

ITA NOS. 1323 & 1324/JPR/2024
SHRI RAVI KUMAR RAWAT VS DCIT, CIRCLE-2, JAIPUR

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्रीराठौड़ कमलेशजयन्तभाई, लेखा सदस्य एवंश्रीनरेन्द्रकुमार, न्यायिकसदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकरअपीलसं./ITA No. 1323 & 1324/JPR/2024
निर्धारणवर्ष/Assessment Year: 2008-09 & 2009-10

Ravi Kumar Rawat 2238, Johari Bazar, Jaipur – 302 003	बनाम Vs.	The DCIT Circle-2, Jaipur
स्थायीलेखा सं./जीआईआरसं./PAN/GIR No.: AATPR 5739A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : Shri Saurav Harsh, Advocate
राजस्व की ओरसे/ Revenueby: Shri Gautam Singh Choudhary, JCIT-DR (Thru: V.C).

सुनवाई की तारीख/Date of Hearing : 20/03/2025
उदघोषणा की तारीख/Date of Pronouncement : 28/04/2025

आदेश/ORDER

PER : RATHOD KAMLESH JAYANTBHAI, AM

Both these appeals have been filed by the assessee against two different orders of the learned Commissioner of Income Tax, Appeals-4, Jaipur [for short CIT(A)] dated 11-09-2024 & 12-09-2024 for the assessment years 2008-09 and 2009-10 respectively. Both the appeals of the assessee relates to the issue of levy of penalty under the provision of section 271(1) (c) of the Income Tax Act 1961, [for short Act]raising therein following grounds of appeal;

ITA No. 1323/JPR/2024 – A.Y. 2008-09

“1. That in law and in the facts and circumstances of the case the learned CIT(A) grossly erred in confirming the penalty of Rs.1,03,150/- imposed by the AO u/s 271(1)(c) of the Act on furnishing inaccurate particulars of income.”

ITA No. 1324/JPR/2024 – A.Y. 2009-10

“1. That in law and in the facts and circumstances of the case the learned Lower Authority grossly erred in confirming the penalty of Rs.1,03,150/- imposed u/s 271(1)(c) of the Act on furnishing inaccurate particulars of income.”

2.1 First of all, we take up the appeal of the assessee for adjudication the assessment year 2008-09 wherein the facts of the case as mentioned in the penalty order u/s 271(1)(c) of the Act are that the assessee filed his return of income on 22-09-2008 for the assessment year 2008-09 declaring a total income at Rs.3,51,880/-. Assessment in this case was completed u/s 148/143(3) of the Act vide order dated 25-01-2016 determining total income at Rs.9,53,340/- as detailed herein below :

1.	Total income as declared by the assessee in ITR/e ITR		3,51,880/-
Add:	i) Disallowance out of bogus purchase	6,01,459/-	6,01,459/-
		Total income	9,53,339/-
		Rounded off	9,53,340/-

In that assessment order Id. AO initiated penalty proceedings u/s 271(1)© vide notice dated 25-01-2016.

2.2 Assessee challenged that order of assessment before the Id. CIT(A) which was partly considered by Id. CIT(A) vide order dated 14-12-2018 in Appeal No. 474/2015-16. Vide that order Id. CIT(A) restricted the addition from Rs.6,01,459/- to Rs. 2,67,647/- by applying G.P. Rate @ 12%. Hence, the addition of Rs.2,67,647/- was sustained by the Id. CIT(A) and therefore, Id. AO passed penalty order dated 01-05-2020 wherein the AO imposed the penalty on the assessee for an amount of Rs. 1,03,150/- u/s 271(1)(c) of the Act by observing as under:-

“4....Here in the present case, the A/R has failed to offer any concrete explanation about the impugned “furnishing of inaccurate particulars of income” to the tune of Rs.2,67,647/-.

05. In view of totality of the facts and keeping in view the provisions of Section 271(1)(c), the assessee is found guilty of furnishing of inaccurate particulars of income to the extent of amount of Rs.2,67,647/-. For that reason, I am satisfied that “Assessee” has committed default u/s 271(1)(c) of the I.T. Act and therefore, penalty u/s 271(1)(c) is imposed on the furnishing of inaccurate particulars of income as per working given below:-

Calculation of penalty imposable

Income furnished inaccurately	Rs.2,67,647/-
Tax sought to be evaded	Rs.1,03,148/-
Minimum penalty imposable @ 100%	Rs.1,03,148/-
Maximum penalty imposable @ 300%	Rs.3,09,444/-

Hence, penalty of Rs.1,03,150/- is imposed u/s 271(1)(c) of the Income Tax Act, 1961 after taking necessary approval from Addl. CIT, Range-2, Jaipur.”

2.3 Being aggrieved by the penalty order, the assessee carried the matter before the Id.CIT(A) who confirmed the action of the AO by

dismissing the appeal of the assessee. The narration as made by the Id CIT(A) in his order at para 19 and page 30 is reproduced as under:-

“(19) In the present case the estimation was required due to the non submission of the details and non compliance of the law by the appellant. The true and correct details of the purchases were concealed by the appellant even after the purchases from the entry operator parties were found to be bogus and accommodation entries and entries in books of accounts were found as false/incorrect. The correct details are only in the possession of the appellant. Such kind of grey market transactions and transactions of accommodation entries takes place in secret. Addition was made in the assessment on the basis of specific information and evidences and inquiries and after affording due opportunities to the appellant and the books of account were rejected u/s 145(3). The income has to be estimated because of the "wrong" of the assessee. It is a settled principle that no one can be allowed to take benefit of his own wrong. Further, the estimate done in the background of there being on the record enough material to show that any particular entries in the books of account were false or incorrect. The way of assessment of income of the appellant in the present case no way takes away the guilt of the assessee or explain its failure to prove that the failure to return the correct income did not arise from any fraud or any gross or willful neglect on its part. Apparently the assessee was taking a chance-sitting on the fence.

In view of the above discussion the levy of penalty in the penalty order under appeal is hereby upheld and this ground of appeal of the appellant is hereby dismissed.

2.4 Similarly for the assessment year 2009-10, the penalty of Rs.13,782/- was imposed by the AO vide his order dated 17-03-2020 which has been confirmed by the Id. CIT(A) holding the same analogy in his order dated 12-09-2024. The relevant para 4.2of Id. CIT(A)'s order is reproduced as under:-

“4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the penalty order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under

I have decided the similar issue in the case of the appellant for the assessment year 2008-09 in the ground of appeal number 1 where Ground of Appeal has been dismissed after detailed adjudication Material facts of the present appeal in the relevant ground of appeal being parn-materia with the facts of the appeal in the assessment year 2008-09, the findings of the appeal order in the case of assessment year 2008-09 in the ground of appeal number 1 will apply mutatis-mutandis to the present appeal for the assessment year 2009-10 and it is held accordingly. Accordingly, this Ground of Appeal No. 1 is dismissed.”

2.5 While hearing of the present appeals Id. AR of the assessee has filed the written submission in connection with penalty confirmed u/s 271(1)© for both the assessment years and submitted that penalty confirmed by the Id. CIT(A) for both the assessment years needs to be deleted on the following counts;

WRITTEN SUBMISSIONS

Ground No. 1 [Penalty imposed u/s 271(1)(c) of the Act A.Y. 2008-2009- Rs 1,03,150/- 2009-2010-Rs 13,782]

1. The assessee appellant is an individual carrying on the business activity of trading, import and export of precious and semiprecious stones for the past several years under his sole proprietorship concern M/s. Precious Jewels.

2. The assessee respondent maintains regular books of accounts supported by; cash book, ledger, bank book, purchase and sale vouchers and other subsidiary records. The accounts are audited by a Chartered Accountant and audit report under Section 44AB and report in form No.3CB are being submitted from time to time. The assessee during the year declares the G.P.(%) at 10.77%.

3. That assessee was assessed u/s 148 of the Act vide order dated 25.01.2016 wherein the assessee was alleged for indulging in taking the accommodation entry and Id. assessing officer vide order dated 25.01.2016 disallowed the 25% of the purchase alleged of bogus and made addition after rejecting books of account u/s 145(3) of the Act. That against the assessment order dated 25.01.2016, the assessee preferred an appeal before the CIT(A) and Id. CIT(A) after considering the submission of the assessee, reduce the G.P. on estimated basis against the G.P. declare by the assessee. The detail of addition made by the Id. assessing officer and relief given by the Id. CIT(A) for the Assessment year 2008-2009 and 2009-2010 is as under:-

A.Y.	Purchase Disallowance (25%)	Addition (Assessing officer)	Addition restricted (CIT-A)
2008-2009	2405836	601459	333812
2009-2010	178783	44696	40548

Copy of order dated 14.12.2018 passed by the Id. CIT(A) against the addition made u/s 143/147 of the Act for the Assessment year 2008-2009 and 2009-2010 is enclosed herewith.

4. That penalty proceeding u/s 271(1)(c) of the Act was initiated against the assessee in consequences of the order dated 25.01.2016 and the Id. assessing officer without appreciating the submission submit in response to Show-cause notice, without considering the precedents settled by the different benches of the Hon'ble tribunals that the penalty is not leviable on the addition based on estimated basis.

5. The Id. assessing officer grossly erred in holding that the addition made in the case of the assessee is not general G.P. addition, The addition was made on the basis of specific information and without going into the facts that the books of account was rejected u/s 145(3) and when the books of the account is not accepted during the assessment proceeding, the addition will only be made on the estimated basis.

6. That against the order passed u/s 271(1)(c) by the Id. Assessing officer, assessee preferred an appeal before the Id. CIT(A) and filed the detail written submission on 21.03.2024 in support of ground of the appeal and also relied upon the judicial precedent which is as under:-

- Shri Alok Haldia v. ACIT [2019 (4) TMI 673-ITAT Jaipur

- Ashok Kumar Gupta v. ITO [2018 (6) TMI 69-ITAT Jaipur
- **HARIGOPAL SINGH v. CIT [2002] 258 ITR 85**

7. That Id. CIT(A) without considering the submission and documents submits during the appeal proceeding, held that the assessee relied upon the Judgement passed by the Hon'ble Rajasthan High Court, Jodhpur Bench in the case of **M/s Shiv Lal Tak v. CIT**, whereas, the assessee relied upon the Judgement passed by the Hon'ble ITAT in the matter of **Shri Alok Haldia v. ACIT [2019 (4) TMI 673-ITAT Jaipur** wherein the the Hon'ble ITAT referred the observation made by the Hon'ble ITAT in **M/s Shiv Lal Tak v. CIT** which is reproduced as under:-

Ld. AR of the assessee has placed reliance on the decision in the case of Shiv Lal Tak Vs CIT (supra) wherein the Hon'ble High Court has held that "in making computation of total income where the income returned has been rejected by rejecting the trading results, finding some discrepancy in the books of account and substituting the same by an estimated figure, in the strict sense, can neither be said to be addition of any amount in the returned income nor disallowance of any amount as deductions claimed.

Copy of Acknowledgement along with the submission dated 21.03.2024 for the A.Y. 2008-09 and 2009-10 is enclosed herewith.

8. That it is pertinent to note that, the Id. CIT(A) for the preceding year i.e Assessment year 2007-2008 deleted the penalty-imposed u/s 271 (1)(c) of the Act vide order dated 17.05.2024 after considering the identical submission and judicial precedents as relied in the Assessment year 2008-2009 and 2009-2010. **Copy of order dated 17.05.2024 is enclosed herewith.**

9. That further assessee again wish to relied upon the settled judicial precedent wherein the penalty cannot be imposed on the income assessee on the estimated basis:-

That Hon'ble ITAT, Jaipur Bench in the matter of Shri Alok Haldia v. ACIT [2019 (4) TMI 673-ITAT Jaipur] dated 08.04.2019 held that:-

"We have considered the rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by the Id. AR and Id. DR during the course of hearing before us in the context of factual matrix of the case.

From the record, we found that in the course of quantum proceedings, the A.O. has estimated extra income of 25% of the alleged bogus purchases.

The Id. CIT(A) has estimated 15% of the profit on such purchases, accordingly given partial relief. In quantum appeal, the Tribunal have confirmed the order of the Id. CIT(A) upholding the addition @ 15%. The A.O. has also imposed penalty U/s 271(1)(c) of the Act with regard to estimated quantum addition upheld by the Id. CIT(A). The assessee is in further appeal before us with regard to penalty so imposed by the A.O. U/s 271(1)(c) of the Act. However, the quantum and penalty proceedings are separate and if in the penalty proceedings, it is found that the assessee has furnished all the evidences to substantiate its claim of not furnishing inaccurate particulars, no penalty is to be imposed even if the addition is being confirmed. In the instant case, the assessee is carrying on business at Jaipur as exporter and trader of precious and semi precious gems and stones from last many years. The entire sales of ₹ 4,11,22,504/- are export sales and all realizations of sale proceeds are in the form of foreign currency through proper banking channels. For the purposes of exports, the assessee purchases goods from various dealers including above named JPK Trading (I) Pvt. Ltd and the same were exported outside India. In the course of this regular business activity the assessee inter alia purchased goods, namely precious and semi precious gems and stones from above named company JPK Trading (I) Pvt. Ltd. and to prove the genuineness of the purchases made from above named party the assessee furnished copy of purchases invoices, copy of bank statements copy of export invoices, Airways bills, bank advice in relation to realization of sale proceeds in foreign exchange, confirmation of supplier, TIN of supplier which is issued to a dealer doing business of purchase/sale issued by the Govt. of Rajasthan. It is clear from the documents so furnished by the assessee that the assessee has submitted all the documentary evidences to substantiate the purchases so made, under these facts and circumstances, merely making of estimated addition of 15% will not attract the penalty U/s 271(1)(c) of the Act.

6. The ITAT, Jaipur Bench in the case of Deepak Dalela Vs. ITO in ITA No. 1027/JP/2013 dated 22/12/2016 has held as under:-

“5. We have heard the rival contentions of both the parties, perused the material available on the record and also gone through the orders of the lower authorities. The Coordinate Bench in the identical case i.e. in the case of ITO Vs. M/s Bhansali Trading Corporation, has held as under:-

“6. We have heard the rival contentions of both the parties and perused the material available on the record. The addition made by the A.O. was specific on account of unverifiable purchases on which G.P. @ 25% was applied and added in the income. However, the same was reduced by the Id CIT(A) and applied different G.P. rate. However, the additions were specific. The assessee has not been able to produce these parties for verification and also summons were returned back to the officer unserved. This Bench recently

decided this issue in detail in the case of Shri Anuj Kumar Varshney Vs. I.T.O. and other cases in ITA No. 187/JP/2012 order dated 22/10/2014 and gave detail findings on unverifiable purchases in number of cases. The department has been able to prove that in gems and jewellery business, some of the parties were giving accommodation entry and some of them accepting the accommodation bill to reduce the profit. The parties names figured in this case also were similar to those cases, therefore, we hold that the addition made by the Assessing Officer was ITA No.95/JP/2017 Shri Ashok Kumar Gupta vs ITO, Ward- 4(2), Jaipur 7 specific and assessee had concealed the income and furnished inaccurate particulars of income. Further the assessee's explanation is not bonafide. The case laws referred by the assessee are not squarely applicable. In this case, the addition was specific with reference to unverifiable purchases. Therefore, we reverse the order of the Id CIT(A)."

Ld. AR of the assessee has placed reliance on the decision in the case of Shiv Lal Tak Vs CIT (supra) wherein the Hon'ble High Court has held that "in making computation of total income where the income returned has been rejected by rejecting the trading results, finding some discrepancy in the books of account and substituting the same by an estimated figure, in the strict sense, can neither be said to be addition of any amount in the returned income nor disallowance of any amount as deductions claimed.

The word "amount" of which additions made or deductions disallowed also denotes reference to specific item of amount added or disallowed as deduction in contrast to substitution of altogether a new estimated sum in place of the income returned. It is a case neither of addition or disallowance but a case of substitution." In view thereof, the Hon'ble High Court has upheld the decision of the Tribunal for deleting the penalty. In the light of the above decision of the Hon'ble Jurisdictional High Court, we hereby direct the Assessing Officer to delete the penalty as in the present case also the Assessing Officer has estimated the profit by rejecting the books of account. Accordingly, we delete the penalty levied by the Assessing Officer and confirmed by the Id. CIT(A)."

7. In view of the above discussion, we do not find any merit in imposition of penalty U/s 271(1)(c) of the Act and the Assessing Officer is directed to delete the same. We order accordingly."

10. That Hon'ble ITAT, Jaipur Bench in the matter of Ashok Kumar Gupta v. ITO [2018 (6) TMI 69-ITAT Jaipur] dated 30.05.2018 held that:-

4 We have heard the rival contentions and perused the materials available on record. Brief facts of the case are that the AO during the course of assessment proceeding noted that the assessee had not maintained the books of account besides the assessee did not maintain the quality details of the stock. The AO thus rejected the books of account of the assessee u/s 143(3) of the Act and made the addition of ₹ 5,65,304/- i.e. @ 25% on unverifiable purchases of ₹ 22,61,216/-. In appellate proceedings, the Id. CIT(A) confirmed the addition of 25% on unverifiable/bogus purchases observing that the assessee is involved in activities of taking accommodation entries in order to reduce the profitability. It is further noted that the AO vide his order dated 28-08-2013 imposed the penalty of ₹ 1,72,981/- u/s 271(1)(c) of the Act which was confirmed by the Id. CIT(A). We have further observed that on similar issue of imposing penalty u/s 271(1)(c) of the Act, the ITAT Jaipur Bench in the case of Deepak Dalela vs ITO (supra) has deleted the penalty by observing as under:-

5. We have heard the rival contentions of both the parties, perused the material available on the record and also gone through the orders of the lower authorities. The Coordinate Bench in the identical case i.e. in the case of ITO Vs. M/s Bhansali Trading Corporation, has held as under:-

“6. We have heard the rival contentions of both the parties and perused the material available on the record. The addition made by the Assessing Officer was specific on account of unverifiable purchases on which G.P. @ 25% was applied and added in the income. However, the same was reduced by the Id CIT(A) and applied different G.P. rate. However, the additions were specific. The assessee has not been able to produce these parties for verification and also summons were returned back to the officer unserved. This Bench recently decided this issue in detail in the case of Shri Anuj Kumar Varshney Vs. I.T.O. and other cases in ITA No. 187/JP/2012 order dated 22/10/2014 and gave detail findings on unverifiable purchases in number of cases. The department has been able to prove that in gems and jewellery business, some of the parties were giving accommodation entry and some of them accepting the accommodation bill to reduce the profit. The parties names figured in this case also were similar to those cases, therefore, we hold that the addition made by the Assessing Officer was specific and assessee had concealed the income and furnished inaccurate particulars of income. Further the assessee's explanation is not bonafide. The case laws referred by the assessee are not squarely applicable. In this case, the addition was specific with reference to unverifiable purchases. Therefore, we reverse the order of the Id CIT(A).”

Ld. AR of the assessee has placed reliance on the decision in the case of Shiv Lal Tak Vs CIT (supra) wherein the Hon'ble High Court has held that “in making computation of total income where the income returned has been

rejected by rejecting the trading results, finding some discrepancy in the books of account and substituting the same by an estimated figure, in the strict sense, can neither be said to be addition of any amount in the returned income nor disallowance of any amount as deductions claimed. The word "amount" of which additions made or deductions disallowed also denotes reference to specific item of amount added or disallowed as deduction in contrast to substitution of altogether a new estimated sum in place of the income returned. It is a case neither of addition or disallowance but a case of substitution." In view thereof, the Hon'ble High Court has upheld the decision of the Tribunal for deleting the penalty. In the light of the above decision of the Hon'ble Jurisdictional High Court, we hereby direct the Assessing Officer to delete the penalty as in the present case also the Assessing Officer has estimated the profit by rejecting the books of account. Accordingly, we delete the penalty levied by the Assessing Officer and confirmed by the Id. CIT(A)." Respectfully following the decision on similar issue by ITAT Jaipur bench in the case of Deepak Dalela vs ITO (supra), we direct to delete the penalty of ₹ 1,72,981/- u/s 271(1)(c) of the Act confirmed by the Id. CIT(A). Thus the appeal of the assessee is allowed.

11. Hon'ble Punjab & Haryana High Court in the case of **HARIGOPAL SINGH v. CIT** [2002] 258 ITR 85 has held that: **Penalty cannot be levied when income has been estimated** - *Where the assessee had not maintained any accounts but had filed his return of income on estimate basis, and the Assessing Officer made his own estimate with which the Tribunal did not agree, it could not be said that the assessee had 'concealed' his income so as to attract penalty. There has to be a positive act of concealment on the assessee's part and the onus to prove this is on the department.*

Thus, looking at the facts and circumstances of the case it is submitted that the penalty imposed by the Id. assessing officer and confirmed by the Id. CIT(A) is completely illegal, without following the settled law and thus penalty deserves to be deleted."

2.6 Further, the Id. AR of the assessee has filed the following documents as Index to support his arguments in the cases of the assessee.

INDEX

S.no.	Particular	Page No.
1.	Written Submission	01-09
2.	Copy of order dated 14.12.2018 passed by the Id. CIT(A) against the addition made u/s 143/147 for the Assessment year 2008-2009.	10-41
3.	Copy of order dated 14.12.2018 passed by the Id. CIT(A) against the addition made u/s 143/147 for the Assessment year 2009-2010.	42-66
4.	Copy of Acknowledgement along with the submission dated 21.03.2024 for the A.Y. 2008-09.	67-74
5.	Copy of Acknowledgement along with the submission dated 21.03.2024 for the A.Y. 2009-2010.	75-82
6.	Copy of order dated 17.05.2024 passed by the Id. CIT(A) for A.Y. 2007-2008.	83-92

2.7 On the other hand, the Id. DR supported the orders of the Id. CIT(A).

2.8 We have heard both the parties and perused the materials available on record. It is noted that the assessee has filed two appeals i.e. ITA No. 1323 & 1324/JPR/2024 pertaining to penalty u/s 271(1)© confirmed by the Id. CIT(A) for the assessment years 2008-09 and 2009-10 as discussed hereinabove. During the course of hearing, the thrust of the Id. AR of the assessee on the issue of penalty u/s 271(1)(c) was that in similarly situated case for the assessment year 2007-08, the appeal of the assessee was allowed by the Id. CIT (A) vide his order dated 17-05-2024 by observing as under:-

“4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the penalty order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

Brief facts of the case as per the penalty order are that during the course of assessment proceedings, the AO observed that the assessee has taken accommodation entries from M/s Vitrag Jewels of Rs. 27,87,133/- and disallowed 25% of the same, which resulted in addition of Rs. 6,96,783. Thereafter, the assessee preferred an appeal before the Id. CIT(A) which was partly allowed by the Ld. CIT(A) on 29/06/2018 in appeal No. 603/2014-15. The Id. CIT (A) restricted the addition on the issue of non genuineness of purchases from 6,96,783/- to 3,02,073-by applying G.P. rate of 10.80%. Thus, the addition of Rs. 3,02,073/- was sustained by the Id. CIT(A). The assessee preferred further appeal before Hon'ble ITAT which was partly allowed by the Hon'ble ITAT on 12.07.2019 in appeal No. ITA 1013/JP/2018. The Hon'ble ITAT restricted the G.P. rate at 10.28% as against 10.80% held by CIT(A). Thus, the addition was restricted to Rs. 46,943. Ld. AO levied the penalty u/s 271(1)(c) w.r.t. this sustained addition.

The appellant has relied upon the judgement of honourable ITAT Jaipur bench in the cases of (i) Shri Alok Haldia v. ACIT (2019 (4) TMI 673-ITAT, Jaipur] dated 08.04.2019, () Deepak Dalela Vs ITO in ITA No. 1027/JP/2013 dated 22/12/2016 (iii) Ashok Kumar Gupta v ITO [2018 (6) TMI 69-ITAT Jaipur] dated 30.05.2018 and other judgements and contended that the penalty cannot be levied in the case as the appellant had given all the documentary evidences in support of the purchases and that **the addition is on estimate basis** which has been gradually and substantially reduced by the Id. CIT(A) and Hon'ble ITAT. Initially the disallowance was made by the learned AO at the rate of 25% of the purchase value which ultimately came to be restricted to 10.28%

Considering the facts of the case and the circumstances, respectfully following the judgements of honourable ITAT Jaipur bench, the penalty levied by the learned AO is hereby directed to be deleted and this ground of appeal of the appellant is hereby allowed.”

2.9 Thus, it is clear from the above order of the Id. CIT(A) that he has allowed the penalty appeal of the assessee for the assessment year 2007-08 on the same set of facts whereas for assessment years 2008-09 and 2009-10 though the facts being same should have been allowed. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development

of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principles should be followed we find out that the Id. CIT(A) has not given any reasons as to why he has not followed his own order in the case of same assessee in spite of the fact that the issues and analogy in both the appeals are the same. Hence, in view of all these facts and circumstances of the case, we do not concur with the findings of the Id.CIT(A) as both the issues are fully covered by the decision of ITAT Jaipur Bench (supra) as narrated in the order of the Id CIT(A) dated 17-05-2024 and the same has been followed by him while determining the appeal of the assessee for assessment year 2007-08. The records reveal that the purchase made by the assessee alleged to have been considered as bogus and thereby the profit was estimated and confirmed in the hands of the assessee. That claim itself is not considered fully not correct and thereby the profit was added. Thus, we get support of the decision of the apex court in the case Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Private Limited [189 Taxman 322(SC) wherein the apex court held that :-

9. We are not concerned in the present case with the *mens rea*. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In *Webster's Dictionary*, the word "inaccurate" has been defined as :—

"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

Hence, in view the entirety of the matter, both the appeals of the assessee relating to penalty u/s 271(1)(c) for the assessment year 2008-09 and 2009-10 are allowed, respectfully following the rule of judicial consistency and decision of the apex court.

3.0 In the result, both the appeals of the assessee relating to levy of penalty under section 271(1) of the Act are allowed.

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

PER : NARINDER KUMAR, JUDICIAL MEMBER.

I have gone through the draft order communicated by my Learned Brother-Accountant Member.

I have reasons to add in dealing with the issue involved, and as such, I proceed to append my reasons, observations and opinion.

2. Two separate orders passed by Learned CIT(A) i.e. order dated 11.09.2024 relating to the assessment year 2008-09, and the order dated 12.09.2024 relating to the assessment year 2009-10 are under challenge before us.

Vide first mentioned impugned order, relating to the assessment year 2008-2009, Learned CIT(A) has dismissed the appeal filed by the assessee and thereby upheld penalty of Rs. 1,03,150/- imposed by the Assessing Officer, u/s 271(1)(c) of the Income Tax Act (hereinafter referred to as the

“Act”) as he found that **the assessee was guilty of furnishing of inaccurate particulars of income to the extent of Rs. 2,67,647/-.**

Vide second mentioned impugned order dated 12.09.2024 penalty order dated 17.03.2022 passed by the Assessing Officer imposing penalty of Rs. 13,782/-, relating to the **assessment year 2009-10**, has been upheld, thereby confirming the findings that **the assessee was found guilty of furnishing of inaccurate particulars of income to the tune of Rs. 40,548/-.**

3. While dealing with appeal for the assessment year 2008-09, Learned CIT(A) observed that the assessee-appellant was found to have concealed true and correct details as regards purchases as accommodation entries were found to have been got made by the assessee from entry operator party, and the entries in his books of accounts were found to be false /incorrect, as a result whereof estimation was required to be done. Accordingly, Ld. CIT(A) dismissed said appeal filed by the assessee and upheld the penalty order.

As regards the other impugned order relating to the assessment year 2009-10, Learned CIT(A), after taking into consideration the submission put forth by the appellant, the discussion made while adjudicating the same issue relating to the previous assessment year 2008-09, and applying the

same findings mutatis mutandis to the second appeal, dismissed the same.

4. Ld. AR for the assessee-appellant has contended that the Assessing Officer passed the penalty order on determination of GP rate, on estimation basis, and as such, no penalty should have been levied "on estimation". In support of this contention, Ld. AR relied on following three decisions :-

- **Shri Alok Haldia vs. ACIT (2019) (4) TMI 673-ITAT-Jaipur, decided on 08.04.2019.**
- **Ashok Kumar Gupta vs. ITO (2018)(6) TMI 69-ITAT-Jaipur, decided on 30.05.2018.**
- **Harigopal Singh vs. CIT (2002) 258 ITR 85 Hon'ble Punjab & Haryana High Court.**

5. Another submission put forth by Ld. AR for the assessee-appellant is that Learned CIT(A) while dealing with challenge to an order dated 17.05.2024 by which penalty u/s 271(1)(c) of the Act relating to the assessment year 2007-08 was imposed, set aside said penalty order, and as such, even on this ground the penalties imposed by the Assessing Officer deserved to be set aside.

6. On the other hand, Ld. DR for the department has contended that while framing assessment, these cases were found to be of bogus purchases, for the reasons recorded by the Assessing Officer, and as such, the Assessing Officer was justified in imposing penalty in respect of the said assessment years, and Learned CIT(A) was also justified in confirming the said penalties, for the reasons recorded in the impugned orders.

7. As regards setting aside of the previous penalty order by Learned CIT(A) relating to the assessment year 2007-2008, Learned DR has not disputed this factual position that penalty order was set aside.

Copy of said order is available from page 83 to 92 of the paper book submitted on behalf of the appellant.

In said order, Learned CIT(A) considered the contention raised before him on behalf of the appellant that the appellant had given all the documentary evidences in support of the purchases and also that the addition was on estimate basis, which was gradually and substantially reduced by Ld. CIT(A) and Hon'ble ITAT i.e. from the rate of 25% of the total purchase value, same was restricted to 10.28%.

Ld. CIT(A) deleted the penalty following three decisions cited there, i.e.:-

-Shri Alok Haldia vs. ACIT (2019) (4) TMI 673-ITAT-Jaipur, decided on 08.04.2019;

-Ashok Kumar Gupta vs. ITO (2018)(6) TMI 69-ITAT-Jaipur, decided on 30.05.2018;

-Deepak Dalela v. ITO, ITA No.1027/JP/2023 dated 22.12.2016.

8. Admittedly, Ld. CIT(A) had deleted the penalty that was levied in similar facts i.e. case of availing of accommodation entries by the assessee from M/s Vitrag Jewels, and the Appellate Authority and Appellate Tribunal having restricted the addition that was made on estimation of rate of Gross Profit, on account of bogus purchases.

Once, the abovesaid penalty order as regards previous assessment year 2007-2008, based on similar facts was set aside, while dealing with the appeals challenging 2 penalty orders pertaining to the subsequent assessment years i.e. 2008-09 and 2009-10, Ld. CIT(A) was required to record reasons for not following the view already taken or as to why present matters were distinguishable.

Ld. CIT(A) observed that the assessee did not make available copy of the assessment orders or the submissions put forth before the Assessing Officer, but he failed to comply with the directions.

It is true that the assessee-appellant should have made available copies of the assessment orders of the previous assessment years as well as the written submissions before the Assessing Officer(s), but he failed to do so, for the reasons best known to him. Surprisingly, he has placed here copies of the orders passed by Ld. CIT(A) as regards the quantum assessments of those two years.

Therein, the allegations were of bogus purchases by the appellant and accommodation entries availed of by him from M/s Aadi Impex and Rajendra Jain Group, entry operators.

There also, addition was made considering 25% of the purchases as bogus purchases, but the addition was ultimately restricted. As regards both the assessment years, estimation was made as regards Gross Profits.

It is not case of the department that in the previous two penalty orders or assessment orders the Assessing Officer(s) had found that the purchases were 100% bogus. Had it been so, then the matter would have been different, and both these appeals, deserved to be dismissed in view of decision in **Sandeep Kewalchand Mehtav.ACIT**[\[2025\]](#) 173 taxmann.com 315 (Mumbai - Trib.).

Therein, levy of penalty u/s 271(1)(c) of the Act amounting to Rs. 1,84,771/- stated to be on estimated profits on the addition of unverified purchases, was confirmed by Ld. CIT(A). Prior to the penalty order, assessment order dated 30/03/2015 was passed u/s 143(3) r.w.s. 147 of the Act wherein, during the course of the scrutiny assessment proceedings, on the basis of the information received from the Sales-tax authorities, the AO came to know that the assessee had made bogus purchases from hawala parties amounting to Rs.43,48,834/-, and the entire amount was added to the income of the assessee.

Matter came up before the Appellate Tribunal. The Tribunal *vide* its order dated 31/10/2017, restricted the quantum addition at 12.5% of the bogus purchases.

It was in pursuance of the order of the Tribunal, penalty proceedings were initiated u/s 271(1)(c) of the Act, and a penalty of Rs.1,84,771/- was levied.

There, on behalf of the appellant, it was contended that since the quantum addition was estimated, no penalty should be levied on estimation of profit.

On the other hand, Ld. D/R pointed out that no estimation was made, and rather, AO was found to have added the entire bogus purchases, and the Tribunal restricted the addition to 12.5% of the bogus purchases being the profit element imbibed in such bogus purchases. In the given situation, it was argued that profit could not have been estimated and rather, the penalty was found to have been levied on estimated profits.

Therein, the undisputed fact was that the additions were made on account of bogus purchases and ultimately, the Tribunal restricted the quantum addition at 12.5% of the bogus purchases.

Therefore, it was held that there was no merit in the contention of the Id. Counsel that the profit had been estimated and the penalty had been levied on estimated profit.

Therein, facts on record showed that there were bogus purchases and only the profit element had been added which meant that the assessee had concealed the income to this extent in the garb of purchases which turned out to be bogus. Therefore, considering the facts of the case in totality, it was held that there was no hesitation in confirming the penalty so levied

u/s 271(1)(c) of the Act. The appeal filed by the assessee was accordingly dismissed.

9. Returning to present appeals, once, the abovesaid penalty order as regards previous assessment year 2007-2008, based on similar facts was set aside, while dealing with the appeals challenging 2 penalty orders pertaining to the subsequent assessment years i.e. 2008-09 and 2009-10, Learned CIT(A) should have maintained consistency and set aside the penalty, especially when it was also not a case of 100% bogus purchases.

Result

10. As a result, I am also of the view that the impugned orders passed by Learned CIT(A) deserve to be set aside. Consequently, both these appeals are allowed and impugned orders are set aside.

Sd/-

(नरेन्द्रकुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/04/2025

Operative Part

As a result, both the appeals of the assessee are hereby allowed.

Order pronounced on 28 /04/2025

Sd/-
(नरेन्द्र कुमार)
(Narender Kumar)
न्यायिकसदस्य / Judicial Member

Sd/-
(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 28/04/2025

*Mishra, Sr. PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Ravi Kumar Rawat, Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Circle-2, Jaipur
3. आयकरआयुक्त / The DCIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 1323& 1324/JPR/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar