

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE MS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER  
ITA Nos.533 to 535 & 536/SRT/2025  
AYs:(2009-10 to 2011-12 & 2012-13)  
(Hybrid Hearing)**

Moulimani Impex Pvt. Ltd., 302, Nishit Diamond Complex, Gujjar Faliya, Mahidharpura, Surat – 395003	<b>Vs.</b>	ITO, Ward – 1(1)(3), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADCM1913C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Himanshu Gandhi, CA
<b>Respondent by</b>	Ms Namita Patel, Sr. DR
<b>Date of Hearing</b>	27/08/2025
<b>Date of Pronouncement</b>	29/08/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

These four appeals emanate from the orders dated 23.12.2024 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short "CIT(A)"], for the assessment years (AYs) 2009-10 to 2011-12. Since the facts are common and grounds of appeal are almost identical except variance of amounts, with the consent of both parties, all these appeals were clubbed and heard together and are decided by this common order for sake of convenience and brevity. ITA No.533/SRT/2025 has taken as 'lead' case.

2. The grounds of appeal raised by the assessee (ITA No.533/SRT/2025) are as follows:

*"1. Ground 1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming 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. Ground 2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming penalty of Rs. 2,81,669/- under section 271(1)(c) of Income Tax Act, 1961 without passing speaking order.*

*3. Ground 3. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that the penalty is not leviable when the addition is made on estimation basis.*

*4. Ground 4. 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 grounds of appeal raised by the assessee (ITA No.534/SRT/2025) are as follows:

*“1. Ground 1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming penalty u/s 271(1)(c) of the 1 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. Ground 2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming penalty of Rs.1,61,620/- under section 271(1)(c) of Income Tax Act, 1961 without passing speaking order.*

*3. Ground 3. 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.*

*4. Ground 4. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

4. The grounds of appeal raised by the assessee (ITA No.535/SRT/2025) are as follows:

*“1. Ground 1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming penalty u/s 271(1)(c) of the 1 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. Ground 2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming penalty of Rs.53,309/- under section 271(1)(c) of Income Tax Act, 1961 without passing speaking order.*

3. *Ground 3. 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.*

4. *Ground 4. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

5. The grounds of appeal raised by the assessee (ITA No.536/SRT/2025) are as follows:

*“1. Ground 1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming 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.*

*Ground 2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming penalty of Rs. 1,34,591/-under section 271(1)(c) of Income Tax Act, 1961 without passing speaking order.*

*Ground 3. On the facts and circumstances of the case and law, 3 the Ld. CIT(A) failed to consider that the penalty is not leviable when the addition is made on estimation basis.*

*Ground 4. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

6. The appeals filed by the assessee are late by 66 days in terms of provisions of section 253(3) of the Act. The assessee has filed an affidavit for condonation of delay in filing of appeal before the Tribunal. It has been stated that notices of hearing were issued to the wrong e-mail Id, i.e., ‘moulimanimpexpl@gmail.com’ instead of ‘gandhi.himanshu92@yahoo.in’, which was mentioned in Form 35. The CIT(A) passed order on 23.12.2024 and due date for filing of appeal before the Tribunal on 28.02.2025. It came to know about the appeal order while checking the status in Income-tax Portal. The learned Authorized Representative (ld. AR) of the assessee submitted that the

delay in filling appeal neither malafide nor deliberate on the part of the appellant. He requested that in the interest of justice, the delay may be condoned and admitted for hearing. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue did not have any objection, if the delay is condoned.

7. We have heard both the parties and perused the materials available on record. We find that the delays in filing these appeals were not deliberate and intentional on the part of assessee. Moreover, the assessee is not going to be benefitted by filling appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, delay in filling the appeal is condoned and we proceed to decide the case on merit.

**ITA No.533/SRT/2025 (AY 2009-10):**

8. The facts of the case in brief are that the assessee filed its return of income u/s 139(1) of the Act, declaring total income of Rs.3,67,560/- on 19.09.2009. A search and seizure action u/s 132 of the Act was conducted in case of Rajendra Jain and other groups on 03.10.2013. The seizure made at the premises of Rajendra Jain at C-805, Oberoi Splendor Building, JVL Road, Andheri (E), Mumbai comprises of computer back-up, mobile and two pen drives, which contains detail of group companies including details of Moulimani Impex Pvt. Ltd, the appellant of the instant appeal. The appellant was engaged in the business of providing accommodation entries by way of name of bogus sales,

purchases and unsecured loans. Accordingly, notice u/s 153C of the Act was issued and the appellant was treated as an accommodation entry provider. It was held that assessee was not doing any actual business and earned only commission income on sales, import and loan entries. Hence, the books of account of the assessee were not found to be reliable and were accordingly rejected u/s 145(3) of the Act. Thereafter, assessment was completed by assessing income on estimated commission basis. The Assessing Officer (in short, 'AO') estimated the total commission income at Rs.17,05,473/-. He allowed deduction of 25% for paper transactions and related cost from the above estimated commission and computed the commission income at Rs.12,79,105/- (17,05,473 – 4,26,368). He estimated commission @0.02%, @0.20% and @0.50% on total turnover (excluding import and group turnover), import and the outstanding loan respectively. The AO also initiated penalty u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income.

8.1 Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). the CIT(A) dismissed the quantum appeal filed by the assessee. It may be mentioned that the ITAT has also dismissed the appeal of the assessee against the order of CIT(A). During the pendency of appeal before the Tribunal, the AO levied penalty, which was also confirmed by the CIT(A). The AO levied the penalty by observing that the assessee had not carried out any business activity and, hence, various data, such as purchases, sales, loans etc. disclosed in the return of income were bogus. Therefore, assessee had furnished inaccurate

particulars of income. During penalty proceedings, the assessee requested to keep the proceedings in abeyance because appeal had been filed before ITAT. The AO did not accept the request of the AO. He referred to Explanation - 1 below section 271(1), which raises a presumption that the amount added or disallowed in computing the total income shall be deemed or represents the income in respect of which particulars have been concealed or inaccurate particulars have been furnished. Hence, he levied minimum penalty of Rs.2,81,669/- u/s 271(1)(c) of the Act. In the appeal before the CIT(A), the appellant submitted that the issue is already decided by the jurisdictional Surat Tribunal in case of its sister concern, M/s Nazar Impex Pvt. Ltd. vide order in ITA Nos.132 & 133/SRT/2021, dated 30.03.2022. The appellant also submitted that penalty cannot be levied just because assessed income is higher than the returned income. Further, the AO himself is not sure whether income is assessable in the hands of the appellant or Shri Rajendra Jain. It was also submitted that when commission income was computed on estimation basis, penalty cannot be levied. The appellant relied on various decisions, which are reproduced at pages 6 to 10 of the appellate order. It was also submitted that the penalty notice itself was bad in law, therefore, no penalty can be imposed. However, the contention of the assessee was not accepted and the CIT(A), primarily on the basis of the reasons given by the AO, upheld the penalty levied u/s 271(1)(c) of the Act.

9. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed a paper book including fact sheet and various details submitted before the lower authorities. He has also enclosed the decisions of ITAT in the quantum proceeding for the appellant and its sister concerns namely, M/s Nazar Impex Pvt. Ltd. and decision of ITAT in penalty appeal in case of M/s Nazar Impex Pvt. Ltd. and Sanjay Chaudhary (HUF). He has also enclosed some other decisions and submitted that no penalty could be imposed on estimated commission income. He also submitted that penalty has been imposed on the limb, which was not specified in the penalty notice. The Id. AR submitted that similar addition had been made in case of its sister concern, namely, M/s Nazar Impex Pvt. Ltd. The appellant, M/s Nazar Impex Pvt. Ltd. and Sanjay Chaudhary (HUF) were covered under the same search proceedings dated 03.10.2013 and were treated as concerns of Rajendra Jain, Dharmichand Jain and Sanjay Chaudhary group and centralized with the same AO. Similar rate of commission was adopted for computing estimated commission income by the same AO. Even the Tribunal passed common order in quantum appeal (page 5 to 38 of PB). In Nazar Impex Pvt. Ltd. and Sanjay Chaudhary (HUF), penalty was levied u/s 271(1)(c) and the matter reached before the Tribunal, wherein the appeal of the appellant's was allowed in ITA No.132 and 133/SRT/2021 (supra). Since the issue has already decided in favour of appellant by the Tribunal in case of appellant's sister concern, the Id. AR requested to delete the penalty u/s

271(1)(c) of the Act. The Id. AR also argued that penalty cannot be imposed only on the ground that assessed income is higher than returned income. He also submitted that the AO himself was not sure whether the income is assessable in the hands of the appellant or Shri Rajendra Jain; therefore, penalty cannot be levied. The Id. AR also submitted that penalty cannot be levied because commission income was computed on estimation basis. He also relied upon the following decisions (i) Nazar Impex Pvt. Ltd. (supra), (ii) Sanjay Chaudhary (HUF), ITA No.618/SRT/2023, (iii) Ramesh Kumar Jain vs. ACIT, ITA No.4670-73/MUM/2018, (iv) Hema R. Gupta, ITA No.2639/Mum/2015, (v) Shah Virchand Govanji Jewellers Pvt. Ltd. vs. ACIT, ITA No.2631/AHD/2014 and (vi) Trupti Piyush Shah vs. DCIT, ITA Nos.186 & 187/SRT/2019.

10. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of lower authorities. She submitted that the case of revenue right from the beginning is that the assessee was engaged in the business of providing accommodation entries and thus, furnished inaccurate particulars of income. The stand of revenue is upheld in sustaining the addition of the estimated commission income. Therefore, the penalty u/s 271(1)(c) of the Act should be upheld qua the addition upheld in the quantum assessment proceedings.

11. 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 144 r.w.s. 153C of the Act by estimating

commission income on sales, import and loan entries. The addition on account of estimated commission was Rs.12,79,105/-, which was upheld by both CIT(A) and ITAT. Thus, it is clear that the additions all through have been made / sustained 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 submitted that similar penalty imposed in case of its sister concern, M/s Nazar Impex Pvt. Ltd. was deleted by the ITAT in ITA Nos.132 & 133/SRT/2021 (supra). Further, the ITAT in case of Sanjay Kumar Chaudhary (HUF), which was also part of the Rajendra Jain group, deleted the penalty in ITA No.618/SRT/2023 (supra). The ITAT in case of Nazar Impex Pvt. Ltd. (supra) has deleted the addition with the following observation:

*“6. We have considered the rival submission of both the parties and perused the material available on record. We have also gone through the orders of the lower authorities. We find that there is no dispute that the addition in the assessment order under Section 143(3) r.w.s. 147 dated 29/01/2016 was made on estimation basis, which we have recorded above. It is settled law that no penalty is leviable on estimated addition. In this regard, we draw strength from the following decisions:*

- \* *Manish Dhirajlal Mehta Vs ACIT in Tax Appeal No.461 & 464 of 2000 and 833 & 836 of 2005 dated 05.02.2014 (Gujarat High Court);*
- \* *Vijay Proteins Ltd., Vs CIT (Income Tax Reference No.139 of 1996), (Gujarat High Court);*
- \* *Awadhesh Bansiraj Pandey Vs ITO (ITA No.4784/ Mum/2018) Mumbai Tribunal and*
- \* *DCIT Vs Anil J Kothari (2048/Ahd/2010), Surat Tribunal.*

*7. Considering the fact that addition in the assessment order, on the basis of which the penalty was levied, is purely an estimated addition. It is settled position in law that no penalty under section 271(1)(c) can be levied on additions made on estimation. The similar view was taken by the Hon'ble Jurisdictional High Court in Manish Dhirajlal Mehta Vs. ACIT, Vijay Proteins Ltd., Vs. CIT (supra), in Vijay Proteins Vs CIT (supra) and other various cases. No*

*contrary facts or law is brought to our notice by the Id. Sr. DR for the revenue at the time of hearing of these appeals. Therefore, considering the totality of facts and circumstances, we direct to delete the penalty levied under Section 271(1)(c) of the Act.”*

11.1 Following the above decision, the ITAT deleted similar penalty levied u/s 271(1)(c) in case of Sanjay Kumar Chaudhary (HUF) (supra). The relevant para is reproduced below for ready reference:

*“8. I note that penalty on estimation addition should not be levied and this issue is no longer res integra and has been decided by the Co-ordinate Bench of ITAT, Surat in the case of Nazar Impex Pvt. Ltd. (supra), wherein the penalty levied on estimation was deleted by the Tribunal, therefore respectfully following the binding precedent of Co-ordinate Bench in the case of Nazar Impex Pvt. Ltd. (supra), I delete the penalty.”*

12. We also find that the Hon’ble jurisdictional High Court in cases of CIT vs. Subhash Trading Co., (1996) 221 ITR 110 (Guj.) and CIT vs. Whitelene Chemicals, (2013) 214 Taxman 93 (Guj.) and Hon’ble Rajasthan High Court in case of CIT vs. Krishi Tyre Retreading & Rubber Industries, (2014) 360 ITR 580 (Raj.) have held that penalty u/s 271(1)(c) of the Act could not be levied where addition was on estimated basis. 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.

13. In the result, appeal of the assessee is allowed.

**ITA Nos.534, 535 & 536/SRT/2025 (AYs.2010-11, 2011-12 & 2012-13):**

14. The facts and grounds taken up by the appellant are similar in these appeals as in ITA No.533/SRT/2025 (AY.2009-10), decided above. Following the

reasons given in the said appeal, the AO is directed to delete the penalties levied u/s 271(1)(c) of the Act in all three years.

15. In the result, all three appeals are allowed.

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

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 29/08/2025.

**Sd/-**  
**(SUCHITRA R. KAMBLE)**  
**JUDICIAL MEMBER**

Surat

दिनांक/ Date: 29/08/2025

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

**// TRUE COPY //**

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

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat