

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

Before Shri Duvvuru RL Reddy, Vice-President (KZ)

**I.T.A. Nos. 486 to 488/PAT/2022
Assessment Year: 2014-2015 to 2016-2017**

***Shree Mangalam Aluminium,.....Appellant
Pandey Plaza Building,
Exhibition Road, Patna-800001, Bihar
[PAN:ABKFS3963M]***

-Vs.-

***Deputy/Assistant Commissioner of Income
Tax,.....Respondent
Central Circle-3, Patna,
Bihar***

Appearances by:

*Shri A.K. Rastogi, Sr. Advocate, appeared on behalf of the
assessee*

*Shri Ashwani Kr. Singal, JCIT, appeared on behalf of
the Revenue*

Date of concluding the hearing: May 6, 2025

Date of pronouncing the order: July 29, 2025

ORDER

These three appeals are directed at the instance of assessee against the separate orders of Id. Commissioner of Income Tax (Appeals), Patna- 3, all dated 30.08.2022 passed for Assessment Year 2014-2015, 2015- 2016 & 2016-2017, respectively.

2. The sole ground raised by the assessee in all the three appeals is with regard to sustenance of penalty u/s.271(1)(c) of the Act of Rs.8,83,495/- for A.Y.2014-2015, Rs.9,95,004/- for A.Y.2015-2016 and Rs. 1,95,247/- for A.Y.2016-2017, respectively.

3. Facts emanate from the assessment order framed for A.Y.2014- 20165 are taken to be considered for deciding all the three appeals. A search and seizure operation u/s. 132(1) of the Act and survey operations u/s.133A of the Act were carried out in the case of Kanodia Group on 26.10.2015, which is engaged in the real estate construction and trading in Bihar and Jharkhand. This group is also engaged in lubricants dealership and contractor business. M/s Shree Mangalam Aluminium relates to Kanodia group of cases. Notice u/s 153C of the Act was issued on 03.10.2017 for filing of return of income. The assessee filed the return of income u/s 153C of the Act declaring total income of Rs.2,54,100/- for A.Y.2014-2015, Rs.4,19,890/- for A.Y.2015-2016 and return of income u/s. 142(1) of the Act was filed declaring total income at Rs.4,89,730/- for A.Y.2016-2017. Consequently, the Assessing Officer framed the assessment u/s.153A of the Act for A.Y.2014-2015 & 2015-2016 and u/s. 143(3) for A.Y.2016-2017, making additions in respective appeals. The Assessing Officer also for all the three assessment years under consideration has stated that the assessee has concealed the income, therefore, initiated the proceedings u/s.271(1)(c) of the Act imposing penalties as mentioned hereinabove. The assessee preferred appeals before the Id. CIT(A), the Id. CIT(A) reduced the

additions made by the Assessing Officer in all the three years under consideration. Thereafter the Assessing Officer revised the assessment orders in all the three appeals and also Imposed penalty u/s.271(1)(c) of the Act. Against the penalty order, the assessee approached before the Id. CIT(A), the Id. CIT(A) in the impugned order has sustained the penalty levied by the Assessing Officer holding therein that the assessee has concealed the income on the basis of entries in the incriminating documents found during the course of search and initiated proceedings u/s. 132 of the Act.

4. Now the assessee is in further appeals before the Tribunal for all the three assessment years i.e. AYs 2014-15, 2015-16 and 2016-17 and raised the following issues:-

- (1) For that the Ld. CIT(A) has erred in affirming penalty u/s 271(1)(c) on the difference between income assessed and relief allowed by Ld. CIT(A) by treating the same to be concealed income.*
- (2) For that the Ld. CIT(A) has erred in mechanically and without due application of mind has affirmed the order of the Assessing Officer imposing penalty of Rs.8.83,495/-.*
- (3) For that the Ld. CIT(A) has erred in invoking provisions of Section 106 of the Evidence Act whereas the fact remains that the fiscal law is guided by pre-ponderance of probability and the provisions of Evidence Act are strictly not applicable.*
- (4) For that the Ld. CIT(A) has erred in invoking Explanation 5A to Section 271(1)(c) in a case where the income has been determined by the Assessing Officer on estimate basis.*
- (5) For that Ld. CIT(A) has erred in not considering the judicial precedents relied upon by the appellant in its written submission wherein it has categorically held that penalty u/s 271(1)(c) is not sustainable in cases of estimation of net/gross profit and mere sustenance of addition by CIT(A) and its acceptance by the assessee does not amount to concealment and/or furnishing of inaccurate particulars thereof.*

(6) For that the sustenance of penalty at Rs.8,83,495/- is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.

(7) For that the whole order is bad in fact and law of the case and the penalty imposed is fit to be cancelled.

(8) For that other grounds, if any, shall be urged at the time of hearing of the case.

5. At the time of hearing, it was the submission of the ld. Counsel for the assessee that the ld. Assessing Officer made the addition by charging the rate of gross profit at 8% on the amount of unaccounted sales, which has been reduced to 4% by the ld. CIT(Appeals). Ld. Counsel further argued that the addition has been made on account of estimate basis and the estimate so made has been held to be arbitrary and unreasonable, therefore, the ld. CIT(Appeals) has reduced it the estimation to 4%. He further submitted that no documentary evidence/material indicating any unaccounted purchase and/or unexplained investment was found or seized, therefore, the foundation of penalty is purely on estimation basis. The ld. CIT(Appeals) passed his orders merely by relying on Explanation 5A and without considering the ratios laid down by various judicial forums. Ld. counsel also relied on the decision of the Hon'ble High Court of Allahabad in the case of Ashok Kumar Rastogi -vs.- CIT reported in (1991) 55 Taxmann 433 and also relied on the decision of Coordinate Bench of Mumbai in the case of Mun Gems -vs.- Asstt. Commissioner of Income Tax reported in (2023) 155 taxmann.com 1 (Mumbai – Trib.). He also relied on the decision of the Hon'ble High Court of Delhi in the case of CIT -vs.- Aero Traders (P.) Limited reported in (2010) 322 ITR 316 (Del.). In all these judgments, Hon'ble High Court held that

penalty levied on estimation could not be sustained. Therefore, ld. Counsel pleaded to set aside the orders passed by the revenue authorities.

6. On the other hand, it was the submission of the ld. Departmental Representative that the assessee has concealed its income, therefore, the ld. Assessing Officer as well as ld. CIT(Appeals) estimated the income of the assessee and also the ld. CIT(Appeals) has categorically held that the assessee has concealed its income and has furnished inaccurate particulars of income. Therefore, he pleaded to uphold the orders passed by the ld. CIT(Appeals).

7. I have heard both the sides, perused the material available on record and also on the judgments relied by the ld. Counsel for the assessee. It is an admitted fact that the ld. Assessing Officer made an addition on account of gross profit on unaccounted sales which has been estimated at 8% and the assessee challenged the same before the ld. CIT(Appeals). After considering the submissions made by the assessee, the ld. CIT(Appeals) has been reduced the estimation of profit to 4% and the addition is only based on the estimation.

7.1. Now the question before me is where profit was estimated after rejection of books and in quantum appeal substantial relief was given by the ld. Commissioner (Appeals), imposition of penalty for furnishing inaccurate particulars of income was justified or not? In this aspect, as per the ratio laid down by the Hon'ble High

Court of Delhi (supra), Hon'ble Delhi High Court has categorically held that *“estimated rate of profit applied on the turnover of the assessee, which in our view does not amount to concealment or furnishing of inaccurate particulars. In our view, ld. CIT(Appeals) has taken a right decision in deleting the penalty, which is upheld, which was confirmed by the ITAT. The finding arrived at by the Tribunal does not warrant interference from this Court”*.

8. The assessee also relied on the decision of the Coordinate Bench of Mumbai Tribunal cited supra, wherein it was held that “merely because some adhoc gross profit rate has been applied on such alleged bogus purchases to factor in suppression of alleged gross profit, no penalty can be levied for furnishing of inaccurate particulars of income or concealing particulars of income, which ld. AO has held in his penalty order that penalty is being levied under both the limbs, which itself shows his satisfaction is vague. Accordingly, penalty levied on such adhoc estimate cannot be sustained.

9. Considering the facts and circumstances of the case and the ratio laid down by the Hon'ble High Court, Delhi and Coordinate Bench of this Tribunal, it is crystal clear that the penalty levied under section 271(1)(c) based on estimation by the ld. Assessing Officer cannot be sustained. Therefore, I am of the considered view that the penalty levied by the ld. Assessing Officer and upheld by the ld. CIT(Appeals) is not in accordance with law. Therefore, I direct the ld. Assessing Officer to delete the penalty levied under

section 271(1)(c) of the Act. The grounds raised by the assessee in all the appeals are allowed.

10. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 29/07/2025.

Sd/-
(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 29th day of July, 2025

*Copies to :(1) Shree Mangalam Aluminium,
Pandey Plaza Building,
Exhibition Road, Patna-800001, Bihar*

*(2) Deputy/Assistant Commissioner of Income Tax,
Central Circle-3, Patna, Bihar*

(3) CIT(A), Patna-3;

(4) CIT - ;

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.