

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH MUMBAI**

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER &
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No. 1542/Mum/2025
(Assessment Year: 2009-10)**

Trustar Diamond EC-3070, G Block Bharat Diamond Bourse, Bandra Kurla Complex, Bandra East-400 051	Vs.	ITO Ward - 19(3)(5) Piramal Chambers, 5 th floor, Lalbaug, Mumbai-400 012
PAN/GIR No. AAFFT7349N		
(Applicant)		(Respondent)

Assessee by	Ms. Krupali Mehta, Ld. AR
Revenue by	Smt. Kavita P. Kaushik, Sr. DR

Date of Hearing	29.04.2025
Date of Pronouncement	27.05.2025

आदेश / ORDER

PER RAJ KUMAR CHAUHAN, JM:

This appeal is directed against the order dated 10.02.2025 passed by the National Faceless Appeal Centre, Delhi (herein after referred as “Ld. CIT(A)” u/s 250 of the Income-tax Act, 1961 (herein after referred as “the Act”), wherein the penalty imposed by the Ld. AO u/s 271(1)(c) of the Act was confirmed.

2. The brief facts as culled out from the proceeding before the lower authorities are that the assessee is engaged in the business of exports of diamond and precious stones. The assessee has filed return of income for the A.Y 2009-10 on 04.09.2013, declaring total income of Rs. 8,29,510/- and the return was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny on the information received from DGIT(Inv.), Mumbai that the assessee was involved in taking entries of non genuine purchases. Therefore, a search and seizure action has been carried out in the case of Shri Bhanwarlal Jain and his group concern on 03.10.2013. During the course of search, it was revealed that these group concerns were merely providing accommodation entries through various benami concerns operated and managed by Shri Bhanwarlal Jain and his son and these concerns are indulged into fraudulent transactions of issuing accommodation /hawala entries which purportedly shows transaction of purchase and sale of materials and bogus unsecured loans and advances. It is alleged that the assessee was one of the beneficiary of bogus purchases through bogus bills and conducting various non genuine transactions from the following parties.

Sr. No.	Name of the hawala entries	Amount
1	Man Diamond	7308204
2	Milan & Co.	3347800

3	Laxmin Diamond	2514313
4	Navkar India	3553650
5	Mahalaxmi Gems Pvt. Ltd.	5394195
6	Manas Gems Pvt. Ltd.	3242172
7	Mohit Enterprises	15082200
	Total	40442534

3. During the course of scrutiny, assessee was asked to explain as to why the purchases from the above parties should not be treated as non-genuine. In response, the assessee furnished the copy of invoices of the parties, statement of bank account of assessee, stock register of assessee and export invoice of purchase from the above parties. The AO after considering the reply filed by the assessee and considering the fact that the assessee has recorded such purchases in the books of accounts, and after taking the profit element embedded in such purchases, passed assessment order u/s 143(3) of the Act determining the total income of Rs. 18,60,620/-. Further the penalty proceedings were initiated for furnishing inaccurate particulars of income leading to concealment of income chargeable to tax and levied penalty of Rs. 3,74,900/- i.e. 100% of tax sought to be evaded.

4. The said assessment order was challenged by assessee before the Ld. CIT(A) who confirmed the action of AO and dismissed the appeal of assessee by observing as under:-

5.5 The appellant has relied on the decision of Supreme Court of India in the case of Pr. Commissioner of Income Tax Surat vs. Tejua Rohit kumart Kopadia and the decision of Jurisdictional Mumbai Income Tax Appellant Tribunal in the case of M/s. Chempure vs. ITO14(3)(1) [ITA nos. 451, 452, 453/M/2006], though the facts of Chempure vs. ITO and appellant facts are identical and the case law was submitted before the Ld. AO.

I have gone through the observations of the Hon'ble courts in the above referred case laws and various other judicial decisions cited by the appellant. The Hon'ble ITAT has allowed the appeal against penalty u/s 271(1)(c) in the above said case. Whether the same relief can be allowed across all the similar cases, depends upon the facts of each case. Therefore, the decisions cited by the appellant are distinguishable on facts. In the said ITAT Mumbai decision, the distinguishable fact is that the party from whom purchases were made by the assessee did not appear in person before the deciding authorities but in the instant case the finding of the investigation wing, Mumbai are on record that Shri Bhanwarlal Jain Group has operated his proprietor concern namely Ms Navkar Diamonds, Ms Milan Co, Ms Mukti Exports, Ms Pankaj Exports, Ms Navkar Diamond, Ms Mouli Gems, Ms Aastha Impex and Ms Naman Exports on paper only. Shri Bhanwarlal Jain Group was found merely giving accommodation entries without there being any physical stock of diamonds to back the sales. The assessee company has made bogus purchases with the above said entities.

Therefore, after careful examinations of the facts and circumstances of the case, I find the levying of penalty by the AO in this case in order as per law. Hence, ground no. 1 to 3 is dismissed.

5. Thus aggrieved by the order of Ld. CIT(A) the present appeal has been filed and following ground has been raised by the appellant / assessee.

1. The Hon'ble CIT(Appeal) has erred in law and facts in sustaining the penalty u/s 271(1) (c) for AY 2009-10, though the firm was not in existence in FY 2008-09 and there were no transactions on the basis of which the penalty was imposed.

2. The Hon'ble CIT(Appeal) erred in law and in facts in levying penalty u/s 271(1)(c) of Income Tax Act, 1961 for AY 2009-10, ignoring the fact that the additions were made for AY 2013-14 on mere estimations and presumptions. The Hon'ble CIT(A) has erred in ignoring the decisions of Hon'ble ITAT on levy of penalty u/s 271(1)(c).

3. The Hon'ble CIT(Appeal) erred in law and in facts in not considering case laws of Jurisdictional Mumbai Income Tax Appellant Tribunal in the case of M/s. Chempure vs. ITO-14(3)(1) [ITA nos. 451, 452, 453/M/2006], though the facts of Chempure vs. ITO and appellant facts are identical and the case law was submitted before the Ld. AO.

4. The appellant reserves its right to add, amend or alter any of the Grounds of Appeal on or before the date of hearing and during the course of hearing.

6. We have heard the Ld. AR and the Ld. DR and examined the record. The Ld. AR at the very outset submitted that since admittedly the addition was made on

estimation basis, therefore imposing of the penalty was not legally justified and was against the settled principle of law and the various legal precedents of different Tribunals as well as various Hon'ble High Courts. The Ld. AR has referred the judgment of the Coordinate Bench of this Tribunal in the case of KP Sanghvi & Sons LLP Vs. ACIT in ITA No. 3565/Mum/2023 order dated 29.02.2024 and also in the case of ITO Vs. Ashok Industrial Corporation in ITA No. 4160/Mum/2024 order dated 30.12.2024. In support of his above arguments, he has also referred the case of ITA No. 961 to 963/Mum/2023. For the sake of brevity we may refer order the ITA No. 3565/Mum/2023 (supra) and would like to refer relevant portion of the judgment extracted herein below:

"7. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that it is a settled proposition of law that when addition has been made on estimate basis, no penalty can be levied u/s. 271(1)(c) of the Act. The Id. AR relied on the decision of the co-ordinate bench in the case of Mun Gems vs. Asst. CIT [2023] 108 ITR(T) 276 (Mum-Trib), M/s. V. K. Ispat & Alloys (in ITA No. 2326 & 2325/Mum/2022 ITA No. 3565/Mum/2023 (AY.2011-12) KP Sanghvi & Sons LLP vs. Asst. CIT vide order dated 24.01.2023 and Shri Poonam K. Prajapati vs. ITO (in ITA No. 1953/Mum/2022 vide order dated 30.11.2022).

8. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said fact and relied on the orders of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee is alleged to have purchased cut and polished diamonds from

(1) M/s. Aadi Impex (2) M/s. Kalash Enterprises and (3) M/s. Daksh Diamonds which aggregates to Rs.2,47,45,023/-- The ld. A.O. held the same to be bogus purchase on the premise that the assessee has received accommodation entries from the above mentioned entities which are sought to be managed and controlled by Bhanwarlal Jain & Famil and Rajendra Jain Group concerns. The assessee contended that the purchases and sales are duly recorded in purchase and sales register that form part of the books of accounts of the assessee and the quantitative details of the cut and polished diamonds are reflected in the tax audit report which the assessee is bound to u/s.44AB of the Act. The assessee further stated that it is said to have filed the relevant documents such as copy of invoices, ledger extracts, payment documents, bank account statement, PAN/VAT registration details of above parties, etc. for the purpose of substantiating its claim. The submission of the assessee was found to be not tenable to the ld. A.O., thereby holding the same to be bogus purchases. The ld. A.O. added 100% of the alleged purchase made from the above party.

10 The first appellate authority, on the other hand, in a appeal prayed by the assessee, restricted the addition to 5% of the alleged bogus purchase and made an addition of ITA No. 3565/Mum/202 3 (A.Y.2011-12) K P Sanghvi & Sons LLP vs. Asst. CIT Rs.12,37,251/- as against the addition made by the ld. A.O. amounting to Rs.2,47,45,023/-. The impugned penalty of Rs.4,20,570/- was levied on the quantum of addition confirmed by the ld. CIT(A).

11. In the above factual matrix, the ld. AR had relied on the following decisions where the co-ordinate benches have held that the penalty u/s. 271(1)(c) of the Act cannot be levied, where addition has been made on estimate basis on alleged bogus purchases. The ld. AR brought our attention to the operative part of the order of the co-ordinate bench in the case of M/s. V. K. Ispat & Alloys (supra) which we have extracted hereunder for ease of reference:

“8. From the above facts, it is evident that the said addition made in the case of the assessee pertains to the addition made

on bogus purchase on estimated basis. It is also pertinent to point out that the A.O. has arrived at the percentage of the gross profit based on the average gross profit earned by the assessee for A.Ys. 2008-09, 2009-10 and 2010-11.

We would like to place our reliance in the decision of the coordinate bench in ITA No.5384/Mum/2019 in the case of ACIT vs. M/s. Fancy Diamonds India Pvt. Ltd. vide order dated 17.06.2022, which has held that in case where the addition is made on estimated basis, the penalty u/s. 271(1)(c) of the Act is not leviable. The Tribunal has relied on the decision of the Hon'ble Rajasthan High Court in the case of CIT vs. Krishi Tyre Retreading and Rubber Industries reported as 360 ITR 580, the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Sangrur Vanaspati Mills Ltd. reported as 303 ITR 53 and Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Co. Ltd. reported as 221 ITR 110. It is observed that all the above mentioned decisions have reiterated the proposition that the penalty u/s. 271(1)(c) of the Act cannot be levied in case where the addition is made on estimated basis. It is evident that there are plethora of other decisions by the Hon'ble High Court's and various benches of the tribunal which had held the said proposition. In the present case in hand, it is observed that the A.O. has made addition @ 2.58% + 3% on VAT which was restricted by the ld. CIT(A) to 2.58% of gross profit on the bogus purchases made by the assessee with the hawala parties. This clearly indicates that the addition in assessee's case was made on estimated basis.

9. We are of view that the penalty u/s. 271(1)(c) of the Act cannot be levied where the addition is made on estimated basis. From the above observation and by respectfully following the above decisions, we hereby delete the penalty levied by the A.O. and find no justification in the order of the ld. CIT(A)".

12. As the facts of this appeal are identical to the above said decision, we hereby hold that the penalty u/s. 271(1)(c) of the Act cannot be levied where the addition has been ITA No. 3 565/Mu m/2023 (A.Y.2011-12) KP Sanghvi & Sons LLP vs. Asst. CIT made on estimate basis on the gross profit on alleged

bogus purchase. We, therefore, direct the ld. A.O. to delete the impugned penalty levied u/s. 271(1)(c) of the Act.

13. In the result, the appeal filed by the assessee is allowed”.

7. On the other hand Ld. DR supported the orders passed by the lower authorities stating that since the assessee has not been able to show the genuineness of the purchases and hence he has to be held responsible for furnishing inaccurate particulars of income and as such penalty imposed is justified.

8. What is concealment of income or inaccurate particulars of such income as contemplated by Section 271(1)(c), has been explained by the Hon'ble Supreme Court in the case of the CIT Vs. Reliance Petro Products (P.) Ltd. as reported in 322 ITR 158 wherein it has been held as under: -

"A glance at the provision of s. 271(1)(c) would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the s. 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail

supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. Therefore, it is obvious that it must be shown that the conditions under s. 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income."

9. On perusal of the case in hand we have noticed that the initial return was filed u/s 143 of the Act and the same was processed and accepted u/s 143(1) of the Act. The case was selected for scrutiny assessment on the basis of information received from DGIT (Inv.), Mumbai, who on the basis of search action upon Bhanwarlal Jain group was of the opinion that the assessee was beneficiary of accommodation entries of bogus purchases provided by Bhanwarlal Jain group. During the course of scrutiny the assessee supplied all necessary documents showing the genuineness of the purchases and the documents find mentioned in para 4.3 of the assessment order. The AO was of the view that the genuineness of the purchase parties are doubted but the genuineness of the purchases on a whole cannot be doubted in this case, therefore only the profit margin embedded in such a transaction could be taxed. He further observed that this is a fairly accepted principle and the same would apply in the case of the

assessee. The AO after analyzing the entire material was of the opinion that the profit margin embedded in these transaction is taken at 3% of the value of the purchases made from the 7 parties mentioned in para no. 4 of the assessment order. Accordingly, the said amount is added to the total income of the assessee for the year under consideration and penalty proceedings were initiated.

10. The 100% penalty of Rs. 3,74,900/- was levied vide penalty order dated 29.03,2019. Against which the assessee filed appeal which was dismissed by the Ld. CIT(A) vide impugned order dated 10.02.2025 confirming the penalty so imposed at Rs. 3,74,900/- and did not agree with the contention of the assessee and distinguished the case relied by Ld. AR including the ITAT Mumbai Benches cases. In this given background, it was argued before us by the Ld. AR that addition has been made on estimation basis, therefore penalty u/s 271(1)(c) cannot be levied. The Ld. AR has relied upon the recent order of Jurisdictional ITAT Mumbai Bench in the case of Atul Properties vs. ACIT Circle 24, Mumbai (ITA No. 4967/Mum/2024, 4968/Mum/2024 order dated 06.11.2024) also reported 2024 (11) TMI 366-ITAT Mumbai and one of us was Member of the Bench which decided this appeal and the para no. 5 and 5.1 containing the finding of the Tribunal which supports the contention of Ld. AR are extracted below:-

5.1. In the instant case, the AO has added 100% value of bogus purchases. However, the Ld.CIT(A) has restricted the addition to the extent of 12.5%, meaning thereby the addition has been sustained by the Ld.CIT(A) on estimated basis. The Hon"ble Rajasthan and Punjab & Haryana High Courts have expressed the view that the penalty u/s. 271(1)(c) of the Act is not leviable when the addition is made on estimation basis. Accordingly, following the above said decision, we hold that the penalty u/s. 271(1)(c) of the Act is not leviable in the present cases. Accordingly, we set aside the order passed by the Ld.CIT(A) in both the years under consideration and direct the AO to delete the penalties levied in both the years.

11. Moreover, the facts and circumstances of the present case are squarely covered by the judgment of the Coordinate Bench referred and relied by the Ld. AR and we respectfully follow the Ld. Coordinate Bench in ITA No. 3565/Mum/2023 (supra) and are of considered opinion that the revenue has failed to show that the assessee has concealed the particulars of income or has furnished inaccurate particulars of such income and thus the case of the assessee is not covered u/s 271(1)(c) of the Act. Accordingly the penalty imposed on accepting addition made on estimation basis is not sustainable. The grounds of appeal are accordingly decided in favour of the assessee. We accordingly direct the Ld. AO to delete the penalty amount.

12. In the result, the appeal is accordingly allowed in the above terms.

Order pronounced in the open court on 27.05.2025.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Mumbai, Dated 27/05/2025

Dhananjay, SPS

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

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

सत्यापित प्रति //True Copy//

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai