

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA Nos.40 to 42/SRT/2024**

**Assessment Years:(2011-12 to 2013-14)**

**(Hybrid Hearing)**

Vimal Chand Gokharoo, 16 <sup>th</sup> Floor, D Wing, Trade World, Kamala Mills, Compound, Senapati Bapat Marg, Lower Parel, Mumbai - 400013	<b>Vs.</b>	The ITO, Ward – 3(3)(1), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACUPJ0819L</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Himashu Gandhi, CA
<b>Respondent by</b>	Ms Jayshree Thakur, Sr. DR
<b>Date of Hearing</b>	24/04/2025
<b>Date of Pronouncement</b>	28/04/2025

**आदेश / O R D E R**

**PER BIJAYANANDA PRUETH, AM:**

These three appeals emanate from the common order dated 14.01.2025 passed by the Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [in short "CIT(A)"], for Assessment Years (AYs) 2011-12 to 2013-14. Since facts of the cases are similar and the grounds taken up in all these appeals are also similar, with consent of both sides, the appeals were heard together and a common order is passed for the sake of convenience and brevity. ITA No. 40/SRT/2024 is taken as the lead case.

2. The grounds of appeal raised by the assessee as per in ITA No. 40/SRT/2024 (AY.2011-12), are as follows:

*“1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in levying penalty u/s 271(1)(c) of the Income Tax Act, 1961 on the basis of invalid penalty order in which the limb of levy of penalty under section 271(1)(c) of Income Tax Act, 1961 not mentioned.*

*2. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to considered that the penalty is not leviable when the addition is made on estimation basis.*

*3. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

3. The fact of the case in brief are that against returned income of Rs.1,79,670/-, the Assessing Officer (in short, 'AO') assessed the total income at Rs.2,29,93,652/- by making addition of Rs.2,28,13,982/-. The AO has disallowed 25% of total non-genuine purchases of Rs.9,12,55,927/- from the concerns of Rajendra Jain Group, who were found to have provided accommodation entries by way of bogus purchase, sale and unsecured loan to various parties. It was so established due to a search and seizure operation conducted u/s 132 of the Act on 03.10.2013 on the concerns of Shri Rajendra Jain group, Shri Dharmichand Jain group and Shri Sanjay Chaudhary group. On appeal, the CIT(A) restricted the addition to 5% of the bogus purchases. On further appeal, the ITAT, Surat vide order dated 13.12.2022 sustained addition @ 6% of total purchase of Rs.9,12,55,927/-. Thereafter, penalty of Rs.15,48,509/- was levied by the AO u/s 271(1)(c) of the Act, being minimum penalty @ 100% of the tax sought to be evaded.

4. Aggrieved by the order of AO, the assessee filed appeal before CIT(A) where appellant raised three grounds including validity of the notice issued u/s 274 r.w.s. 271(1)(c) of the Act and merit of the penalty imposed by the AO. The CIT(A) has passed a common order for AYs.2011-12 to 2013-14, wherein he

condoned the delay of 6 days in filing the appeal. He, however, dismissed the appeal both on validity of notice and merit of the penalty order. The CIT(A) has dismissed the ground on validity of notice u/s 274 r.w.s. 271(1)(c) in para 7.14 at page 24 of the order. In ground No.2, he has discussed and decided the merit of penalty and upheld it by holding that ITAT has confirmed disallowance @ 6% of the bogus purchases.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that in case of the appellant, the assessment order u/s 143(3) r.w.s. 147 of the Act was passed on 29.12.2018, wherein 25% of the bogus purchase from concerns of Shri Rajendra Jain group was disallowed and added to the total income. The addition was Rs.4,20,34,971/- on total purchase of Rs.16,81,39,885/- from the said parties. In appeal, the CIT(A) restricted the disallowance to 5% of the bogus purchase. The revenue filed appeal before ITAT, Surat Bench, which sustained addition @ 6% as against 5% made by the CIT(A). The Id. AR of the assessee submitted that the addition in quantum assessment as well as appellate proceedings before CIT(A) and the ITAT were made/upheld on estimation basis. He submitted that it is now fairly well settled that in Income-tax proceedings, no penalty is leviable on addition made on estimated addition. Therefore, the penalty levied by the AO is liable to be deleted. To support such contention, the Id. AR relied upon the following decisions, viz., (i) CIT vs. Subhash Trading Co., (1996) 221 ITR 110 (Gujarat), (ii) CIT vs. Krishi Tyre Retreading & Rubber Industries, (2014) 360 ITR 580

(Rajasthan), (iii) DCIT vs. M/s Opulent Jewels Pvt. Ltd., in ITA No. 1855/Ahd/2010/Srt, dated 15.11.2018, (iv) CIT vs. Whitelene Chemicals, (2013) 214 Taxman 93 (Gujarat), (v) Mayank Diamonds Pvt. Ltd. vs. ITO, in ITA No. 879/Ahd/2004, dated 21.02.2014 and (vi) ITO vs. Shri Jignesh Amrutlal Shah, in ITA No.1267/Mum/2019, dated 13.03.2020.

5.1 The Id. AR of the assessee further submitted that the appellant has also raised legal ground that the AO while issuing notice u/s 274 r.w.s 271(1)(c) of the Act has not specified the limb of levy of penalty u/s 271(1)(c) of the Act. Thus, the notice is itself invalid as held by the decisions of various Hon'ble High Courts and Tribunals.

6. On the other hand, the learned Commissioner of Income-tax - Departmental Representative (Id. CIT-DR) for the revenue supported the orders of lower authorities. He submitted that the case of revenue right from the beginning is that the assessee has shown bogus purchases and thus, furnished inaccurate particulars of income. The stand of revenue is upheld in restricting the addition to the extent of 6%. Therefore, the penalty u/s 271(1)(c) of the Act should be upheld qua the addition upheld in the quantum assessment proceedings.

7. We have heard both the parties and perused the materials available on record. We have also deliberated upon the decisions relied upon by the Id. AR. The assessment order was passed u/s 143(3) r.w.s. 147 of the Act by disallowing 25% of the purchases from the concerns of Shri Rajendra Jain group. The disallowance was restricted to 5% of the impugned purchase by the CIT(A). On

further appeal, the ITAT sustained the addition to the extent of 6% of the purchases from the above parties. Thus, it is clear that the additions all through have been made on estimation basis. The penalty u/s 271(1)(c) of the Act has been levied on the estimated addition by the AO, which has been sustained by the CIT(A). The Id. AR has argued that the Hon'ble jurisdictional High Court in cases of Subhash Trading Co. (supra) and Whitelene Chemicals (supra) and Hon'ble Rajasthan High Court in case of Krishi Tyre Retreading & Rubber Industries (supra) have held that penalty u/s 271(1)(c) of the Act could not be levied where addition was on estimated basis. The Co-ordinate Bench of ITAT, Surat in cases of Yogendra Raj U Sanghvi, in ITA No.459/SRT/2021, dated 19.10.2023, Deepak Banwarilal Agarwal, in ITA No.827/SRT/2023, dated 27.02.2024 and M/s Opuient Jewels Pvt. Ltd. (supra) have also held that no penalty is leviable on estimated addition. The ITAT, Mumbai in case of Mun Gems vs. ACIT, 155 taxmann.com 1, has held that where AO treated entire purchase as bogus based on findings of Investigation Wing and levied penalty u/s 271(1)(c), since payment of purchase had been made through account payee cheques and there was corresponding sales, ad hoc GP rate applied on alleged bogus purchases to factor in suppression of alleged gross profit could not be basis of levying penalty for furnishing of inaccurate particulars of income or concealing particulars of income. Since the facts are similar, following the above decisions, the AO is directed to delete the penalty levied u/s 271(1)(c) of the Act. Accordingly, the ground of the appellant is allowed.

8. Since, we have allowed the appeal of the appellant on merit, the other grounds become academic in nature and do not require adjudication.

9. In the result, appeal of the appellant is allowed.

**ITA Nos. 41 & 42/SRT/2024 (AYs.2012-13 & 2013-14):**

10. The facts and grounds taken up by the appellant are similar in these appeals as in ITA No.40/SRT/2024 (AY.2011-12), decided above. Following the reasons given in the said appeal, the AO is directed to delete the penalty levied u/s 271(1)(c) of the Act in both years.

11. In the result, the appeals of the appellants are allowed.

12. In the combined result, the appeals of the appellant are allowed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 28/04/2025.

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

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 28/04/2025

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

**// TRUE COPY //**

Assistant Registrar/Sr. PS/PS  
ITAT, Surat