

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.106/SRT/2025

Assessment Years:(2009-10)

(Hybrid Hearing)

The ITO, Ward – 1(2)(6), Surat	Vs.	Hiteshbhai Popatbhai Sakariya, 17, Hetal Nagar Society, Rander Road, Near Navyug College, Surat - 395009
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AKVPS5306G		
(Appellant)		(Respondent)

Appellant by	Ms Neerja Sharma, Sr. DR
Respondent by	Shri Himashu Gandhi, CA
Date of Hearing	01/05/2025
Date of Pronouncement	07/05/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal emanates from the order dated 16.12.2024 passed by the Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [in short "CIT(A)"], for Assessment Year (AY) 2009-10.

2. The grounds of appeal raised by the revenue are as follows:

"a) On the facts and circumstances of the case and law, the Id.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.17,462/- 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 Id. 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 Taxman30 (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 Id. CIT(A) has erred in deleting the penalty levied by the AO u/s.271(1)(c) of the Act of

Rs.17,462/- 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 Id. 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.

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.”

3. The facts of the case in brief are that against returned income of Rs.2,29,216/-, the Assessing Officer (in short, 'AO') assessed the total income at Rs.3,50,248/- by making addition of Rs.1,21,032/- u/s 69C of the Act. The AO also initiated penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. The AO has disallowed 25% of total non-genuine purchases of Rs.4,84,128/- 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) upheld the addition made by AO. On further appeal, the ITAT, Surat vide order dated 09.11.2021 involving AYs from 2009-10 to 2012-13 restricted the estimated addition at 6% of bogus purchases made in each year. During the penalty proceedings, the

assessee requested to keep the penalty proceedings in abeyance since appeal before the ITAT was pending for disposal. The AO did not accept such request and proceeded to levy the penalty because the CIT(A) had dismissed appeal of the assessee. He levied minimum penalty of Rs.17,462/- u/s 271(1)(c) of the Act, being 100% of 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 order u/s 250 of the Act for AY.2009-10 in which he had noted that the ITAT passed an order on 09.11.2021 involving AYs.2009-10 to 2012-13 by restricting the estimated addition at 6% of bogus purchases made in each year. He has reproduced relevant portion of the ITAT order at pages 4 and 5 of the appellate order. Thereafter, he observed that estimated addition at 25% of bogus purchases was restricted to 6% by the ITAT. He also stated that no adverse inference on the basis of quantitative analysis could be laid down by AO to establish the bogus purchase. The books of account were also not rejected. Hence, presumption under Explanation to Section 271(1)(c) stands rebutted. Therefore, penalty cannot be imposed. Accordingly, he directed AO to delete the penalty and allowed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), the revenue filed appeal before the Tribunal. The learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of AO. She 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 by the ITAT 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.

6. On the other hand, 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 15.12.2016, wherein 25% of the bogus purchase from concerns of Shri Rajendra Jain group was disallowed and added to the total income. The addition u/s 69C of the Act was Rs.1,21,032/- on total purchase of Rs.4,84,128/- from the said group. In appeal, the CIT(A) upheld the said disallowance. The appellant filed appeal before ITAT, Surat Bench, which restricted the addition to 6% of bogus purchases as against 25% made by the AO and CIT(A). The Id. AR of the assessee submitted that the addition in quantum assessment as well as appellate proceedings before 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. The Id. AR further submitted that the decisions relied upon by the revenue in cases of CIT vs. Subhash Trading Co., (1996) 221 ITR 110 (Guj.) and CIT vs. S. P. Bhatt, (1974) 97 ITR 440 (Guj.), are in fact in favour of the

assessee whereby the penalty has been deleted. The revenue's reference to the above decisions of the jurisdictional High Court is against its own plea.

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. Sr. DR. Though the revenue has raised seven grounds of appeal, they are either inter-connected or general in nature. Hence, the grounds are decided together in terms of the discussion made hereafter. 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 6% of the impugned purchase by the ITAT. 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 deleted by the CIT(A). The Id. AR has argued that the Hon'ble jurisdictional High Court in cases of Subhash Trading Co. (supra) and S. P. Bhatt (supra) has 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 DCIT vs. M/s Opulent Jewels Pvt. Ltd., in ITA No. 1855/AHD/2010/SRT, dated 15.11.2018, 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 direction of CIT(A) to the AO to delete the penalty levied u/s 271(1)(c) of the Act is upheld. Accordingly, the grounds of the revenue are dismissed.

8. In the result, appeal of the revenue is dismissed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 07/05/2025.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 07/05/2025

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