

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'ए' बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad "A" Bench, Hyderabad

श्री मंजुनाथा जी., माननीय लेखा सदस्य एवं श्री रवीश सूद, माननीय न्यायिक सदस्य
SHRI MANJUNATHA G., HON'BLE ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.2044/Hyd/2025
(निर्धारण वर्ष/ Assessment Year: 2018-19)

N.A.M. Expressway Limited New Delhi PAN: AADCN3131D	Vs.	Deputy Commissioner of Income Tax Circle-5(1) Hyderabad
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri. Salil Kapoor, Adv
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Ms. Aditi Goyal, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	04.02.2026
घोषणा की तारीख/ Date of Pronouncement	:	04.03.2026

ORDER

PER MANJUNATHA G., A.M :

The captioned appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National

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Faceless Appeal Centre (“NFAC”), Delhi [“Ld.CIT(A)”], dated 26.09.2025, pertaining to the assessment year 2018-19.

3. The brief facts of the case are that the assessee filed its return of income for the A.Y.2018-19 on 22.09.2018, declaring income at Rs. Nil and claimed current year loss of Rs.81,04,82,331/-. The case was selected for scrutiny and assessment has been completed u/s 143(3) of the Income Tax Act, 1961 on 21.04.2021 and determined current year loss of Rs.80,63,83,770/-, by making additions towards disallowance of labour cess of Rs.40,76,414/- u/s 43B of the Act.

4. Subsequently, Penalty proceedings u/s 270A of the Act was initiated and show cause notice u/s 274 read with section 270A was issued and called upon the assessee to explain as to why penalty shall not be levied for under reporting of income, which is in consequence of misreporting thereof u/s 270A(9) of the Act. During the course of penalty proceedings, the AO noticed that the tax auditor has certified in the audit report in Form 3CD that labour cess amounts to Rs.40,76,414/- has not been paid on or before the due date provided for filing return of income u/s 139(1) of the Act, which attracts the provisions section 43B, however, the said amount

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was not included in the disallowances made by the assessee in the computation of total income. Thus, labour cess of Rs.40,76,414/- was disallowed and added back to the total income u/s 43B. Accordingly, a show cause notice, dated 06.09.2021 and 08.03.2022 was issued to the assessee to file its objection, if any for proposed penalty u/s 270A of the Act. In response, the assessee filed letter dated 28.05.2021 and submitted that by inadvertent error, the assessee failed to add disallowance reported by the tax auditor in respect of labour cess amounting to Rs.40,76,414/- u/s 43B, while computing income from business. The assessee further submitted that it had accepted the disallowance made by the AO, which resulted in reduction in the current year loss to that extent and the assessee has not preferred any further appeal. The assessee had also submitted that it has filed an application for immunity from imposition of penalty u/s 270A of the Act on 28.05.2021, within one month from the end of the month in which the order has been received by the assessee.

5. The AO after considering the relevant submissions of the assessee and also taking note of provisions of section 270A of the

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Act, observed that the application filed by the assessee for immunity from imposition of penalty u/s 270A of the Act is not maintainable, because the AO has initiated the penalty proceedings under sub section (9) of section 270A for under reporting of income, is in consequence of misreporting thereof and thus, the assessee is not entitled for immunity from penalty. The AO had also rejected the explanation of the assessee with regard to disallowance of labour cess u/s 43B of the Act and held that although the auditor has reported disallowance u/s 43B in respect of delayed payment of labour cess, but the assessee has not made any disallowance, while computing the income and thus, it is a fit case for levy of penalty for under reporting of income as a consequence of misreporting thereof, therefore, levied penalty of Rs.25,19,222/- being 200% of the amount of tax payable on under reported income, in consequence of misreporting thereof.

6. Aggrieved by the penalty order, the assessee preferred an appeal before CIT(A). Before the CIT(A), the assessee has made three fold arguments on the issue, including on the issue of vague notice issued by the AO u/s 274 r.w.s. 270A of the Act, application filed by

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the assessee u/s 270AA of the Act, requesting immunity from imposition of penalty and consequent failure of the AO to pass consequent order within the time specified under sub section (4) of section 270AA and also on merits. The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that, the AO has issued vague show case notice, without specifying the sub clause, under which, penalty for misreporting of income has been initiated u/s 270A(9) of the Act. The assessee had also challenged penalty levied by the AO, in light of bonafide explanation and submitted that it is only an error in reporting the income, i.e., because of inadvertent mistake committed, while filing the return of income and thus, the AO ought not levied penalty u/s 270A(9) of the Act.

7. The Ld.CIT(A), after considering the relevant submissions of the assessee and also taking note of various reasons given by the AO for levying penalty u/s 270A of the Act, rejected the explanation of the assessee with regard to notice issued by the AO u/s 274 r.w.s.270A of the Act and held that, in the assessment order, the AO had arrived at a clear satisfaction to the effect that the assessee has under reported income, is in consequence of misreporting and

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further initiated penalty proceedings u/s 270A(9) of the Act. The Ld.CIT(A) had also rejected the arguments of the assessee on the issue of levy of penalty and held that even in case of reduction in loss returned by the assessee, in consequence to additions/disallowances attracts provisions of section 270A of the Act. Therefore, once the assessee has under reported its income, which is in consequence of misreporting, the provisions of section 270A(9) is applicable and the AO has rightly levied penalty of Rs.25,19,222/-. Thus, rejected the explanation of the assessee and upheld the penalty levied by the AO.

8. Aggrieved by the order of the Ld.CIT(A), the assessee is now in appeal before the Tribunal.

9. The learned counsel for the assessee, Shri Salil Kapoor, Advocate, submitted that the Ld.CIT(A) erred in upholding the penalty levied u/s 270A(9) of the Act, without appreciating the fact that the AO has not arrived at a clear satisfaction as required under law, which is clearly evident from the show cause notice issued u/s 274 r.w.s. 270A of the Act dated 21.04.2021. The learned counsel for the assessee, further referring to the assessment order of the AO

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submitted that the AO has simply recorded that penalty proceedings are separately initiated u/s 270A of the Act for under reporting of income, in consequence of misreporting, even though sub section (9) of section 270A has various defaults and the case of the assessee does not fall in any sub clause (a) to (f) of sub section (9) of section 270A of the Act. In this regard, he relied upon the decision of Hon'ble Delhi High Court in the case of GE Capital US Holdings inc.Vs. DCIT (2024) 468 ITR 746 (Delhi).

10. Learned counsel for the assessee, further referring to the assessment order passed by the AO and the consequent application filed by the assessee u/s 270AA dated 28.05.2021, submitted that the appellant has satisfied both the conditions specified u/s 270AA of the Act for immunity from imposition of penalty and also filed an application with relevant particulars on 28.05.2021. As per sub section (4) of section 270A of the Act, the AO shall, within a period of three months from the end of the month, in which application under sub-section (1) is received, pass an order, accepting or rejecting such application. In the present case, although the AO has rejected the application filed by the assessee in the penalty order itself passed on

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29.03.2022, but such order has been passed after three months or no order has been passed separately, either accepting or rejecting the application filed by the assessee, therefore, the AO ought not to have levied penalty u/s 270AA of the Act.

11. The learned counsel for the assessee, further submitted that even on merits, the AO ought not to have levied penalty for under reporting of income, is in consequence of misreporting thereof, because, the assessee's case clearly falls under sub section (6) of section 270A, where, it has been clearly stated that under reporting of income for the purpose of this section shall not include the amount of income, in respect of which, assessee offers explanation and the AO or Commissioner, as the case may be is satisfied that the explanation is bonafide and the assessee has disclosed all the material facts to substantiate the explanation offered. In the present case, the assessee has furnished all facts related under reported income considered by the AO towards additions made on account of labour cess u/s 43B of the Act, by filing relevant tax audit report and also explained that said mistake is only inadvertent mistake, while filing the return of income and not with an intention to under

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report the income. Further, the appellant has furnished all the particulars with reference to said addition and therefore, the explanation offered by the assessee is bonafide and gets covered under sub section (6) of section 270A of the Act and thus, the AO ought not to have levied penalty u/s 270 of the Act. The Ld.CIT(A), without appreciating the relevant facts, simply sustained the additions made by the AO. Therefore, he submitted that the penalty levied by the AO should be deleted.

12. Ms. Aditi Goyal, Learned Sr.AR for the Revenue, on the other hand, supporting the order of the Ld.CIT(A) submitted that, the AO has arrived at a clear satisfaction in the assessment order itself, which is evident from the observation of the AO, for initiating penalty proceedings u/s 270A(9) of the Act and therefore, issuing notice u/s 274 r.w.s. 270A of the Act is only a formality to communicate to the assessee and in fact, the assessee has responded to the said notice and explained the case, therefore, the assessee cannot argue that the entire penalty proceedings become vitiated for issuing vague notice, without specifying the sub clause of section 270A(9) of the Act. The Ld.Sr.AR, further submitted that the

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application filed by the assessee u/s 270AA of the Act is not maintainable, once the AO initiates penalty proceedings u/s 270A(9) of the Act, which is clear from sub section (3) of section 270A and thus, the requirement of passing an order, rejecting or accepting the application filed by the assessee does not arise. Therefore, the argument of the counsel for the assessee is devoid of merit and cannot be accepted. The Ld.Sr.AR for the Revenue, further referring to additions made by the AO submitted that the assessee has under reported income, which is in consequence of misreporting, which is clear from the observation of the AO with regard to disallowance u/s 43B, where, even though the tax auditor has reported disallowance, but the assessee has failed to make adjustments in the statement of total income. Therefore, she submitted that, it is a case of under reporting of income, as a consequence of misreporting and attracts penalty u/s 270A(9) of the Act. The Ld.CIT(A), after considering relevant facts has rightly sustained penalty levied by the AO, therefore, she submitted that penalty levied by the AO should be upheld.

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13. We have heard both the parties, perused the material on record and had gone through the orders of the authorities below. We have also carefully considered relevant show cause notices issued by the AO u/s 274 r.w.s. 270A of the Act, on 21.04.2021, in light of various arguments of the counsel for the assessee and relevant case laws, including the decision of Hon'ble Delhi High Court in the case of GE Capital US Holdings inc.Vs. DCIT (supra). There is no dispute with regard to fact that in the assessment proceedings, the AO initiated penalty proceedings u/s 270A(9) of the Act, for under reporting of income, is in consequence of misreporting thereof. The AO had also issued a show cause notice u/s 274 r.w.s. 270A of the Act, on very same charge i.e. for under reporting of income, is in consequence of any misreporting thereof. From the show cause notice issued by the AO, coupled with observations in the assessment order, it is very clear that the AO has arrived at a clear satisfaction, in so far as the levy of penalty u/s 270A(9) of the Act for under reporting of income, is in consequence of misreporting thereof. Therefore, in our considered view, non specifying the sub clause under which, sub section (9) of section 270A is applicable is only imaginary and stretching beyond the scope of section 270A(9) of

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the Act and thus, the arguments of the counsel for the assessee cannot be accepted. In so far as the decision of Hon'ble Delhi High Court in the case of GE Capital US Holdings inc.Vs. DCIT (supra), we find that in the above case, in particular para 23 and 24, the Hon'ble High Court has discussed the issue in light of clause (a) to (f) of section 270A(9) of the Act and observed that, upon perusal of the orders of assessment, which were passed, the same carry no findings, which may be viewed as indicative of the contingencies spelled out in clause (a) to (f) of section 270A(9) being attracted. Under those facts, the Hon'ble Delhi High Court came to the conclusion that the AO failed to specify, whether the petitioner was being charged with under reporting or misreporting of income. In the present case, going by the assessment order and the observation of the AO and further notice issued u/s 274 r.w.s 270A dated 21.04.2021, the AO has clearly arrived at satisfaction, with regard to cases of misreporting of income referred to in sub section (9) of section 270A of the Act. Therefore, in our considered view, there is a clear satisfaction from the AO on the issue of levy of penalty for under reporting of income, is in consequence of misreporting, which is followed by show cause notice u/s 274 r.w.s.270A of the Act and

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thus, the arguments of the counsel for the assessee, in light of decision of Hon'ble Delhi High Court, does not hold good and thus rejected.

14. Coming back to another argument of the learned counsel for the assessee in light of provisions of section 270AA of the Act. Section 270AA of the Act, deals with immunity from imposition of penalty and as per said section, the assessee can make an application to the AO to grant immunity from imposition of penalty u/s 270A, upon fulfilling two conditions namely, tax and interest payable as per the order of assessment has been paid within the period specified in demand notice and no appeal against the order has been filed. The appellant needs to file such application u/s 270AA, within one month from the end of the month in which the order has been received by the assessee. In the present case, there is no dispute with regard to fact that the assessee has satisfied both the conditions referred to under sub section (1) of section 270AA and also satisfied sub section (2) by filing an application on 28.05.2021, within one month from the end of the month in which the order has been received by the assessee, however, the assessee has not

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satisfied sub section (3) of section 270AA, because as per sub section (3), the AO shall subject to fulfillment of the conditions specified in sub section (1) and after expiry of the period of filing the appeal as per section 249(2), grant immunity from imposition of penalty u/s 270AA, where, the proceedings for penalty u/s 270A has not been initiated under the circumstances referred to in sub section (9) of section 270A of the Act. In other words, the assessee can file application for immunity from imposition of penalty u/s 270A, only in a case, where, penalty has been initiated for under reporting of income u/s 270A(2) of the Act and in case, penalty proceedings have been initiated u/s 270A(9) of the Act, then the question of filing application by an assessee does not arise and consequently, the AO need not pass an order under sub section (4) of section 270AA of the Act. In the present case, since the AO has initiated penalty u/s 270A(9) of the Act, in our considered view, the application filed by the assessee u/s 270AA on 28.05.2021 becomes infructuous or not maintainable and thus, the AO need not pass an order as per section 270AA(4) of the Act. Therefore, we reject the arguments of the counsel for the assessee on this ground also.

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15. Coming back to the penalty levied by the AO u/s 270A(9) of the Act. Admittedly, the AO levied penalty for under reporting of income, is in consequence of misreporting thereof, in respect of disallowance of Rs.40,76,414/- u/s 43B of the Act for delayed payment of labour cess on or before the due date provided u/s 139(1) of the Act. According to the AO, the assessee has failed to disallow the labour cess in the statement of total income, even though the tax auditor quantified the disallowance in Form No.3CD. It was the explanation of the assessee before the AO that the assessee has made true and full disclosure of facts with regard to labour cess, however, while filing the return of income, the assessee erroneously did not disallow Rs.46,76,414/- u/s 43B of the Act. The assessee further contended that the additions made by the AO only reduces loss declared by the assessee for current year, without there being any additional payment of tax and further upon payment of said labour cess in the subsequent financial year, the assessee gets deduction of the said amount, which resulted in loss being declared by the assessee, restored to the original position of loss declared in the return of income filed for the year under consideration. We find that, in so far as disclosure of necessary facts with regard to the issue of labour

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cess, there is no dispute with regard to the arguments of the assessee, that it has disclosed full particulars with regard to labour cess in the return of income and also the tax auditor has reported the said amount in Form No.3CD under disallowance in the column disallowance u/s 43B of the Act. The assessee also explained the mistakes that occurred while filing the return of income and as per the assessee due to inadvertent error, the same has not been disallowed in the statement of total income. In our considered view, the arguments of the assessee appear to be bonafide and acceptable, going by the facts available on record, because first of all, the additions made by the AO does not lead to additional tax payment for the year under consideration. Further, it has resulted in reduction of current year loss reported by the assessee in the return of income and further upon payment of said labour cess in the subsequent financial year, the loss declared by the assessee in the return of income is restored to the original position, without there being any additional tax liability on the assessee. Since the additions made by the AO is only tax neutral and the explanation of the assessee appears to be bonafide, in our considered view, the AO ought to have considered the case of the assessee under sub section

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(6) of section 270A, where, it has been clearly stated that the under reported income for the purpose of this section shall not include the amount of income, in respect of which, the assessee offers an explanation and the AO or Commissioner as the case may be and the AO is satisfied that the explanation is bonafide and the assessee disclosed all the material facts to substantiate the explanation offered. In the present case, the assessee has disclosed all the facts with regard to labour cess and also explained the reasons for not making adjustment in the statement of total income. Therefore, in our considered view, the explanation of the assessee is bonafide and therefore, the AO ought not to have concluded that disallowance u/s 43B is in the nature of under reported income, is in consequence of misreporting thereof, for the purpose of section 270A of the Act. The Ld.CIT(A), without appreciating the relevant facts, simply sustained penalty levied by the AO. Thus, we set aside the order of the Ld.CIT(A) and direct the AO to delete penalty levied for Rs.25,19,222/- u/s 270A(9) of the Act.

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16. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 4th March, 2026.

<p>Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER</p>	<p>Sd/- (मंजूनाथ जी) (MANJUNATHA G.) लेखा सदस्य/ACCOUNTANT MEMBER</p>
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Hyderabad,
dated 04.03.2026.
L.Rama/sps

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	M/s N.A.M.Expressway Limited, B-376, Upper Ground Floor, Nirman Vihar S.O, Laxmi Nagar, New Delhi-110092
2.	राजस्व/ Revenue The	:	The Deputy Commissioner of Income-Tax, Circle-5(1), Aayakar Bhawan, Hyderabad
3.	The Principal Commissioner of Income Tax, Hyderabad		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad