

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR STATE OF TELANGANA  
W.P. NO. 18549 OF 2022**

BETWEEN

Vista Homes, 5-4-187/3 & 4, 2<sup>nd</sup> Floor,  
Soham Mansion, M.G. Road,  
Secunderabad 500 003, Telangana  
Represented by its Managing Partner  
Sri Soham Satish Modi, S/o. Late Satish Modi,  
Aged about 53 years, R/o Plot No. 280,  
Road No. 25, Jubilee Hills, Hyderabad.

AND

1. Union of India  
Department of Revenue  
Ministry of Finance, North Block,  
New Delhi- 110 001
2. Additional/Joint/Deputy/  
Assistant Commissioner of Income Tax,  
Circle-6(1), I T Towers, A C Guards  
Masab Tank,  
Hyderabad.

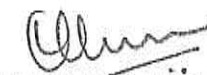
...Respondents

**COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS**

I, Uppaluri Meena, D/o Uppaluri Sri Hari Rao aged about 30 years, Occ: Govt. Service, R/o Flat No. 207, Ramky Pride Apartments, Hyderabad, do hereby solemnly and sincerely affirm and state as follows:-

1. I am the Deputy Commissioner of Income Tax, Circle-6(1), Hyderabad and I am well acquainted with the facts of the case. I am filing this Counter Affidavit on behalf of the Respondents as per SOP of the CBDT in F. No. NaFAC/Delhi/CIT-3/2022-23/339/76 dated 01-08-2022.
2. I have read the writ affidavit filed by the petitioner herein in support of the above Writ Petition and deny all the material allegations made therein except those which are specifically admitted hereunder and the writ petitioner is put to strict proof of the same.

  
श्री. श्रीनिवास राव  
Srinivasa Rao  
आयकर अधिकारी  
INCOME TAX OFFICER  
वार्ड-6(1), हैदराबाद  
Ward-6(1), Hyderabad

  
UPPALURI MEENA, I.R.S.  
Dy. Commissioner of Income Tax  
Circle-6(1), Hyderabad.

**BRIEF FACTS OF THE CASE:-**

The petitioner/Assessee is a partnership firm and is engaged in real estate business. The assessee filed its return of income for the A.Y. 2018-19 on 04-10-2018 declaring total income of Rs. 71,49,954/-. The case was selected for scrutiny. Assessment u/s 143(3) r.w.s. 144B was completed on 22-07-2021 assessing the income of Rs. 3,91,68,318/- by making addition of Rs. 3,20,18,364/- as income from business. In the assessment order it is also mentioned that the assessee has under-reported income which is in consequence of misreporting thereof and therefore, penalty proceedings u/s 270A of the I T Act, 1961 for under-reported income which is in consequence of misreporting thereof of the income is being initiated separately.

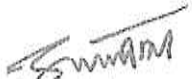
On 22-07-2021 notice u/s 274 r.w.s. 270A of Income Tax Act, 1961 issued. Show cause Notices for penalty u/s 270A of the I T Act issued on 10-11-2021 and 29-12-2021. The Penalty order u/s. 270A of the I T Act, 1961 in DIN: ITBA/PNL/F/270A/2021-22/1041977416(1) was passed on 29-03-2022 by the National Faceless Assessment Centre, Delhi.

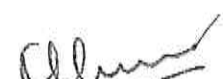
Aggrieved by the penalty order dated 29-03-2022, the petitioner has filed this Writ Petition challenging the penalty order.

3. In reply to the averments in para 1 of the Affidavit, it is submitted that since this para is general in nature and therefore, no comment is offered.
4. In reply to para 2 to 6 of the Affidavit, it is submitted that these paras are based on the facts of the case.
5. In reply to the averments in para 7 of the Affidavit, it is submitted that Order u/s 270A of the I T Act, 1961 dated 29-03-2022 was passed considering the submissions of the assessee. The relevant part of the penalty order is reproduced as below:

*"After going through the reply and submissions made by the assessee, it is found to be a fit case for levy of penalty u/s 270A of the Income Tax Act, 1961.*

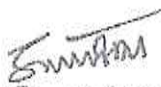
*In view of the above facts, I am satisfied that assessee has under reported his income in respect of addition of Rs. 3,20,18,364/- made in the assessment order and liable to penalty u/s 270A of the Income Tax Act, 1961."*

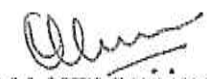
  
 टी. श्रीनिवास राव  
 Srinivasa Rao  
 आयकर अधिकारी  
 INCOME TAX OFFICER  
 Circle-8(1) Hyderabad

  
 UPPALURI MEENA, I.R.S.  
 Dy. Commissioner of Income Tax  
 Circle-8(1) Hyderabad

6. In reply to the averments in para 8 of the Affidavit, it is submitted that this para is based on facts of the case.
7. In reply to the averments in para 9 of the Affidavit, it is submitted that as per provisions of section 270AA, the application in Form 68 has to be filed before the Assessing Officer within one month from the end of the month in which the Assessment order was received by the assessee. The Assessment order was received by the assessee in the month of July, 2021. Hence, the time limit to file application u/s 270AA is expired by August, 2021, whereas the assessee has filed application u/s 270AA in September, 2021. Hence, the time for filing the application u/s 270AA is barred by limitation. Notwithstanding the above, the penalty u/s 270A in the case of petitioner is initiated under clause 270A(9) for which the immunity u/s 270AA is not applicable.
8. In reply to the averments in para 10 of the Affidavit, it is submitted that this para is factual in nature.
9. In reply to para 11 of the Affidavit, it is submitted that plain reading of Section 270A reveals that there is no requirement of intent to deceive or wilful non-disclosure or mens rea in said section. The detection of misreporting is sufficient to levy penalty under this section. Hence, the contention of the petitioner that intent to deceive and wilful non-disclosure as an essential condition for imposition of penalty under this section is not correct.
10. In reply to para 12-14 of the Affidavit, it is submitted that the assessment order has elaborately discussed the additions made and reverted the submissions made by the assessee. Further, based on the detailed discussion the penalty u/s 270A for under reporting of income which is in consequence of misreporting thereof has been initiated. Hence, the satisfaction that the assessee's case for penalty falls under sub-section 8 of section 270A clearly lies in the detailed assessment order dated 29.03.2022. The relevant part of which is reproduced below : (Para 4 of Page 10)

*"I am satisfied that the assessee has under-reported income which is in consequence of misreporting thereof, and therefore, penalty proceeding u/s 270A of*

  
**डी. श्रीनिवास राव**  
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 सर्कल-6(1), हैदराबाद  
 Circle-6(1), Hyderabad

  
**DR. PALURI MEENA, I.R.S.**  
 Dy. Commissioner of Income Tax  
 Circle-6(1), Hyderabad.

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*the IT Act, 1961 for under-reported income which is in consequence of misreporting thereof of the income is being initiated separately."*

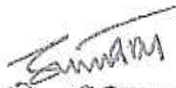
11. In reply to para 15 of the Affidavit, it is submitted that plain reading of Section 270A reveals that there is no requirement of intent to deceive or wilful non-disclosure or mens rea in said section. The detection of misreporting is sufficient to levy penalty under this section. Hence, the contention of the petitioner that intent to deceive and wilful non-disclosure as an essential condition for imposition of penalty under this section is not correct.

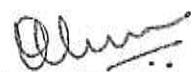
Further, if the petitioner is aggrieved by the penalty order passed, the right course of action statutorily, is to file an appeal before the Commissioner of Income Tax (Appeals) which was available to the petitioner

12. In reply to the averments in Ground 'A' of para 16 of the Affidavit, it is submitted that the Penalty Notice u/s 274 r.w.s. 270A was issued to the assessee on 22-07-2021. Show cause Notice u/s 270A of the IT Act 1961 dated 10/11/2021 and another Show Cause Notice dated 29-12-2021 were issued to the assessee. Multiple opportunities were given to the assessee before passing penalty order on 29-03-2022. Hence, principles of natural justice have been followed.

13. In reply to the averments in Ground 'B' of para 16 of the Affidavit, it is submitted that the Notice for penalty under section 274 r.w.s. 270A of the Income Tax Act, 1961 for the A.Y. 2018-19 in the assessee's case issued on 22-07-2021 wherein it is clearly mentioned that *"Whereas in the course of proceedings before me for the Assessment Year 2018-19, it appears to me that you have under-reported income which is consequence of misreporting thereof"*. Hence, the clause for imposing penalty is mentioned in the notice.

14. In reply to the averments in Ground 'C' of para 16 of the Affidavit, it is submitted that the penalty notice u/s 274 r.w.s. 270A for the A.Y. 2018-19 was issued to the assessee on 22-07-2021 requiring the assessee to submit their reply and the assessee submitted a letter dated 17-08-2021. Show cause Notices for penalty u/s 270A of the IT Act, 1961 dated 10-11-2021 & 29-12-2021 were issued asking the assessee to submit supporting documentary evidence(s) if any. As per the penalty order, replies filed were considered.

  
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15. In reply to the averments in Ground 'D' of para 16 of the Affidavit, it is submitted that the Order u/s 270A of the I T Act, 1961 dated 29-03-2022 was passed duly considering the assessee's submission and merits of the case. Further, it is submitted that plain reading of Section 270A reveals that there is no requirement of intent to deceive or wilful non-disclosure or mens rea in said section. The detection of misreporting is sufficient to levy penalty under this section. Hence, the contention of the petitioner that misreporting presupposes wilful representation or non-disclosure of income is not correct.

16. In reply to the averments in Ground 'E' of para 16 of the Affidavit, it is submitted that the initiation of penalty was under Section 270A(8). The sub-sections 270A(6) and 270A(7) are not applicable to Section 270A(8). Further, the sub-section under which penalty is initiated can be appealed before the Commissioner (Appeals) which is the right course of action.

17. In reply to the averments in Ground 'F' of para 16 of the Affidavit, it is submitted that plain reading of Section 270A reveals that there is no requirement of intent to deceive or wilful non-disclosure or mens rea in said section. The detection of misreporting is sufficient to levy penalty under this section. Hence, the contention of the petitioner that misreporting presupposes wilful intent to deceive or non-disclosure of income is not correct.

18. In reply to the averments in Ground 'G' of para 16 of the Affidavit, it is submitted that it is general in nature and hence require no specific comments.

19. In reply to the averments in para 17 of the Affidavit, it is submitted that in this case the order u/s 270A of the I T Act, 1961 was passed on 29.03.2022. If aggrieved by the order, the petitioner had alternative remedy to file the appeal before CIT(A), within 30 days from the date of receipt of order. However, the petitioner has not filed any appeal, instead the petitioner filed Writ Petition before the Hon'ble High Court, thus, not following the proper judicial hierarchy. Hence, the contention of the Petitioner that there is no provision of appeal provided under the Income Tax Act against the order passed u/s. 270A and that there is no other alternate and efficacious remedy except to approach Hon'ble Court under Article 226 is not correct. Further, the petitioner can still appeal against

the penalty order before the Commissioner (Appeals) who has the power to condone the delay in filing of appeal.

20. In reply to the Para 18 to 20 of the Affidavit, it is submitted that the penalty order was passed after following due procedure of law, by providing ample opportunities to the petitioner. Hence, contention of petitioner that the order is illegal is not correct. Further, it is once again reiterated that the petitioner had alternative remedy to file the appeal before CIT(A), within 30 days from the date of receipt of order. Furthermore, the petitioner can apply for stay of demand as per the prescribed rules, which the petitioner has not attempted to avail.

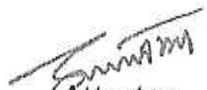
To sum up, the petitioner has not exhausted the alternative remedies available to contest against the penalty order, before invoking the Writ Jurisdiction of this Hon'ble High Court.

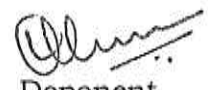
For the reasons stated above, the Hon'ble Court may be pleased to dismiss the Writ petition and pass such other or further orders as the Hon'ble court may deem fit and proper in the circumstances of the case.

Solemnly affirmed at Hyderabad

On this the        day of October, 2022

And signed before me

  
Attestor  
टी. श्रीनिवास राव  
T. Srinivasa Rao  
आयकर अधिकारी  
INCOME TAX OFFICER  
वार्ड-6(1), हैदराबाद  
Ward-6(1), Hyderabad

  
Deponent  
UPPALURI MEENA, I.R.S.  
Dy. Commissioner of Income Tax  
Circle-6(1), Hyderabad.

### VERIFICATION STATEMENT

I, Uppaluri Meena, D/o Uppaluri Sri Hari Rao aged about 30 years, Occ: Got. Service, R/o Flat No. 207, Ramky Pride Apartments, Hyderabad, Deponent acquainted with the facts do hereby verify and state that the contents of paragraph Nos. 1 to 20 of the Counter Affidavit are true and correct to the best of my knowledge and on the basis of the records.

Hence, verified at Hyderabad on this the                      day of October, 2022.

  
Attestor  
टी. श्रीनिवास राव  
T. Srinivasa Rao  
आयकर अधिकारी  
INCOME TAX OFFICER  
वार्ड-6(1), हैदराबाद  
Ward-6(1), Hyderabad

  
Deponent  
UPPALURI MEENA, I.R.S.  
Jy. Commissioner of Income Tax  
Circle-6(1), Hyderabad.





*Copy to R.S. Associates.*

HYDERABAD DISTRICT  
IN THE HIGH COURT OF HYDERABAD.  
FOR THE STATE OF TELANGANA

W.P. NO. 18549 OF 2022

COUNTER AFFIDAVIT FILED ON  
BEHALF OF THE RESPONDENTS

*R*  
*12/10/22*

Filed on:

Filed by:

J V PRASAD (7985)

Sr. Standing Counsel for Income Tax Dept

BOKARO SAPNA REDDY (15048)

Jr. Standing Counsel for Income Tax Dept

*9010000637.*