during assessment would not automatically justify levy of penalty. Consequently, substantial litigation*

*arose regarding the existence of mens rea, bona fide explanation, voluntary disclosure, debatable claims and interpretation of Explanation 1 to section 271(1)(c).*

*Recognising these difficulties, Parliament introduced section 270A with the object of replacing the subjective concept of "concealment" by a more objective mechanism based on "under-reporting" and "misreporting" of income. The Memorandum explaining the provisions of the Finance Bill, 2016 also indicates that the intention was to rationalise and simplify the penalty provisions by reducing unnecessary litigation Section 270A creates two distinct categories of defaults, namely*

*(1) under-reporting of income, and*

*(1) misreporting of income.*

*The statute itself prescribes separate consequences for the two categories. Where income is merely under-reported, penalty is leviable at the rate of 50% of the amount of tax payable on the under-reported income. However, where the under-reporting is a consequence of misreporting, the penalty increases to 200% of the tax payable on such misreported income.*

*Thus, unlike section 271(1)(c), the present provision provides a statutory classification of defaults instead of leaving the matter entirely to judicial interpretation.*

*The appellant has relied extensively upon judicial precedents rendered under section 271(1)(c), particularly decisions such as CIT v. Reliance Petroproducts Pvt. Ltd., Hindustan Steel Ltd. v. State of Orissa and other authorities dealing with concealment penalty. These authorities undoubtedly explain the legal principles governing the erstwhile provision. However, while such decisions may provide useful guidance on general principles, they cannot be mechanically imported into proceedings under section 270A because the statutory framework itself has undergone a material change.*

*Coming to the facts of the present appeal, the assessment order records that employees' contribution towards PF and ESI amounting to 7,16,611/- was deposited beyond the due dates prescribed under the respective welfare statutes and was accordingly disallowed. The said addition has already attained finality. Pursuant thereto, penalty proceedings under section 270A were initiated and the appellant was afforded repeated opportunities of being heard through notices issued during the course of penalty proceedings. The impugned penalty order records that although responses were furnished, the explanation offered was not found acceptable for the purposes of section 270A*

*The principal contention of the appellant is that at the time of filing the return there existed divergent judicial opinion regarding allowability of delayed deposit of employees' contribution to PF and ESI and that the issue came to be settled only subsequently by the judgment of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. The appellant therefore contends that the claim was bona fide and consequently no penalty should survive.*

*This contention has been carefully considered. However, in the present appeal the scope of appellate examination is confined to the correctness of the penalty order passed under section 270A. The assessment order giving rise to the disallowance has already attained finality. Once the statutory authority has invoked the provisions relating to misreporting under section 270A and has recorded reasons for doing so, the burden lies upon the appellant to demonstrate that the case falls outside the statutory framework of section 270A. Except reiterating that the claim was bona fide and relying upon authorities rendered under section 271(1)(c), no material has been brought on record to establish that the Assessing Officer has incorrectly invoked the provisions of section 270A or that the statutory ingredients for levy of penalty are absent.*

*It is also relevant that the appellate authority cannot rewrite the legislative scheme by applying the jurisprudence developed under a repealed provision in disregard of the language employed by Parliament in section 270A. The Legislature has consciously replaced the concepts of concealment and furnishing of inaccurate particulars by a distinct statutory code dealing with under-reporting and misreporting of income. The appeal must therefore be examined strictly within the four corners of section 270A.*

*Having considered the entire material on record, I am satisfied that the Assessing Officer has passed a reasoned penalty order after recording the relevant facts and after granting adequate opportunity to the appellant. No procedural infirmity or legal defect has been demonstrated which would justify interference with the impugned order. The submissions advanced by the appellant primarily rest upon principles evolved under section 271(1)(c), whereas the penalty under consideration has been imposed under the independent statutory framework of section 270A.*

*Accordingly, Ground Nos. 1 and 2 are dismissed. Ground No. 3 is general in nature and does not call for separate adjudication.*

*In the result, the appeal is dismissed…"*

5. Being aggrieved by the order of the Ld. CIT(A), the assessee has preferred the present appeal before the Tribunal.

6. We have heard the rival submissions and perused the material available on record. The assessee has challenged the penalty of ₹4,42,866/- imposed under Section 270A of the Income-tax Act, 1961, in respect of the disallowance of employees' contribution towards PF and ESI amounting to ₹7,16,611/- for Assessment Year 2017-18.

6.2. We find that the Co-ordinate Bench of the Tribunal in the case of *Hiro Mulchand Tanwani v. ITO*, ITA No. 110/Ahd/2026, dated 15.05.2026, held that a mere disallowance of a claim does not automatically amount to misreporting of income under Section 270A of the Act. The Revenue must establish that the case falls within the specific circumstances prescribed under Section 270A(9).

6.3. In the present case, the penalty has been levied on account of the disallowance of employees' contribution towards PF and ESI. However, the material available on record does not establish that the assessee's case falls within any of the categories of misreporting specified under Section 270A(9) of the Act. The mere disallowance of the claim, by itself, is not sufficient to justify the levy of penalty for misreporting.

6.4. Respectfully following the aforesaid decision of the Co-ordinate Bench and considering the facts of the present case, we hold that the penalty for misreporting of income is not sustainable. Accordingly, we set aside the order of the Ld. CIT(A) and **delete the penalty of ₹4,42,866/- imposed under Section 270A of the Act**. The grounds relating to the levy of penalty are allowed. The remaining grounds are not adjudicated separately, being academic in view of our decision on the merits.

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

**The order pronounced in the open Court on 23.10.2026.**

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| **Sd/-** | **Sd/-** |
| **(SANJAY KUMAR)** | **(DR. B.R.R. KUMAR)** |
| **JUDICIAL MEMBER** | **VICE-PRESIDENT** |

(True Copy)

Ahmedabad; Dated 23.10.2026

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) /The CIT(A)-
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, अहमदाबाद/ DR, ITAT, Ahmedabad
6. गार्डफाईल /Guard file.

**आदेशानुसार**/ BY ORDER,

**सहायकपंजीकार** (Dy./Asstt. Registrar)
**आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad**