

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. Nos. 1062&1068/SRT/2024  
(Assessment Year: 2007-08)

Income Tax Officer, Ward-3(3)(1), Surat	Vs.	Borda Brothers, 8/9, Saurashtra Daimonds, Behind Gitanjali, Varachha Road, Surat
[PAN No. AA EFB0796Q]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	None for Assessee
<b>Respondent by:</b>	Shri Ravi Kant Gupta, CIT DR
<b>Date of Hearing</b>	27.03.2025
<b>Date of Pronouncement</b>	08.04.2025

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

Both appeals have been filed by the Department against the orders passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 29.08.2024 passed for A.Y. 2007-08. ITA No. 1062/Srt/2024 relates to quantum additions made by the Assessing Officer and ITA No. 1068/Srt/2024 relates to consequential levy of penalty under Section 271(1)(c) of the Act. Since common facts and issues for consideration are involved for both the years under consideration, both appeals filed by the assessee are taken up together.

**We shall first deal with ITA No. 1062/Srt/2024 (A.Y. 2007-08)**

2. The Department raised the following grounds of appeal:

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*“a) On the facts and circumstances of the case and law the ld.CIT(A) has erred in deleting the addition of Rs.9,64,13,991/- made on account of bogus purchases u/s 69A of the Act ignoring the fact that these purchases are sham transactions fabricated through bogus paper concerns of Shri Rajendra Jain Group entities which were engaged in providing accommodation entries.*

*b) On the facts and circumstances of the case and law, the ld. CIT(A) has justified partly allowing the appeal of the assessee and restricting the addition to 6% of the Loud bogus purchases against the addition made by the AO at the rate of 100% of bogus purchases amounting 10 Rs. 9,64,13,991/- ignoring the fact that these purchases are sham transactions fabricated through bogus paper concerns of Shri Rajendra Jain Group entities which were engaged in providing accommodation entries.*

*c) On the facts and circumstances of the case and law, the ld. CIT(A) is correct in not considering that the amount claimed as payment to hawala dealers was in effect suppression of profits by obtaining bogus purchase bills which was liable to be added to the income of the Assessee.*

*d) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the judgment of Gujarat High Court in the case of N,K. Industries Ltd. vs. DCIT in TA No. 240 to 242 of 2003 which has been upheld by the Hon'ble Apex Court in Special Leave to Appeal No. 769 of 2017 dated 16.01.2017, wherein the Hon'ble High Court decided that 100% of purchases from bogus parties was liable to be added in the hands of the Assessee. reversing the order passed by (he Hon'ble ITAT that restricted addition to 25% holding that such restriction goes against the principles of Sections 68 and 69C of Income tax Act.*

*e) Whether on the facts and circumstances of the case and law, the ld. CIT(A) has erred not appreciating that the judgment of Calcutta High Court of in the case of PCIT vs. Premlata Tekriwal (143 taxmann.com 173) involving similar issue of purchase of bogus concern to suppress profits wherein the court held that “since it was established that expenditure was unexplained/bogus, entire amount of bogus expenditure was to be added to income of Assessee”.*

*f) Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) has justified in restricting the addition to 6% of the total bogus purchases even though the AO has made 100% addition of bogus transaction amounting to Rs. 9,64,13,991/- made by the Assessee with the entry provider not appreciating that non-genuineness of the expenditure booked was established by the information received from DIT(Inv.), Mumbai and the Assessee was not. able to discharge its onus to establish the genuineness of transaction before the AO.*

*g) On the basis of the (acts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*

*h) It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.*

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i) *The appellant craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal.”*

3. The brief facts of the case are that the assessee firm filed its return of income for A.Y. 2017-18 declaring total income of RS. 43,17,209/-. Subsequently, the case of the assessee was reopened under Section 148 of the Act. However, in response to notice issued by the Assessing Officer, the assessee did not file return of income. During the course of 148 proceedings, the Assessing Officer noted that a search and seizure action was carried out in the Shri Rajendra Jain Group on 03.10.2013 which proved that the said group, through a layer of benami transaction was engaged in providing accommodation entries to various parties in respect of bogus unsecured loans, bogus purchases etc. During the assessment, the Assessing Officer noted that the assessee had received accommodation entries of bogus sales during the impugned Financial Year from various entities. On further investigation, the Assessing Officer observed that the such entities were not found to be operating from the addresses mentioned and were bogus entities. The Assessing Officer noted that despite issuance of several notices of hearing, the Assessing Officer did not cause appearance before the Assessing Officer. Accordingly, the Assessing Officer added a sum of Rs. 9,64,13,991/- with respect to various bogus accommodation entries received by the assessee from the following concerns which are tabulated below for ready reference:

<b>Name of the Entry Provider</b>	<b>Amount (Rs.)</b>	<b>Group</b>
<i>Avi Exports</i>	<i>2,09,42,955/-</i>	<i>Rajendra Jain Group</i>
<i>Moulamani Impex Pvt. Ltd.</i>	<i>3,36,96,067/-</i>	<i>Rajendra Jain Group</i>
<i>Sparsh Exports Pvt. Ltd.</i>	<i>68,75,626/-</i>	<i>Rajendra Jain Group</i>
<i>Vitrag Jewels</i>	<i>2,57,64,485/-</i>	<i>Rajendra Jain Group</i>
<i>Sun Diam</i>	<i>91,34,858/-</i>	<i>Rajendra Jain Group</i>
<i>Total</i>	<i>9,64,13,991/-</i>	

4. While making the additions, the Assessing Officer made the following observations:

*“11.4 Further it is seen that the assessee is reported to be a manufacturer of polished diamond for the purposes of local sales and export of polished diamonds. During the F.Y. 2006-07 relevant to A.Y. 2007-08 the assessee has shown total purchases Rs. 2,61,08,883/-, out of which the above bogus purchases amounting to Rs. 9,64,13,991/- accounts for nearly 370% of the total purchases. This only goes to prove that the assessee has not only indulged in Bogus purchase, but had also indulged in not routing the same through the books of accounts. Thus, considering the totality of facts and circumstances of the case and also since nearly 370% of the purchases made by the assessee has been bogus purchases, the entire bogus purchases amounting to Rs. 9,64,13,991/- is, therefore, added to the total income of the assessee, by invoking the provisions of section 69A of the Income Tax Act.”*

5. In appeal, Ld. CIT(A) restricted the addition to only 5% of the purchases by following the Tribunal order of earlier years. Further, Ld. CIT(A) noted that in respect of similar addition made for A.Y. 2008-09 Ld. CIT(A) vide order dated 28.09.2019 had given substantial relief by restricting the addition to only 5% of the purchases. Accordingly, in light of these observations, Ld. CIT(A) restricted the addition to only 5% of the purchases in view of the order passed by his predecessor for earlier years.

6. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A).

7. Before us, the Ld. D.R. placed reliance on the observations made by the Assessing Officer in the assessment order.

8. On going through the facts of the instant case we observe that while passing the order, Ld. CIT(A) has noted that even for subsequent years for A.Y. 2008-09 Ld. CIT(A) vide order dated 28.09.2018 has given substantial relief to the assessee by restricting the addition to only 5% of the purchases. Before us, the Ld. DR also submitted that Ld. CIT(A), while allowing relief to the assessee

had followed ITAT order for earlier years and hence had restricted addition to Rs. 5% of the purchases. We note that in view of the above facts, in our considered view, Ld. CIT(A) has taken a consistent approach by following orders passed by his predecessor and as well as ITAT in which similar additions for other years were restricted to 5% of purchases. In view of the above facts, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

9. In the result, the appeal of the Department is dismissed.

**Now we shall take up Department's appeal in ITA No. 1068/Srt/2024**

10. The Department taken the following grounds of appeal:

*a) On the facts and circumstances of the case and law, the ld. CIT(A) has erred in deleting the penalty levied by the A.O. u/s 271(1)(c) of the I.T. Act, 1961 of Rs. 3,24,52,950/- without appreciating the fact that the assessee claimed bogus purchases in its Return of income in order to suppress taxable income thereby making himself liable for penalty u/s 271(1)(c) of the Income-tax Act, 1961.*

*b) Whether on the facts and circumstances of the case and law the ld. CIT(A) has erred in deleting the penalty is not in accordance with the decision of Hon'ble jurisdictional High Court in the cases of Commissioner of Income Tax Vs Subhash Trading Co [1996] 86 Taxman 30 (Gujarat) and Commissioner of Income Tax Vs S.P Bhatt [1974] 97 ITR 440 (Guj)?*

*c) Whether on the facts and circumstances of the case and law, the ld. CIT(A) has erred in deleting the penalty levied by the AO u/s. 271(1)(c) of the Act of Rs. 3,24,52,950/- without appreciating the fact that the Assessing Officer has correctly held that the assessee has failed to substantiate the transactions claimed in its return of income thereby evaded taxes to that extent?*

*d) Whether on the facts and circumstances of the case and law, the ld. CIT(A) has erred in not appreciating the fact that the act of assessee clearly falls within the ambit of provisions of Explanation-1 to section 271(1)(c) of the Act as the assessee had failed to offer an explanation or which was found by the A.O. to be false?*

*e) On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*

*f) It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.*

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g) *The appellant craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal.*"

11. The brief facts in relation to this issue are that the Assessing Officer had initiated penalty proceedings under Section 271(1)(c) of the Act in respect of the aforesaid additions made by the Assessing Officer under Section 68 of the Act. In appeal, Ld. CIT(A) deleted the penalty imposed under Section 271(1)(c) of the Act by holding that it is a well settled law that penalty cannot be imposed in case additions have been made on an estimated basis. While passing the order, Ld. CIT(A) made the following observations:

*"While passing my order in the quantum appeal, I had commented that it was worthwhile referring to the judgement of the jurisdictional ITAT in the appellant's own case for AY 08-09 where the ITAT had concluded that disallowance 6% of the disputed purchases would be sufficient to meet the possibility of revenue leakage.*

*Respectfully following the order of the jurisdictional ITAT in the appellant's own case for AY 08-09, I had directed the AO to restrict the disallowance to 0% of the disputed purchases.*

*This appeal is against the penalty imposed on the bogus purchases.*

*Various courts have decided in their judgements that no penalty under section 271(1)(c) is leviable on estimated additions which is the case here.*

*The ITAT Mumbai has in a judgement, summed up as:*

*Heard both the sides and perused the materials on record. It is undisputed fact that impugned penalty was levied only on estimated addition. The Assessing Officer had made addition of entire bogus purchases, however, did not doubt the sales made against such purchases. We observe that the Tribunals in various decisions have held that where sales are not disputed, entire alleged bogus purchases cannot be disallowed and only the gross profit on the alleged purchases to be disallowed." "After taking into consideration the various decisions of the Tribunal that no penalty under section 271(1)(c) is leviable on estimated additions and also after taking into consideration the decision of Hon'ble Rajasthan High Court in the case of CIT vs Krishi Tyre Retreading & Rubber industries 360 ITR 580, the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs Sangrur Vanaspati Milla Ltd 303 ITR 53 (P&H), and the decision of Hon'ble Gujarat High Court in the case of CIT vs Subhash Trading Co Ltd 221 ITR 110 (Guj), we direct the Assessing Officer to delete the impugned penalty levied on estimated addition.", the Mumbai ITAT thus held, thereby allowing both the appeals of the assessee*

*I have hence no hesitation in directing the AO to delete the penalty.”*

12. On going through the facts of the instant case, we are of the considered view that Ld. CIT(A) has correctly held that penalty cannot be imposed in case additions have been made on estimated basis. We further observe that in the following cases, various courts have held that when income of the assessee is determined on an estimated basis, no penalty under Section 271(1)(c) is liable to be imposed for concealment of income or for furnishing inaccurate particular of income:

- (a) *Anil Abhubhai Odedara v. Income Tax Officer [2020] 117 taxmann.com 490/183 ITD 313 (Rajkot - Trib.)*
- (b) *CIT v. Sahu Construction (P.) Ltd. [2014] 42 taxmann.com 419/222 Taxman 167/362 ITR 609 (Allahabad)*
- (c) *Commissioner of Income-tax v. Norton Electronics Systems (P.) Ltd. [2014] 41 taxmann.com 280 (Allahabad)*
- (d) *Commissioner of Income-tax v. Aero Traders (P.) Ltd. [2010] 322 ITR 316 (Delhi)*

13. Accordingly, in view of the above facts, we find no infirmity in the order of Ld. CIT(A) deleting the imposition of penalty under Section 271(1)(c) of the Act looking into the instant facts.

13. In the result, both the appeals filed by the Department are dismissed.

**Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 08/04/2025**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 08/04/2025  
TANMAY, Sr. PS

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat