

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.:2660/Chny/2025

निर्धारण वर्ष / **Assessment Year: 2017-18**

Myunghwa Automotive India Private Limited, No.112, Sidadvakkam Village, Kanchipuram – 631 560.	vs.	ITO, Corporate Ward -4(1), Chennai.
[PAN:AAFCEM-2148-H] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. Divya Abhishek, C.A.

प्रत्यर्थी की ओर से/Respondent by : Shri. K. Ilayaraja, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 17.12.2025

घोषणा की तारीख/Date of Pronouncement : 11.02.2026

आदेश / O R D E R

PER S. R. RAGHUNATHA, AM:

The present appeal is filed by the assessee against the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "Id.CIT(A)") dated 18.07.2025, dismissing the appeal filed by the assessee against the penalty order dated 12.11.2021 passed u/s.270A of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), pertaining to Assessment Year (A.Y.) 2017-18.

2. The assessee is a private company and filed its return of income on 27.11.2017 admitting Nil income. The assessee's case was selected for scrutiny

under CASS and accordingly statutory notices u/s.143(2) and 142(1) of the Act were served on the assessee. Thereafter, the Assessing Officer passed an assessment order u/s.143(3) of the Act on 16.12.2019 wherein he disallowed the deduction claimed by the assessee with respect to employees' contribution towards EPF and ESI to the tune of Rs.8,55,654/- for belated payments of deductions in the respective Acts.

3. Subsequently, penalty proceedings u/s.270A of the Act was initiated by way of notice dated 16.12.2019. A show-cause notice was issued upon the assessee on 06.04.2021 to which the assessee filed its reply dated 13.04.2021. Thereafter, the Assessing Officer levied penalty for 'misreporting of income' at the rate of 200% on the tax sought to be evaded and thereby a sum of Rs.5,28,800/- was levied as penalty.

4. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Id.CIT(A) vide Form 35 dated 06.01.2022. Subsequently, notices were issued upon the assessee, who responded to the same. Thereafter, the Id.CIT(A) passed an order u/s.250 of the Act, confirming the penalty levied by the Assessing Officer.

5. Aggrieved by the above order of the Id.CIT(A), the assessee is in appeal before us.

6. Brief facts of the case emanating from the records are that the assessee is a private company and filed its return of income for the year under consideration on 27.11.2017 admitting income at Nil. Thereafter, the assessee's case was selected for scrutiny under CASS. Upon scrutiny, it was found that the remittance of employees' contribution towards EPF and ESI of Rs.8,55,664/- were beyond due dates and therefore, deduction claimed in respect of the same u/s.36(1)(va) of the Act were disallowed by the Assessing Officer vide order dated 16.12.2019 passed u/s.143(3) of the Act. In the said order, initiation of penalty proceedings u/s.270A of the Act was proposed and

notice in effect of the same was issued on the assessee on 16.12.2019. Thereafter a show-cause notice dated 06.04.2021 was issued for filing of written submission. In response to the same, the assessee filed its reply on 13.04.2021 wherein it was submitted that there was no mens-rea on the part of the assessee and that there was no deliberate neglect or conscious intent to conceal any income. It was further submitted that there was no misreporting of income, so as to warrant penalty at the rate of 200%. The Assessing Officer, after perusing the reply of the assessee, found it unpalausible and levied penalty of Rs.5,28,800/- at the rate of 200% on the tax sought to be evaded.

7. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A). In the appellate proceedings, the assessee submitted that even though remittance of PF and ESI is belated, it still qualifies to be an allowable expense and therefore, the consequent penalty u/s.270A cannot be levied. It was further submitted that when there are two views possible with respect the allowability of a claim of deduction, following one view would not come within the purview of misreporting of income and it cannot lead to levy of penalty. In support of the contention that the claim of PF/ESI is allowable, the assessee relied on the following case:

- CIT V. Vinay Cement Ltd (213 CTR 268).
- CIT V. JH Gotla (1985) 48 CTR (SC) 363.
- CIT V. Aimil Ltd (2010) 321 ITR 0508.
- CIT V. Industrial Security & Intelligence India Pvt Ltd (Mad HC – TCA No.585,586 of 2015).

8. The assessee also contended that the EPF and ESI, although remitted late in the respective Acts, but remitted within the due date of filing return of income under the Act and hence it will not be misreporting of income. Thereafter, the Id.CIT(A) passed an order dated 18.07.2025 upholding the levy of penalty u/s.270A on the basis of the decision of the Hon'ble Supreme Court in the case of M/s. Checkmate Services P. Ltd. v. CIT [TS-791-SC-2022].

9. Before us, the Id.AR for assessee reiterated their grounds from the appellate proceedings. Further, the Id.AR submitted that the assessee while filing the return of income and Tax Audit report, the disallowance u/s.36(1)(va) was not in force, since the decision of the Hon'ble Supreme Court in the case of Checkmate was not in existence. Therefore, the claim of the assessee in the relevant Assessment year was an allowable deduction and hence question of levy of penalty on such claim as misreporting does not arise.

10. Per contra, the Id.DR argued that the Id.CIT(A) was right in confirming the penalty and relied on the decision of Hon'ble Supreme Court in M/s. Checkmate Services P. Ltd (supra).

11. We have heard rival contention, perused the material before us and the judicial precedents relied by the assessee and the revenue. It is admitted fact that the assessee filed its return of income and declared income at Nil. Thereafter, assessee's case was selected for scrutiny under CASS and order u/s.143(3) of the Act came to be passed on 16.12.2019 wherein a sum of Rs.8,55,664/- was disallowed u/s.36(1)(va) of the Act on the ground that the assessee remitted EPF and ESI after due dates. Consequently, penalty proceedings u/s.270A was initiated for 'misreporting of income' and penalty order u/s.270A of the Act dated 12.11.2021 came to be passed in which penalty of Rs.5,28,800/- at the rate of 200% on the tax sought to be evaded was levied. In the appeal before the Id.CIT(A) the assessee contended on various grounds as captioned above. Thereafter, the Id.CIT(A) upheld the penalty order of the Assessing Officer while relying on the decision of Hon'ble Supreme Court in the case of M/s. Checkmate Services P. Ltd (supra).

12. The question arising here is whether the penalty levied u/s.270A(9) of the Act for the reason that the assessee has remitted the EPF and ESI of the employees' contribution, beyond due dates is correct or not. We find that the Assessing Officer had levied the penalty for misreporting of income. In order to

levy penalty for misreporting of income, the following circumstances must exist as per section 270A (9) of the Act.

(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely: —

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| <i>(a) misrepresentation or suppression of facts;</i> |
| <i>(b) failure to record investments in the books of account;</i> |
| <i>(c) claim of expenditure not substantiated by any evidence;</i> |
| <i>(d) recording of any false entry in the books of account;</i> |
| <i>(e) failure to record any receipt in books of account having a bearing on total income; and</i> |
| <i>(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.</i> |

13. A claim which is duly disclosed in the return of income but subsequently disallowed in the assessment proceedings cannot, by any stretch of imagination, be brought within the ambit of the clauses prescribed for “misreporting of income” u/s. 270A(9) of the Act. In the facts of the present case, none of the clauses enumerated u/s. 270A(9) are attracted.

14. Further, where penalty is sought to be levied u/s.270A(9) of the Act at the rate of 200% of the tax payable on the under-reported income, it is incumbent upon the Assessing Officer to clearly specify the particular clause of sub-section (9) of section 270A under which the case is alleged to fall. In the present case, the Assessing Officer has failed to specifically identify the applicable clause of section 270A(9) while levying the penalty.

15. In as much as the belated remittance of employees’ contribution towards PF/ESI does not fall within any of the clauses of section 270A(9) of the Act, we are of the considered view that the penalty levied u/s. 270A(9) is unsustainable in law and, accordingly, the same is directed to be deleted.

16. We further find that, at the time of filing the return of income on 27.11.2017, the assessee had duly disclosed and claimed deduction of employees' contribution towards EPF and ESI in accordance with the law as it stood then. The statutory amendment disallowing such deduction where the contributions are deposited beyond the due dates prescribed under the respective Acts came into force only with effect from 01.04.2021. Accordingly, the levy of penalty by the Assessing Officer, as confirmed by the Id. CIT(A) by placing reliance on the decision of the Hon'ble Supreme Court in *M/s. Checkmate Services (P.) Ltd.* (supra), is misplaced and unsustainable, and therefore liable to be set aside. In view of the foregoing discussions, we set aside the order of the Id.CIT(A) and direct the Assessing Officer to delete the penalty.

17. In this result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 11th February, 2026 at Chennai.

Sd/-

(एबी टी वर्की)

(ABY T VARKEY)

न्यायिक सदस्य/Judicial Member

Sd/-

(एस. आर. रघुनाथा)

(S. R. RAGHUNATHA)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 11th February, 2026

SP

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF