

**IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, COCHIN**

**SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.564/COCH/2025
(Assessment Year:2018-2019)**

**Chundayil Kalam Girijadevi (Deceased),
Anizham, Keralassery, Palakkad- 678641
Presented by legal heir – Gopalakrishnan K
Padmanathan. K.V Advocate,
E2, Lucy's Arcade, Old Railway Station Road,
Ernakulam – 18.
[PAN: ACZPG5222D]**

..... **Appellant**

Vs

**The Income Tax Officer, Ward 1 & TPS,
Palakkad, Kerala**

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Padmnathan K.V.
For the Respondent/Department : Smt. Leena Lal

Date

Conclusion of hearing : 21.08.2025
Pronouncement of order : 22.09.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the Order, dated 14/07/2025, passed by National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Penalty Order, dated 02/08/2021, passed under Section 270A of the Act for the Assessment Year 2018-2019.
2. The Assessee has raised following grounds of appeal :
 - "A. The orders of the lower authorities in so far as they are against the appellant are highly unjust, perverse and against the facts

and circumstances of the case.

- B. The penalty under section 270A is not legally sustainable since the ingredients thereunder are not satisfied and hence, requires to be set aside.*
- C. The penalty under section 270A cannot be levied merely because the appellant has claimed an exemption in the returns which is unacceptable to the revenue. To this extent, reliance is placed on the decision of ITAT New Delhi in HCL Technologies Ltd. Versus DCIT, Circle 11 (1) New Delhi No.-ITA No. 3702/Del/2017, wherein it was held that levy of penalty is unsustainable because mere preferring a claim which is unacceptable to the Revenue does not ipso facto lead to levy of penalty. The Hon'ble Supreme Court in the cases of CIT vs. Reliance Petro Products Private Limited 322 ITR 158 (SC) and Dilip N. Shroff 291 ITR 519 (SC) has held that where the addition is made in respect of a bona fide claim, even if such claim is untenable according to the learned Assessing Officer, still no penalty could be levied under section 271(1)(c) of the Act.*
- D. Where the appellant has made adequate disclosures in the return, the penalty under section 270A of the Act is not justified. To this extent reliance is placed on decision of ITAT Mumbai in DCIT vs. Genesys International Corporation Ltd. (2013) 32 taxmann.com 372 (Mumbai-Trib). In CIT vs. Zoom Communication (P) Ltd. 327 ITR 510 (Del), the Hon'ble Delhi High Court has held that so long as the assessee has not concealed any material fact or the factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty under section 271(1)(c) of the Act, even if the claim made by him is unsustainable in law provided that he either substantiates the explanation offered by him or the explanation, even if not substantiated, is found to be bona fide.*
- E. Where the appellant has withdrawn the claim during the course of the assessment proceedings, the penalty under section 270A is not invokable. The appellant relies on decision of ITAT Surat in Vijaysinh P Solanki Versus The DCIT Circle-1 (3), Surat And Mayur Mathurdas Patel Vs. The Income Tax Officer, Ward-1 (3) (7), Surat No. ITA No.697 & 698/SRT/2018 to buttress this contention.*
- F. The levy of penalty at 200% of tax as mis-reporting of income is illegal and in violation of principles of natural justice, since*

there was no allegation of misreporting in the notice under section 270A. It is a settled law that an order cannot travel beyond the allegations in the show cause notice. Reliance is placed on decision of ITAT Chennai in Prakashchand Jain, Chennai vs Dcit, Cc2(3), Chennai ITA No.68/Chny/2024 and Hon'ble Delhi High Court in Schneider Electric South East Asia (HQ) Pte Ltd. v. ACIT, International Taxation in WP (C) No.5111 of 2022 dated 28.03.2022. A similar view has been taken by the Hon'ble Karnataka High Court in CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565, wherein it was held that penalty proceedings consequent to vague and invalid notice becomes invalid and liable to be quashed. This has been affirmed by Hon'ble Supreme Court in CIT v. SSA's Emerald Meadows (2016) 73 taxmann.com

- G. *Section under section 270A is discretionary and not mandatory an the provision uses the word "may" instead of "shall". The higher deduction was claimed on Bonafide belief on the basis of Notification S.O. 1420 (E) dated 29-03-2018 issued by the Government of India, increasing the limit under Section 4 of the Payment of Gratuity Act, 1972. At the time of filing the returns, the appellant was not aware that higher exemption was applicable only to those who retired or terminated on or after 29-03-2019 since the Notification 16/2019/F. No. 200/8/2018-ITA-1 on 08-03-2019, much after the appellant has filed her returns. Reliance is placed on decision of ITAT Chennai in Chitra Jaikumar Versus The Income Tax Officer, Non Corporate Ward 4 (6) Chennai. Chitra Jaikumar vs. The Income Tax Officer, Non Corporate Ward 4 (6) Chennai. No. ITA No. 2412/Chny/2024. In this case, the appellant had claimed deduction under 10(10AA) of the Act on the Bonafide belief that since she was working in Telecom Department before its corporatization into PSU. In Adinath Vasantrao Wandhekar Versus Income Tax Officer, Ward-4, Panvel, Mumbai ITA No. 1388/PUN/2023, ITAT Pune has set aside the penalty levied under section 270A where the appellant had claimed excess exemption under section 10(10) under a Bonafide belief.*
- H. *The Hon'ble Supreme Court of India in the following cases have held:*
- i. *That for imposition of penalty, mens rea is a necessary constituent CCE Vs. Pepsi Foods Ltd. 2010 (260) ELT 481 (SC).*
 - ii. *That penalty not imposable when mens rea absent- CCE Vs. Pepsi Foods Ltd. 2010(260) ELT 481(SC).*

- iii. *That penalty is leviable for some contumacious conduct or for a deliberate violation of the provisions of the particular statute Pratibha Processors Vs. UOI 1996 (88) ELT 12 (SC).*
- iv. *That penalty not justified in case of technical/venial breach of law or where breach flows from a bona fide error Hindustan Steel Limited 1978(2) ELT (J-159) (SC).*
- v. *That penalty not imposable when there is no intent to evade duty-Tamilnadu Housing Board vs Collector of Central Excise 1994(74) ELT 9 (SC).*
- vi. *That penalty is imposable only when a person acted in conscious disregard of his statutory obligation and deliberately suppressed the material facts - Grover & Well (India) Ltd. Vs. Collector 1994 (74) ELT 481 (SC).*
- vii. *That penalty not imposable for bonafide mistake - CCE Vs. India Aluminium Co. Ltd. 2010 (259) ELT 12 (SC).*
- viii. *That in respect of penalty in fiscal laws the principle followed is more like the principle in criminal cases. That is to say the benefit of doubt is more easily given to the assessee VV. IYER VERSUS COLLECTOR OF CUSTOMS 1999 (110) E.L.T. 414 (SC)*
- I. *Assuming but not admitting, penalty under section 270A can be imposed for under-reporting in the present case, the appellant is entitled to immunity under section 270AA since the entire tax stands already paid and no appeal has been filed against the assessment order.*
- J. *The appellant craves to reserve her right to add, modify, alter, substitute or delete any grounds in this appeal."*

3. The relevant facts in brief are that the Assessee is a retired as employee of Kerala State Finance Co-operation during the Financial Year 2017-18 relevant to the Assessment Year 2018-19. The Assessee filed return of income on 06/08/2018 claiming exemption of INR.10,00,000/- under Section 10(10) of the Act in respect of gratuity received on retirement. Thereafter, the Assessee filed a revised return claiming a higher exemption of INR.20,00,000/-. The case of the Assessee was selected for regular scrutiny. The

Assessing Officer was of the view that the increase exemption of INR.20,00,000/- under Section 10(10) of the Act was applicable only in case of retirement on/after 29/03/2018. Since, the Assessee retired during the Financial Year 2017-18, the benefit of aforesaid enhance exemption limit of INR.20,00,000/- was not available with the Assessee. Therefore, the Assessing Officer restricted the claim of the exemption under Section 10(10) of the Act to INR.10,00,000/- and completed the assessment at assessed income of INR.36,89,900/- as against returned income of INR.26,89,900/-. The Assessing Officer also initiated penalty proceeding under Section 270A of the Act and levied penalty of INR 2,20,000/- u/s 270A(1) r.w.s. 270A(9) of the Act holding that the Assessee had misreported income. Being aggrieved the assessee preferred the appeal before the Ld. CIT(A). The Ld. CIT(A) rejected the appeal preferred by the Assessee holding that the Assessee had failed to bring on record any material to substantiate reasonable cause for not offering income of INR.10,00,000/- to tax and for claiming the higher exemption of INR.20,00,000/- (*as opposed to INR 10,00,000/- available with the Assessee*).

4. Being aggrieved, the Assessee has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
5. The Ld. Authorised Representative for the Assessee took us through the relevant parts the Assessment Order and order passed by the Ld. CIT(A) and submitted that the Assessee has made claim for exemption of INR.20,00,000/- based upon the bonafide belief. During the assessment proceedings when the Assessee got to know that the belief of the Assessee was not correct, the Assessee accepted the assessment made, paid the tax on addition/disallowance made and did not prefer appeal against the quantum addition made. It was contended that there was no

misreporting by the Assessee. Without prejudice, in the present case it can only be alleged that there was underreporting of income by the Assessee. Since the Assessee had accepted the addition and paid the demand, the Assessee was entitled to benefit of immunity in terms of Section 270AA of the Act.

6. Per contra the Ld. Departmental Representative submitted that the claim of exemption of INR.20,00,000/- made by the Assessee in respect of gratuity benefits was clearly contrary to the applicable provision. The Ld. Departmental Representative relied upon Paragraph 7.19 to 7.22 of the impugned order passed by Ld. CIT(A) and submitted that the Assessee had not claimed benefit of provision u/s 270AA of the Act and in any case, the same were not available in case of misreporting of income.
7. We have given thoughtful consideration to the rival submissions and have perused the material on record. In the present case, penalty has been levied upon the Assessee for misreporting of income in terms of Section 270A(9) of the Act which deals with misrepresentation or suppression of facts. Whereas on perusal of record, we find that in the present case there was misrepresentation or suppression of facts by the Assessee. The Assessee had made claim for enhanced exemption by way of filing a revised returned of income. Thus, all the material/relevant facts were disclosed by the Assessee. Further, in our view it cannot be said that the Assessee had made any misrepresentation or had suppressed any facts. Further, it was explain by the Assessee that the enhanced claim of deduction of INR.20,00,000/- in respect of gratuity receipts was made on the basis of bonafide belief that the Assessee was entitle for the same. It is admitted position that when the enhanced claim was rejected by the Assessing Officer, the Assessee has accepted the assessment order and paid the additional tax demand. Therefore, in the facts of the present case, we hold that (a) the

Assessing Officer erred in concluding that Assessee had misreported income; and (b) even if the Assessee is held to have underreported income, the benefit of immunity under Section 270AA of the Act should be extended to the Assessee since the Assessee had paid additional tax demand and had not filed appeal against the Assessment Order. Accordingly, in view of the aforesaid and taking into consideration the overall facts and circumstances of the case, we delete the penalty of INR.2,20,000/- under Section 270A(1) r.w.s. 270A(9) of the Act. Thus, Ground No. A to E, and I raised by the Assessee are allowed; and Ground No. F, G H and J are dismissed as having been rendered infructuous.

8. In result, in terms of Paragraph 7 above, the appeal preferred by the Assessee is allowed.

Order pronounced on 22.09.2025.

Sd / -
(Inturi Rama Rao)
Accountant Member

Sd / -
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 22.09.2025

Disha Raut, Stenographer

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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