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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 17.09.2026*
Date of uploading: 22.09.2026

CNR No. DLHC010412662026

\+ W.P.(C) 12741/2026, CM APPL. 59208/2026 & CM APPL. 59209/2026

SHANTIJANAK ESTATES PRIVATE LIMITED

.....Petitioner

Through: Mr. Rajeev Ahuja, Ms. Deepika , Mr. Harshit Ahuja & Mr. Shikhar Bansal, Advocates.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 22(2), DELHI &ANR.

.....Respondents

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann, JSC & Mr. Pratyuksh Gupta, JSC.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

DINESH MEHTA, J. (*ORAL*)

1. By way of present writ petition, the petitioner has challenged the order dated 30.07.2026 passed by the respondent no.1- the Assessing Officer under Section 270AA of the Income Tax Act, 1961 *(hereinafter referred to as 'the Act of 1961')* vide which petitioner's application under Section 270AA(2) of the act of 1961 seeking immunity from the penalty proceedings has been

rejected.

2. The petitioner company is engaged in the business of letting out immovable property and has been filing its return of income. During the assessment year 2024-25, the petitioner declared a total income of Rs. 5,43,52,210/- under the head Profits and Gains of Business and Profession and filed its return.

3. Petitioner's assessment was done under Section 143(3) of the Act of 1961 read with Section 144B of the Act of 1961 by way of order dated 27.03.2026 and the income as declared by the petitioner was assessed under the head income from house property at Rs.6,68,07,690/-.

4. While passing the assessment order, the Assessing Officer initiated penalty proceedings under Section 270A of the Act of 1961 alleging that the petitioner has done under reporting of the income.

5. The petitioner paid the entire demand of Rs 37,99,340/- on 22.04.2026 before the due date (26.04.2026) and on 27.04.2026, moved an application seeking immunity in the prescribed form no.68 as provided under Section 270AA(2) of the Act of 1961 and requested respondent no.1 to grant him the immunity from the penalty proceedings.

6. On 20.05.2026, the respondent no.2 issued a notice to the petitioner seeking its response as to why penalty under Section 270A of the Act of 1961 be not imposed.

7. The Assessing Officer issued a notice dated 28.07.2026 asking the petitioner as to why his request of immunity should not be rejected, as the petitioner had failed to establish payment of tax and interest payable and he had not given any documentary evidence to establish that no appeal had been preferred against the assessment order.

8. In response to the above-referred notice dated 28.07.2026, the petitioner filed a reply dated 29.07.2026 and submitted that he is entitled for immunity from the penalty proceedings, as he fulfilled all the conditions. The respondent-Assessing Officer however, rejected petitioner's application *vide* order dated 30.07.2026, *inter alia*, recording that the petitioner did not file any reply.

9. Learned counsel for the petitioner pointed out that it is clear from record that the petitioner had filed a reply to the notice dated 28.07.2026 issued by the AO on 29.07.2026 (Annexure P-12) and contended that the petitioner has placed the acknowledgement of such reply which showed that the same was filed on 29.07.2026 *vide* its Reference ID: 100117217516, yet the AO has arbitrarily rejected petitioner's application citing that the reply had not been filed by the petitioner.

10. Invitng Court's attention towards annexure P-16, learned counsel for the petitioner pointed out that on 30.07.2026, the respondent had seen the petitioner's reply and in spite of the same he had written that no reply had been filed by the petitioner, while passing the impugned order on 30.07.2026. He argued that the AO deserves to be reprimanded and the impugned order deserves to be set aside.

11. Without prejudice to above argument, learned counsel submitted that filing of reply and not filing the reply is inconsequential so far as grant of immunity under Section 270AA of the Act of 1961 is concerned, inasmuch as the petitioner fulfils all the requisite conditions of getting immunity from penalty proceedings. He submitted that entire outstanding demand arising out of the assessment order had been deposited and no appeal had been preferred and the application was filed within time.

12. Mr. Bhatia, learned Senior Standing Counsel for the respondents was in no position to contradict the factual position laid down by the petitioner.

13. Heard learned counsel for the parties.

14. On perusal of the record, including notice issued by the Assessing Officer, we find that the Assessing Officer had required the petitioner to satisfy that he had not filed any appeal. We fail to comprehend as to how the assessee could file or furnish negative evidence that he had not filed an appeal.

15. While observing so, we hereby direct the Assessing Officer not to ask for negative evidence. The AO can at the best take a declaration from the assessee that it has not filed any appeal against the assessment order and also that in case any appeal has been preferred, the same would be withdrawn or shall be deemed to have been withdrawn.

16. That apart, the form 68 which the petitioner had filed already contained such detail and declaration. Therefore, the notice issued by the Assessing Officer was an empty formality to say the least.

17. Be that as it may. Since the petitioner had filed a reply and the order impugned has been passed without consideration of the reply, we set aside the impugned order dated 30.07.2026 (Annexure P-1) and direct the respondent-Assessing Officer to pass fresh order in accordance with law and with objectivity, considering the mandate of law and material available on record.

18. The writ petition stands allowed in aforesaid terms.

19. All interlocutory applications are disposed of accordingly.

20. The Assessing Officer shall pass fresh order in accordance with law on or before 15.10.2026. Until the petitioner's application under Section 270AA

is decided, the Faceless Assessing Officer shall not proceed in furtherance of notice dated 27.03.2026 proposing to levy penalty under Section 270A of the Act of 1961.

DINESH MEHTA
(JUDGE)

RAJNEESH KUMAR GUPTA
(JUDGE)

SEPTEMBER 17, 2026/*nk*