

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER AND
SHRI G. M. DOSS, ACCOUNTANT MEMBER**

ITA No. 297/Mum/2026 & ITA No. 3499/Mum/2026 & ITA No. 4637/Mum/2026 (निर्धारणवर्ष/Assessment Year:2023-24) [Permanent Account Number : AAGCA4215J]		
Cyqurex Systems Private Limited Plot No. C-21, G Block,1st Floor, Bandra Kurla Complex, Bandra East, Mumbai - 400051	Vs.	The Deputy Commissioner of Income-Tax, Central Circle-2(3), Mumbai Pratishtha Bhavan, 8 th Floor, M. K. Road, Mumbai - 400020.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी /Respondent)
निर्धारितीद्वारा/Assessee represented by:		Shri Ruturaj H. Gurjar, Advocate
राजस्वद्वारा/Revenue represented by:		Shri Pankaj Deshmukh, Sr. AR
सुनवाईकीतारीख/Date of conclusion of hearing:		12.08.2026
घोषणाकीतारीख/Date of pronouncement:		30.09.2026

आदेश / ORDER

PER G.M. DOSS, ACCOUNTANT MEMBER :

These three appeals filed by the assessee arise out of the common appellate order dated 13.11.2025 passed by the learned Commissioner of Income-tax (Appeals)-48, Mumbai, for the assessment year 2023-24, whereby the penalty of Rs.1,23,71,443/- levied by the Assessing Officer under section 270A of the Income-tax Act, 1961 ("the Act") was

confirmed. The three appeals arise from the same penalty order passed by the Assessing Officer dated 16.09.2025 and the grounds raised in all the three appeals are identical. The penalty was levied in respect of an amount of Rs.7,41,16,000/- which had been claimed by the assessee as revenue expenditure but was treated by the Assessing Officer as a capital loss.

2. The assessee is engaged in the business of cyber-security and software development solutions. The relevant facts emerging from the penalty order are that the assessee had filed its return of income for the year under consideration declaring total loss of Rs.16,39,73,406/-. The assessment under section 143(3) of the Act was completed on 20.03.2025 and the Assessing Officer initiated penalty proceedings under section 270A on the ground of alleged under-reporting of income of Rs.7,41,16,000/-.

3. The aforesaid amount of Rs.7,41,16,000/- represented expenditure relating to software development projects. In the course of the assessment proceedings, the Assessing Officer treated the amount as capital loss instead of revenue expenditure and, consequently, disallowed the claim. The assessee, in response to the penalty proceedings, submitted that the claim had been made bona fide, on the basis of judicial precedents and CBDT Circular No.16 of 2015, and that all material facts relating to the claim had been fully disclosed during the assessment proceedings. It was further submitted that the question whether the expenditure was capital or revenue in nature was a debatable issue involving interpretation of law and that the disallowance arose on account of a difference in legal interpretation and not on account of suppression of facts or furnishing of inaccurate particulars.

4. The Assessing Officer, however, was not satisfied with the explanation of the assessee. According to the Assessing Officer, the software developed by the assessee constituted a capital asset and,

therefore, its write-off was required to be treated as a capital loss. The Assessing Officer observed that the judicial precedents and CBDT circular relied upon by the assessee related to cases where the asset had either not been used or had not generated income and, according to him, the facts of the present case were materially different. The Assessing Officer consequently held that the assessee had failed to substantiate its explanation and proceeded to hold that the assessee had under-reported its income within the meaning of section 270A of the Act. A penalty of Rs.1,23,71,443/-, being 50 per cent of the tax sought to be evaded, was accordingly levied.

5. Aggrieved by the penalty order, the assessee preferred an appeal before the learned CIT(A). The learned CIT(A), after considering the assessment order, penalty order, written submissions and material placed on record, confirmed the penalty. The learned CIT(A) proceeded on the basis that the expenditure represented the write-off of the "SaifeZero Trust Network Access Solution", which, according to him, had already been completed, capitalised, put to use and had generated revenue. On this reasoning, the learned CIT(A) held that the assessee's reliance upon authorities concerning infructuous or abandoned projects was misplaced. The learned CIT(A) further held that the loss was capital in nature and that the claim as revenue expenditure was not a bona fide explanation for the purposes of section 270A(6)(a). The learned CIT(A) also recorded that the assessee had disclosed the relevant facts in its financial statements and submissions, but nevertheless concluded that the explanation offered was not bona fide.

6. Before us, the learned counsel for the assessee reiterated the submissions made before the lower authorities. It was submitted that the entire expenditure of Rs.7,41,16,000/- comprised two distinct components, namely, Rs.5,88,40,000/- towards impairment of the internally developed Saife IP asset and Rs.1,52,76,000/- towards

development cost of the Blackbox and Command Control Operating Platform, which continued to stand as capital work-in-progress. It was submitted that these particulars were duly disclosed in Notes 42 and 43 forming part of the audited financial statements. According to the learned counsel, the learned CIT(A) had proceeded on an incomplete appreciation of the factual position by treating the entire amount as relating to the completed Saife asset. The learned counsel therefore submitted that there was full and transparent disclosure of all material facts and that the dispute was only regarding the legal characterisation of the expenditure as capital or revenue.

7. The learned counsel further submitted that the statutory exclusion contained in section 270A(6)(a) was squarely applicable. It was contended that the assessee had offered an explanation, the explanation was bona fide and all material facts necessary to substantiate the explanation had been disclosed. It was emphasised that the learned CIT(A) himself had recorded that the assessee had disclosed the facts in its financial statements and submissions. It was therefore submitted that rejection of the assessee's legal claim in the quantum proceedings could not, by itself, lead to the conclusion that the explanation was not bona fide. The learned counsel relied, inter alia, upon the decisions in *Carona Ltd. v. Deputy Commissioner of Income-tax*, reported in 176 taxmann.com 983 (Bombay H.C), *Vijay Bhagwandas Raheja v. Deputy Commissioner of Income-tax*, reported in 160 taxmann.com 684 (Bombay H.C), *CIT v. Reliance Petroproducts Pvt. Ltd.*, reported in 322 ITR 158 (SC), *Principal Commissioner of Income-tax v. Trigint Software Ltd.* reported in 147 taxmann.com 52 (Bombay H.C), and *G.M. Modular (P.) Ltd. v. Principal Commissioner of Income-tax.*, reported in 185 taxmann.com 495 (Bombay H.C) The learned counsel submitted that these authorities establish the distinction between a false factual claim and an unsuccessful legal claim, and that where the underlying facts are disclosed and the dispute concerns the

legal treatment or characterisation of an expenditure, penal consequences do not automatically follow.

8. The learned Departmental Representative (Id.DR), on the other hand, relied upon the orders of the Assessing Officer and the learned CIT(A) and supported the levy of penalty. It was submitted that the Assessing Officer had correctly found that the software constituted a capital asset and that the write-off was consequently capital in nature. The Id.DR thus supported the conclusion of the learned CIT(A) that the assessee had not established a bona fide explanation within the meaning of section 270A(6)(a) of the Act.

9. We have considered the rival submissions and perused the material available on record. We have also considered the case laws relied upon by the learned counsel for the assessee. The short issue arising for our consideration is whether, on the facts of the present case, the amount of Rs.7,41,16,000/- can be regarded as under-reported income for the purposes of section 270A of the Act when the assessee had disclosed the relevant expenditure and its accounting treatment in the audited financial statements and the dispute between the assessee and the Revenue essentially concerns the legal characterisation of such expenditure as revenue or capital in nature.

10. In this regard, the decision relied upon by the learned counsel in the case of Carona Ltd. is relevant for the principle sought to be canvassed before us, namely, the distinction between a false factual statement and an unsuccessful claim based upon the legal treatment of disclosed facts. The assessee's case before us is not that any expenditure was fictitious or that any primary fact was concealed. The material placed before us shows that the expenditure and the manner in which it had been accounted for were disclosed in the audited financial statements. The written submissions of the assessee specifically refer to

Notes 42 and 43, wherein the two components of the expenditure and their accounting treatment were disclosed.

11. Similarly, the decision in the case of Vijay Bhagwandas Raheja is relied upon by the assessee for the proposition that where the underlying transaction is correctly disclosed, an incorrect legal head or characterisation of the transaction does not, by itself, result in penal consequences. In the present case also, the assessee disclosed the expenditure and its accounting treatment. The dispute is as to whether, having regard to the nature and ultimate fate of the software development expenditure, the amount was allowable as revenue expenditure or was required to be dealt with in the capital field. Thus, the controversy essentially concerns the legal consequence flowing from the disclosed facts.

12. The assessee has also relied upon the decision of the Hon'ble Supreme Court in the case of CIT v. Reliance Petroproducts Pvt. Ltd., rendered in the context of section 271(1)(c) of the Act. Though the said decision concerns the provisions of section 271(1)(c), the principle laid down therein regarding the distinction between making a claim which is not sustainable in law and furnishing inaccurate particulars is relevant while examining the nature of the assessee's explanation in the context of section 270A(6)(a). The statutory scheme under section 270A specifically excludes from the computation of under-reported income an amount in respect of which the assessee offers an explanation, the explanation is bona fide and all material facts necessary to substantiate such explanation have been disclosed. The question, therefore, is not merely whether the claim ultimately succeeded in the quantum proceedings, but whether the explanation offered by the assessee satisfies the statutory conditions.

13. In the present case, we find considerable force in the submission of the learned counsel that the issue regarding the nature of the

expenditure was debatable. The assessee had treated the expenditure as revenue expenditure and had disclosed the relevant particulars. The Assessing Officer, on examination of the nature of the software and its development, took a different view and treated the amount as capital loss. The fact that the claim of the assessee was not accepted in the assessment proceedings does not, by itself, establish that the assessee had furnished any false particulars or that the explanation offered by it was not bona fide. The question whether expenditure incurred in relation to software development which ultimately does not result in an enduring asset or commercially viable product is to be treated in the capital field or revenue field is one which necessarily requires examination of the facts and the applicable legal principles.

14. We find that the decision of the Hon'ble Bombay High Court in the case of G.M. Modular (P.) Ltd. v. Principal Commissioner of Income-tax, reported in 185 taxmann.com 495, directly bears upon the issue before us. In that case, the Hon'ble jurisdictional High Court considered the applicability of section 270A(6)(a) and dealt with a situation where the material facts had been disclosed by the assessee and the claim was made under a bona fide belief supported by the then prevailing judicial position. The Hon'ble High Court held that where the issue is debatable and the explanation offered by the assessee is bona fide, the statutory exclusion under section 270A(6)(a) is attracted. The Hon'ble High Court also considered the principle laid down by the Hon'ble Supreme Court in Reliance Petroproducts in the context of penalty and held that merely because a claim is ultimately found to be unsustainable in law, it does not, by itself, justify penal consequences where the relevant particulars have been disclosed and the claim was made bona fide.

15. The principle laid down in G.M. Modular is directly applicable to the facts before us. In the present case, the assessee had disclosed the relevant expenditure in its audited financial statements and had also

furnished an explanation during the assessment and penalty proceedings. The material on record does not indicate that the expenditure was fictitious, that the amount claimed was inflated, that any receipt or asset was concealed, or that any primary factual statement furnished by the assessee was found to be false. The dispute arose because the Assessing Officer adopted a different legal characterisation of the expenditure and treated it as capital loss instead of revenue expenditure. Thus, the essential controversy is one concerning the legal treatment of disclosed expenditure.

16. We also find relevance in the decision of the Hon'ble Bombay High Court in the case of Principal Commissioner of Income-tax v. Trigent Software Ltd., reported in 147 taxmann.com 52. In that case, the Hon'ble Bombay High Court considered expenditure incurred in connection with development of a new software which had initially been shown as capital work-in-progress and was subsequently written off when the project was abandoned. On the facts of that case, the Court considered the circumstance that the expenditure related to development in the assessee's existing line of business and that no new asset ultimately came into existence, and held the expenditure to be revenue in nature.

17. The factual circumstances considered in Trigent Software Ltd. are relevant for appreciating the bona fide nature of the claim made by the assessee before us. The assessee had incurred expenditure in the course of software development. In respect of the Blackbox and Command Control Operating Platform, the expenditure continued to be reflected as capital work-in-progress and was charged to the profit and loss account when the products could not be brought to the stage of commercial viability. The assessee had also separately disclosed the impairment of the internally developed Saife IP asset. Thus, there was an accounting and factual basis for the claim made by the assessee. The

mere fact that the Revenue ultimately characterised the expenditure differently cannot, in the circumstances of the present case, convert the claim into a non-bona fide explanation.

18. The learned counsel has also placed reliance upon the decision in Carona Ltd. and the decision in Vijay Bhagwandas Raheja in support of the proposition that an incorrect legal claim or legal characterisation, in the absence of any false factual particulars or suppression of material facts, cannot by itself be equated with conduct warranting penalty. Though these decisions were rendered in the context of section 271(1)(c), the underlying principle concerning the distinction between disclosure of facts and the legal conclusion drawn from those facts is relevant while examining whether the statutory conditions of section 270A(6)(a) stand satisfied.

19. We further note that the learned CIT(A), while confirming the penalty, has himself recorded that the assessee had disclosed the facts in its financial statements and submissions. The learned CIT(A), however, proceeded to reject the assessee's explanation primarily because, according to him, the legal treatment adopted by the assessee was incorrect and the Saife asset had already been completed, capitalised, put to use and had generated revenue. The written submissions filed before us point out that the total amount of Rs.7,41,16,000/- comprised two separate components and that the development expenditure relating to Blackbox and CCOP continued as capital work-in-progress. Therefore, the conclusion that the explanation was not bona fide merely because the legal claim was ultimately not accepted cannot, in our view, be sustained.

20. The statutory language of section 270A(6)(a) is also material. Where an assessee offers an explanation, such explanation is bona fide and all material facts necessary to substantiate the explanation have been disclosed, the corresponding amount is excluded from the scope of

under-reported income. In the present case, the assessee had furnished an explanation during the assessment proceedings and reiterated the same during the penalty proceedings. The relevant accounting treatment and the nature of the expenditure were disclosed. The issue was a matter of interpretation and legal characterisation. In these circumstances, the ingredients of section 270A(6)(a), as explained by the Hon'ble Bombay High Court in G.M. Modular, stand satisfied.

21. In view of the foregoing discussion, and respectfully following the decision of the Hon'ble jurisdictional Bombay High Court in G.M. Modular (P.) Ltd. as well as the decision in Trigent Software Ltd., we hold that the penalty levied under section 270A of the Act cannot be sustained. The assessee's claim, even though not accepted in the quantum proceedings, was based upon disclosed facts and an arguable legal position concerning the characterisation of the expenditure. The circumstances of the case do not warrant treating the amount as under-reported income in view of the exclusion contained in section 270A(6)(a) of the Act. Accordingly, the penalty of Rs.1,23,71,443/- levied by the Assessing Officer and confirmed by the learned CIT(A) is directed to be deleted. The grounds raised by the assessee are accordingly allowed.

22. Before parting, we note that the assessee has filed three appeals, namely, ITA No.297/Mum/2026, ITA No.3499/Mum/2026 and ITA No.4637/Mum/2026, all arising from the same order of the learned CIT(A) and relating to the same penalty order for assessment year 2023-24, with identical grounds of appeal. The assessee has requested that the matter be adjudicated in ITA No.297/Mum/2026 and that the other two appeals, being duplicate appeals arising from the same order, may be permitted to be withdrawn. Having regard to the request of the assessee and the fact that the three appeals arise from the same penalty order and contain identical grounds, the request is accepted.

Accordingly, ITA Nos.3499/Mum/2026 and 4637/Mum/2026 are dismissed as withdrawn. The decision rendered in the preceding paragraphs is with reference to ITA No.297/Mum/2026.

23. In the result, ITA No.297/Mum/2026 is allowed, while ITA Nos.3499/Mum/2026 and 4637/Mum/2026 are dismissed as withdrawn.

Order pronounced in the open Court on 30.09.2026.

Sd/-
CHALLA NAGENDRA PRASAD
JUDICIAL MEMBER

Sd/-
G. M. DOSS
ACCOUNTANT MEMBER

Mumbai, Dated: 30/09/2026
Aditi Pandare, PS

Copy to: The Appellant
The Respondent
The PCIT/CIT concerned
The DR, ITAT; and
Guard file.

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai