

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“DB” BENCH, AGRA**

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND  
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकरअपीलसं./ ITA No. 237/Agr/2018  
(निर्धारणवर्ष / Assessment Year: 2010-11)**

&

**2. आयकरअपीलसं./ ITA No.276/Agr/2018  
(निर्धारणवर्ष / Assessment Year: 2010-11)**

<b>M/s Modern Paint Stores</b> Jhokan Bagh, Jhansi	<b>बनाम/ Vs.</b>	<b>DCIT, Circle-2(3)(1),</b> Jhansi
<b>स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. <b>AABFM-2086-M</b></b>		
<b>(अपीलार्थी/Appellant)</b>	:	<b>(प्रत्यर्थी / Respondent)</b>

<b>अपीलार्थीकीओरसे/ Appellant by</b>	:	None
<b>प्रत्यर्थीकीओरसे/Respondent by</b>	:	Shri Shailendra Shrivastava – Ld. Sr. DR

<b>सुनवाईकीतारीख/Date of Hearing</b>	:	13-02-2025
<b>घोषणाकीतारीख /Date of Pronouncement</b>	:	22.04.2025

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid two appeals by assessee for Assessment Year (AY) 2010-11 arises out of separate orders of learned first appellate authority. First, we take up appeal ITA No.237/Agr/2018 which arises out of an order of learned Commissioner of Income Tax (Appeals)-2, Agra [CIT(A)] dated 30-11-2017 in the matter of impugned penalty levied by Ld. AO u/s 271(1)(c) for Rs.22 Lacs. At the time of hearing, none appeared for assessee. Therefore, the appeals were heard with the able assistance of Ld. Sr. DR who pleaded for dismissal of the

appeals. Upon perusal of case records, the appeals are disposed-off as under.

2. Facts leading to impugned penalty are that the assessee is retail trader of paint and hardware. The assessee did not maintain books of accounts and during survey excess stock was found which culminated into an assessment u/s 143(3) vide order dated 26-03-2013 wherein Ld. AO made addition of excess stock of Rs.126.11 Lacs. For the same, penalty u/s 271(1)(c) was initiated in the assessment order for concealment of particulars of income and filing of inaccurate particulars of income. The quantum assessment after first appeal order stood reduced to Rs.77.20 Lacs. The Ld. AO proceeded to levy penalty on the assessee. The assessee stated that difference in value of stock had arisen due to erroneous and incorrect valuation by the department and therefore, the penalty was to be dropped. However, rejecting the same Ld. AO levied penalty of Rs.22 Lacs.

3. The Ld. CIT(A), in para 5.3 of the impugned order, noted that during survey unaccounted stock was found. No physical stock register was being maintained by the assessee. The assessee himself surrendered an amount of Rs.4.29 Lacs and therefore, the penalty was upheld against which the assessee is in further appeal before us.

4. In ITA No.276/Agr/2018, the assessee is aggrieved for levy of penalty u/s 271A for alleged non-maintenance of books of accounts. The same was confirmed by Ld. CIT(A) against which the assessee is in further appeal before us.

5. It emerges that the quantum assessment was subjected to assessee's further challenge before this Tribunal in ITA No.437/Agr/2015 common order dated 09-10-2018 wherein substantial relief has already been granted to the assessee and the appeal has partly been allowed. The same would have material bearing on determination of impugned penalties against the assessee. Considering this fact, both the penalties stand restored back to the file of Ld. AO for fresh consideration in terms of consequential order passed while giving effect to the order of Tribunal. All the issues are kept open.

6. Both the appeal stand allowed for statistical purposes.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.*

Sd/-

Sd/-

**(SATBEER SINGH GODARA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**(MANOJ KUMAR AGGARWAL)**  
लेखासदस्य / ACCOUNTANT MEMBER

Dated: 22.04.2025

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR  
ITAT AGRA