IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.871/Mum/2025 & 872/Mum/2025
(**Assessment Year :2015-16 & 2017-18**)
ITA No. No.888/Mum/2025 to 890/Mum/2025
(A.Y.2011-12, 2013-14 & 2018-19)

DCIT, Central Circle-3(2), Mumbai-400051	Vs.	Viraj Profiles Private Limited 10, Imperial Chamber Ballard Estate Mumbai – 400 001
PAN/GIR No.AABCV1740N		
(Appellant)	..	**(Respondent)**

CO No.101 & 102/Mum/2025
(Arising out of ITA No. 872/Mum/2025 & 890/Mum/2025)
(**Assessment Year : 2017-18 & 2018-19**)

Viraj Profiles Private Limited 10, Imperial Chamber Ballard Estate Mumbai – 400 001	Vs.	DCIT, Central Circle-3(2), Mumbai-400051
PAN/GIR No.AABCV1740N		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Madhur Agarwal / Shri Prateek Jain
Revenue by	Shri Vivek Perampurna, CIT-DR
Date of Hearing	**07/05/2025**
Date of Pronouncement	**29/09/2025**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

All the aforesaid appeals have been filed by the Revenue against separate order passed by ld. CIT(A) deleting the penalty levied u/s.271(1)(c) and 271AAB one arising out of additions made u/s.143(3) and other addition made in the assessment made u/s.153A A.Y.2011-12, 2013-14, 2015-16, 2017-18 & 2018-19 and assessee has also filed cross objection on technical grounds for the A.Y. 2017-18 & 2018-19.

2. The summary of penalty levied by the ld. AO which has been deleted by the ld. CIT(A) are as under:-

Before Hon'ble Income Tax Appellate Tribunal, Mumbai 'F' Bench
M/s Viraj Profiles Private Limited
Summary of Penalty Appeals

(Amt in INR)

Sr. No.	Nature of Addition/ Disallowance	AY 2011-12 u/s 271(1)(c)	AY 2013-14 u/s 271(1)(c)	AY 2015-16 u/s 271(1)(c)	AY 2017-18 u/s 271AAB	AY 2018-19 u/s 271AAB	Total
	Addition made u/s 143(3)						
1	Corporate Guarantee commission @0.50%	4,08,99,387	2,42,17,906	-	-	-	**6,51,17,293**
		(ITAT - 4,08,99,387/-)	(ITAT - 2,42,17,906/-)				
2	Provision for diminution in value of stock	4,11,128	-	-	-	-	**4,11,128**
		(ITAT - 4,11,128/-)					
3	Disallowance of professional fees paid (Deleted by ITAT vide order dated 12.05.2023)	-	6,60,00,000	-	-	-	**6,60,00,000**
			(ITAT - Deleted)				
4	Disallowance of Non-Compete fees (Deleted by ITAT vide order dated 12.05.2023)	-	2,64,28,571	-	-	-	**2,64,28,571**
		-	(ITAT - Deleted)				
	Addition made u/s 153A						
5	Corporate Guarantee commission @0.50%	-	-	1,70,05,502	98,75,088	1,21,63,432	**3,90,44,022**
				(ITAT - 1,70,05,502/-	(ITAT - 98,75,088/-	(ITAT - 1,21,63,432/-	
6	Alleged Bogus purchases @6% ***(For AY 2011-12 & 2013-14 entire 153A order quashed by ITAT, For AY 2015-16, 2017-18 & 2018-19 addtion restricted to 2%)***	34,74,833	12,82,92,265	2,21,12,601	1,95,23,650	1,35,66,706	**18,69,70,055**
		(ITAT - Deleted)	(ITAT - Deleted)	ITAT - 73,70,867/-	ITAT - 65,07,883/-	ITAT - 45,22,235/-	
7	Disallowance of expenses u/s 37 ***(For AY 2011-12 & 2013-14 entire 153A order quashed by ITAT, For AY 2015-16, 2017-18 & 2018-19 addtion was deleted on merits)***	4,50,000	66,00,373	10,00,000	19,00,000	29,65,000	**1,29,15,373**
		(ITAT - Deleted)	(ITAT - Deleted)	(ITAT - Deleted)	(ITAT - Deleted)	(ITAT - Deleted)	
8	Unexplained cash income u/s 69A (Partly deleted by ITAT)	-	-	-	6,45,51,456	3,58,44,000	**10,03,95,456**
					(ITAT - 2,03,91,653/-)	(ITAT - 2,86,46,450/-)	
9	Unexplained expenditure u/s 69C (Partly deleted by ITAT)	-	-	-	54,23,385	2,94,20,000	**3,48,43,385**
					(ITAT - 15,00,000	(ITAT - Deleted)	
	TOTAL ADDITION/ DISALLOWANCE (After CIT(A) order)	**4,52,35,348**	**25,15,39,115**	**4,01,18,103**	**10,12,73,579**	**9,39,59,138**	**53,21,25,283**
	PENALTY Levied by AO	**1,49,95,517**	**8,18,75,981**	**1,29,98,264**	**6,07,64,148**	**5,63,75,482**	**22,70,09,392**

Note: Amounts mentioned against 'ITAT' are addition confirmed by ITAT in their quantum orders

3. Thus, all these appeals assailed the levy of penalty across multiple assessment years u/s.271(1)(c) and 271AAB of the Income Tax Act, 1961. The assessments emanate from common spectrum of the facts spanning into impugned assessment years 2011-12, 2013-14, 2015-16, 2017-18 and 2018-19.

4. For the A.Y.2011-12 and 2013-14 the assessments were originally filed u/s.143(3) while for the A.Y.2015-16, 2017-18 and 2018-19 they were computed pursuant to search u/s.153A. In the assessments, several additions and disallowances were made relating to corporate guarantee commission, diminution in stock value, professional and non-compete fees, alleged bogus purchases, salary expenditure and unexplained cash / expenses u/s.69A and 69C. The ld. CIT(A) upon elaborate analysis has deleted these penalties. Revenue is in appeal against such penalties.

Penalty on Corporate Guarantee Commission @ 0.5%

5. We first take up the penalty levied in respect of the addition made towards corporate guarantee commission. The relevant facts, in brief, are that the assessee company had extended corporate guarantees in favour of its Associated Enterprises. During the course of transfer pricing proceedings, the Transfer Pricing Officer (TPO) noted that the assessee had not charged any commission for extending such guarantees. He was of the opinion that the transaction was an international transaction that required benchmarking, and accordingly determined the arm's length commission at 1.5%.

Based on such adjustment, additions were made to the assessee's income for the respective years.

6. In the first appellate stage, the learned CIT(A) examined the matter in detail and restricted the adjustment to 0.5%, relying upon the Tribunal's own order in the assessee's case for assessment year 2010–11, where such a rate had been accepted. The matter further travelled to the Tribunal, and vide order dated 12.05.2023, the Tribunal too confirmed the estimation of 0.5%. It was only subsequent to such confirmation that the Assessing Officer proceeded to levy penalty on the addition so sustained.

7. The assessee, both before the Assessing Officer and the CIT(A), stoutly contested the levy of penalty. It was emphasised that the guarantees were extended only as part of a group support arrangement, a common feature in multinational enterprises where the parent company supports its subsidiaries. The transaction was duly disclosed in the return of income as well as in the financial statements. The assessee never concealed this fact, nor did it furnish any inaccurate particulars. The only issue was whether any commission was to be charged at all, and if so, at what rate. The assessee submitted that such a dispute, hinging on legal interpretation and estimation, could not give rise to penalty.

8. It was further contended that the controversy regarding the appropriate rate of guarantee commission has engaged the attention of various appellate fora, including the jurisdictional High Court. The very fact that different rates

have been adopted at different stages of proceedings underscores that the matter is debatable and not one of concealment. The assessee also relied upon the celebrated judgment of the Hon'ble Supreme Court in CIT v. Reliance Petroproducts Pvt. Ltd. (322 ITR 158), wherein it was held that making a claim which is not accepted in law does not ipso facto amount to furnishing inaccurate particulars of income. It was urged that since the matter was one of interpretation and estimation, no penalty was exigible.

9. The learned CIT(A), after carefully evaluating the rival submissions, came to the conclusion that the penalty was not sustainable. He recorded that all particulars relating to the corporate guarantees were duly disclosed in the assessee's books and return of income. The Assessing Officer had not shown that any material fact was concealed or any particulars furnished were false. The addition arose merely on account of a difference in estimation of the arm's length commission. The CIT(A) also referred to the decisions of the Hon'ble Bombay High Court in CIT v. Dharam Chand L. Shah and the Pune Bench of the Tribunal in Kanbay Software India Pvt. Ltd., both reiterating the principle that penalty proceedings are distinct and separate from quantum proceedings, and that penalty cannot be mechanically imposed merely because an addition has been made.

10. Having given our thoughtful consideration, we find ourselves in agreement with the conclusions of the CIT(A). The entire edifice of the addition rests on estimation of the rate of commission. From 1.5% determined by the TPO, it has

been reduced to 0.5% by the Tribunal, which itself shows that the issue is one of approximation rather than concealment. The assessee's disclosure of the guarantees was candid and complete. The stand taken by it, though not fully accepted, was bona fide and was even partly upheld by appellate fora. In the absence of any material to demonstrate concealment of income or furnishing of inaccurate particulars, the essential ingredients for invoking penalty provisions are conspicuously absent. The penalty order, in our view, is a mechanical consequence of the quantum addition without any independent satisfaction of the statutory requirements.

Finding: We accordingly uphold the order of the CIT(A) deleting the penalty on corporate guarantee commission. The grounds raised by the Revenue fail on this issue and are dismissed.

Penalty on Provision for Diminution in Value of Stock

11. We next turn to the penalty levied in respect of the provision for diminution in the value of stock. The facts of this issue are relatively simple, yet they demonstrate how an inadvertent human error can sometimes be misconstrued as concealment. In assessment year 2011–12, the assessee had debited a sum of ₹2,05,564 to its profit and loss account towards provision for diminution in the value of stock. While preparing the computation of income, the same amount was again, by inadvertence, claimed as a deduction, resulting in a double claim.

12. The Assessing Officer, while finalising the assessment, noticed this duplication. He disallowed the provision in the profit and loss account as inadmissible under the Act and simultaneously disallowed the same amount claimed again in the computation of income. The assessee accepted this disallowance without demur and did not carry the matter further in appeal. However, the Assessing Officer, not content with the disallowance, proceeded to levy penalty on this item under section 271(1)(c) of the Act.

13. Before the CIT(A), the assessee explained that the duplication had occurred purely on account of oversight and inadvertence, without any mala fide intention to evade tax. It was pointed out that the entire facts had been duly disclosed both in the audited financial statements and in the computation of income. There was nothing concealed from the Department, and the error was merely one of repetition, which the assessee accepted gracefully by not even contesting the disallowance. It was emphasised that when the assessee had declared an income exceeding ₹141 crores and had duly paid taxes thereon, it was inconceivable that it would wilfully attempt to evade a paltry sum of ₹4.11 lakhs.

14. The CIT(A), after examining the record, found merit in this explanation. He observed that the assessee had indeed disclosed the relevant particulars in its books and computation, and that the error was a product of human inadvertence. He further held that the error could not be equated with concealment or furnishing of inaccurate particulars. Significantly, he noted that the Assessing Officer

had not brought on record any evidence to establish mens rea on the part of the assessee. The CIT(A) also drew strength from the authoritative judgment of the Hon'ble Supreme Court in Price Waterhouse Coopers Pvt. Ltd. v. CIT (348 ITR 306), wherein the Apex Court held that a bona fide and inadvertent error in claiming deduction, where all facts are duly disclosed, cannot give rise to penalty under section 271(1)(c).

15. Having considered the rival submissions, we are of the view that the order of the CIT(A) deleting the penalty does not suffer from any infirmity. The facts speak for themselves. All particulars were on record. The duplication was a mere slip, an error of human fallibility. The assessee's acceptance of the disallowance without a contest further fortifies the bona fides of its conduct. To suggest that a company declaring taxable income of more than ₹141 crores would deliberately seek to evade tax of a few lakhs is not only far-fetched but contrary to logic and common sense.

16. It is well settled that penalty under section 271(1)(c) is not an automatic consequence of every disallowance or addition. It can be imposed only when there is clear evidence that the assessee has either concealed income or furnished inaccurate particulars. In the present case, there is neither concealment nor inaccuracy. What has happened is nothing more than an inadvertent duplication of a claim, all facts having been fully disclosed and the disallowance accepted without protest. To fasten penalty in such a scenario would

be wholly unjustified, for the law does not punish a mere human error.

Finding: We therefore affirm the order of the CIT(A) deleting the penalty levied on the provision for diminution in the value of stock. The Revenue's grounds on this issue accordingly fail and are dismissed.

Penalty on Disallowance of Professional Fees Paid

17. The next issue relates to the levy of penalty in respect of the disallowance of professional fees paid by the assessee. For assessment year 2013–14, the Assessing Officer, in the course of scrutiny proceedings, disallowed certain professional fees claimed by the assessee. According to him, the assessee had not satisfactorily demonstrated the business nexus of such expenditure. On this basis, the disallowance was made in the assessment order.

18. The assessee carried the matter in appeal before the CIT(A). The learned first appellate authority, upon examining the claim, confirmed the disallowance. While the appeal was pending before the Tribunal, the Assessing Officer initiated and levied penalty under section 271(1)(c), holding that the assessee had furnished inaccurate particulars by making an unsustainable claim of expenditure.

19. The assessee challenged the levy of penalty before the CIT(A), contending that the claim of professional fees was made bona fide and on the basis of genuine expenditure

incurred. It was urged that all details had been disclosed in the books of account and in the return of income. Merely because the Assessing Officer or the CIT(A) did not accept the claim, it could not be inferred that the assessee had concealed income or furnished inaccurate particulars. Reliance was also placed on judicial pronouncements which lay down that making a claim which does not ultimately succeed does not attract penalty.

20. In the interregnum, the matter on the quantum addition reached the Tribunal. Vide order dated 12.05.2023, the Tribunal deleted the disallowance of professional fees in its entirety. The Tribunal categorically held that the expenditure was genuine, incurred for business purposes, and was duly allowable under section 37(1).

21. Armed with this decision, the assessee urged before the CIT(A) that the very foundation of the penalty had collapsed, since the addition itself had been erased by the Tribunal. The learned CIT(A), considering the Tribunal's order, deleted the penalty. He observed that once the substantive addition is set aside, the penalty, being only consequential, cannot survive. He held that the Assessing Officer lacked jurisdiction to levy penalty when the quantum addition itself had been extinguished.

22. We have given our thoughtful consideration to the matter. The law is well settled that penalty is not an inevitable corollary of every addition. It is a separate proceeding that can be sustained only if the addition survives and the

statutory requirements of concealment or furnishing inaccurate particulars are satisfied. In the present case, the Tribunal, in its wisdom, has deleted the entire disallowance of professional fees, thereby obliterating the very basis of penalty. Once the foundation crumbles, the superstructure must fall.

Finding: We therefore uphold the order of the CIT(A) deleting the penalty levied on the disallowance of professional fees. With the deletion of the addition itself by the Tribunal, no occasion remains to impose penalty. The Revenue's grounds on this issue are accordingly dismissed.

Penalty on Disallowance of Non-Compete Fees

23. We now turn to the issue of penalty levied in respect of the disallowance of non-compete fees. For assessment year 2013–14, the assessee had claimed deduction of certain sums paid as non-compete fees to specified parties. The Assessing Officer, however, disallowed the claim. According to him, the assessee had failed to substantiate the business expediency and necessity of such payments. He held that the expenditure was either capital in nature or not incurred wholly and exclusively for business purposes, thereby warranting disallowance.

24. The assessee carried the matter before the CIT(A). The first appellate authority, after examining the nature of the claim, confirmed the disallowance. In the meantime, the Assessing Officer proceeded to levy penalty under section

271(1)(c), reasoning that the assessee had furnished inaccurate particulars of income by claiming an inadmissible expenditure.

25. The assessee, in appeal against the penalty, contended that the claim for non-compete fees was made in a bona fide manner. It was urged that the payment was actually incurred, duly supported by agreements and other documentation, and was disclosed in the return of income and audited financials. The claim was thus transparent and bona fide, even if the Assessing Officer did not ultimately accept its allowability. The assessee stressed that merely making a claim which is later disallowed does not amount to concealment of income or furnishing of inaccurate particulars.

26. While these arguments were under consideration, the Tribunal adjudicated upon the quantum appeal of the assessee. Vide order dated 12.05.2023, the Tribunal deleted the disallowance of non-compete fees in its entirety. The Tribunal held that the expenditure was legitimate and allowable, and that the Assessing Officer's grounds for disallowance were not sustainable in law.

27. Once the quantum disallowance itself stood deleted, the CIT(A), considering the Tribunal's decision, deleted the corresponding penalty as well. He held that the penalty was merely a consequential proceeding, dependent upon the subsistence of the addition in quantum. With the Tribunal having annulled the disallowance, the penalty could not be sustained.

28. Having perused the record and the reasoning of the CIT(A), we find no infirmity in his conclusion. Penalty cannot outlive the quantum addition. The foundation having been knocked down by the Tribunal's order, the penalty has no independent legs to stand on. This is a principle well recognised in jurisprudence: when the quantum addition disappears, the penalty, being consequential, must automatically fall.

Finding: We therefore affirm the order of the CIT(A) deleting the penalty levied on the disallowance of non-compete fees. The grounds raised by the Revenue on this issue stand rejected.

Penalty on Alleged Bogus Purchases

29. We now address the penalty levied in respect of additions made on account of alleged bogus purchases. The Assessing Officer, in proceedings under section 153A pursuant to search, held that the assessee had procured accommodation entries for inflated purchases from certain parties. He therefore treated such purchases as non-genuine and proceeded to make a one hundred percent disallowance of the purchase value.

30. The assessee challenged this finding before the CIT(A). Upon considering the submissions and material placed on record, the learned CIT(A) restricted the disallowance to 6% of the purchase value, reasoning that while there could be some element of inflation or unverifiable purchases, it was

implausible that no purchases were made at all, particularly when the sales were accepted as genuine. In the meantime, however, the Assessing Officer levied penalty on the full disallowance.

31. The matter eventually reached the Tribunal. For assessment years 2011–12 and 2013–14, the Tribunal quashed the very assessments framed under section 153A, thereby erasing the foundation for any addition or penalty. For assessment years 2015–16, 2017–18, and 2018–19, the Tribunal, after appreciating the evidence, restricted the disallowance further to only 2% of the purchase value, holding that the purchases were in fact made, consumed in production, and duly reflected in the sales, but that some estimation to cover possible leakages was justified.

32. The assessee, in appeal against penalty, argued that all purchases had been duly recorded in the books, supported by invoices, quantitative details, and yield analysis. The Assessing Officer had not doubted the consumption of the material or the sales generated therefrom. The dispute was only as to the genuineness of certain suppliers. On these facts, it was submitted that the additions confirmed were purely on estimation, and penalty could not be levied on estimated additions.

33. The learned CIT(A), while deleting the penalty, concurred with this reasoning. He noted that the Tribunal itself had confirmed only a small percentage of the disallowance, thereby implicitly accepting the purchases and consumption.

Such ad hoc disallowances, in his view, did not amount to proof of concealment of income or furnishing inaccurate particulars. He relied upon several judicial precedents where it has been consistently held that penalty cannot be sustained where additions are made on the basis of estimation or approximation.

34. We have carefully considered the matter. The essential feature of this issue is that the entire disallowance, even where sustained, rests on estimation. From 100% disallowance made by the Assessing Officer, it was brought down to 6% by the CIT(A) and ultimately to 2% by the Tribunal. This itself demonstrates that the matter is one of approximation, not concealment. It is axiomatic that penalty provisions cannot be attracted to additions sustained merely on estimated basis. The Assessing Officer has not brought any evidence on record to demonstrate that the assessee had either concealed purchases or furnished inaccurate particulars.

Finding: In these circumstances, we uphold the order of the CIT(A) deleting the penalty levied on alleged bogus purchases. The additions having been drastically reduced and sustained only on estimation, no concealment can be inferred. The Revenue's grounds on this issue accordingly fail and are dismissed.

Penalty on Disallowance of Salary Expenses u/s 37

35. The next issue concerns the penalty levied on account of disallowance of salary expenses. In the course of assessment, the Assessing Officer noted that certain salaries paid to employees were not properly substantiated in his view. He therefore proceeded to disallow such expenses, treating them as inadmissible under section 37(1) of the Act.

36. The assessee carried the matter in appeal. For assessment years 2011–12 and 2013–14, the Tribunal eventually quashed the assessments made under section 153A altogether, rendering the additions non-existent. For the subsequent assessment years 2015–16, 2017–18, and 2018–19, the Tribunal, on merits, examined the nature of salary payments and held that the disallowances were unjustified. The additions on account of salary expenses were thus deleted in their entirety.

37. Despite this, the Assessing Officer had levied penalty under section 271(1)(c), reasoning that the assessee had furnished inaccurate particulars by claiming expenditure that was not allowable. The assessee contended that the salary expenses were genuine and duly recorded in the books of account. The disallowance made by the Assessing Officer was at best a difference of opinion as to the allowability, and could not by itself invite penalty.

38. The learned CIT(A), considering the subsequent deletion of the disallowances by the Tribunal, deleted the penalty as well. He held that where the very basis of the addition is

knocked out in quantum proceedings, the penalty automatically collapses. He further observed that the Assessing Officer had not demonstrated that any particulars furnished were false, or that there was any conscious concealment of income.

39. We have examined the matter closely. It is trite law that penalty cannot outlive the quantum addition. The Tribunal having quashed the assessments for certain years and deleted the disallowances on merits for others, the substratum of penalty is extinguished. Even otherwise, the assessee had disclosed all relevant particulars in its return of income and financials. There was no suppression of fact. The disallowances were made purely on account of a difference in appreciation by the Assessing Officer, which does not by itself constitute concealment or furnishing of inaccurate particulars.

Finding: We accordingly affirm the order of the CIT(A) deleting the penalty levied on disallowance of salary expenses. The deletion is justified both on account of the quantum addition itself not surviving and on the principle that no concealment was ever established. The Revenue's grounds on this issue are dismissed.

Penalty on Unexplained Cash Income u/s 69A and Unexplained Expenditure u/s 69C

40. We have given anxious consideration to the rival submissions, perused the assessment order, the appellate

orders, and the material seized during search. The fulcrum of the Revenue's case is a set of loose papers recovered from the residence of an HR executive of the assessee company and certain WhatsApp chats. Treating those scribbles as if they were ledgers of reality, the Assessing Officer invoked section 69A for supposed cash receipts and section 69C for supposed cash payments and, on that basis, made an aggregate addition of ₹16,56,45,341 across AYs 2017–18 and 2018–19 (AY 2017–18: ₹8,87,52,956 under section 69A and ₹54,23,385 under section 69C; AY 2018–19: ₹4,20,49,000 under section 69A and ₹2,94,20,000 under section 69C).

41. In first appeal, person-wise netting between receipts and payments was permitted, shrinking the quantum to ₹6.99 crores for AY 2017–18 and ₹6.52 crores for AY 2018–19. The Assessing Officer thereafter levied penalty under section 271AAB, mechanically treating the reduced figures as "undisclosed income" within the Explanation, without recording any reasoning as to how the statutory conditions were in fact satisfied.

42. In the quantum appeals, this Tribunal undertook a careful calibration. After telescoping and removing duplication, it sustained only ₹2,03,91,653 under section 69A and ₹15,00,000 under section 69C for AY 2017–18 and ₹2,86,46,450 under section 69A for AY 2018–19 about ₹5.05 crores in aggregate. Equally significant, the Tribunal described the loose sheets as rough jotting aptly as "dumb documents" and recorded that the limited sustainment flowed essentially from the assessee's search-time offer to buy peace

rather than from any corroborative evidence unearthed by the Department.

43. The penalty appeals must therefore be tested against this backdrop: (i) the edifice of addition rests upon papers and chats, not upon discovery of assets; (ii) the quantum itself stands substantially pruned after telescoping; and (iii) the Tribunal has itself recorded the conspicuous absence of independent corroboration. In such a setting, it is statutory text not loose inference that must guide the levy of penalty.

44. Section 69A is a deeming provision. It can be pressed into service when an assessee is found to be the owner of any money, bullion, jewellery, or other valuable article not recorded in the books, and fails to offer a satisfactory explanation. The sine qua non, therefore, is a discovery of the asset itself. In the present case, there was no discovery of cash, bullion, jewellery, or valuable article. The additions under section 69A rest solely upon loose papers and WhatsApp chats purporting to note alleged receipts. Where the foundation is “papers” and not “money found,” the statutory precondition for invoking section 69A is absent.

45. Judicial authority has consistently underscored this limitation. Courts have cautioned against elevating loose slips to the status of discovered assets. Unless there is tangible discovery of unrecorded money or valuables, mere jotting cannot activate the deeming fiction of section 69A. This aligns with first principles and with the Tribunal’s own

characterisation of the material here as rough, uncorroborated notings.

46. The position is even clearer under section 69C. The notings of cash expenditure merely reflect an outflow; such outflow does not constitute income. It is trite law that expenditure, by its very nature, cannot be equated with undisclosed income unless it is demonstrably linked with unaccounted inflows. The Jaipur Bench of the Tribunal in Rajendra Kumar Gupta v. DCIT has held that mere slips of paper noting advances or payments cannot, absent corroboration, be treated as undisclosed income. A noting of expenditure is not an inflow, and therefore falls outside the scope of "undisclosed income."

47.The superstructure of penalty under section 271AAB rests upon an even narrower foundation. The Explanation defines "undisclosed income" in stringent terms. Read with section 274, the provision is discretionary, not automatic; the use of "may" obliges the Assessing Officer to apply an independent mind, afford hearing, and record satisfaction that what is brought to tax genuinely falls within the statutory definition. This principle was stressed by the Visakhapatnam Bench in ACIT v. Marvel Associates (170 ITD 353) and by the Jaipur Bench in Ravi Mathur v. DCIT, both of which emphasise that penalty under section 271AAB cannot be levied mechanically.

48. The Explanation to section 271AAB admits of only two categories: (a) money, bullion, jewellery, or valuable article found in search and not recorded in the books; or (b) an entry

of income in books or documents found in search which was not recorded before the date of search or otherwise not disclosed to the Department. The statutory insistence is on discovery either of an asset itself, or of an unrecorded income entry. Reliance on unverified scribbles does not meet that definition.

49. Tested against this statutory text, the present additions fall short. There is no discovery of unaccounted cash or valuables; there is no proved linkage to any unrecorded income entry; there is, instead, a set of rough notings and chats described by the Tribunal itself as dumb documents accompanied by a surrender made to buy peace. Such material may, in a given factual matrix, sustain a calibrated quantum addition; but it does not, without more, constitute "undisclosed income" for purposes of penalty under section 271AAB.

50. The Assessing Officer's approach of treating whatever survives in quantum as per se "undisclosed income" and then mechanically levying penalty elides this statutory discipline. His order does not explain how the additions fit the Explanation; it is bereft of the reasoned satisfaction that section 274 demands and section 271AAB presupposes. That, by itself, is a substantial legal infirmity.

51. At the level of quantum, given the assessee's offer during search and the Tribunal's limited sustainment, the surviving sums may be colloquially described as "undisclosed." Yet, for penalty, the inquiry is text-bound and sharper: whether

section 69A's condition of "money found" is met and whether the definition of "undisclosed income" in section 271AAB is satisfied. Where the addition rests on papers and not on discovered money, and where no unrecorded income entry is proved, the answers are plainly in the negative.

52. The position is even more categorical in respect of the ₹15,00,000 sustained under section 69C for AY 2017–18. A noting of expenditure evidences an outflow, not an inflow. It does not represent "income" and therefore cannot be pressed into the statutory mould of "undisclosed income" in section 271AAB. Tribunal authority has consistently recognised this distinction, holding that advances or payments noted on paper slips do not attract the provision.

53. It is also well settled that voluntary disclosure cannot, by itself, justify penalty. The Supreme Court in Sir Shadilal Sugar & General Mills Ltd. v. CIT (168 ITR 705) held that an assessee's agreement to an addition does not prove concealment; there may be many reasons for such an agreement, including avoidance of litigation or commercial expediency. This principle has been reiterated in CIT v. M. Pachamuthu (295 ITR 502), CIT v. Rajiv Garg (313 ITR 256), and by the Bombay High Court in CIT v. Haji Gaffar Haji Dada Chini (169 ITR 33), which all hold that voluntary surrender, without corroborative material, cannot sustain penalty.

54. Further, coordinate benches such as in Suresh B. Dedhia and Smt. Dipikadevi Todi have clarified that legal infirmities

in the very addition can be raised at the penalty stage. Penalty cannot be built upon a legally infirm base; thus, where section 69A itself is inapplicable for want of discovery of money, penalty collapses automatically.

55.Bringing together these strands, our conclusions are clear. First, section 69A presupposes discovery of money or valuable article; here there was none. Second, the Explanation to section 271AAB envisages either discovered assets or demonstrably unrecorded income entries; here too, there was none. Third, section 69C notings of expenditure cannot, in law, be treated as "undisclosed income." Fourth, the Tribunal has already described the seized material as dumb documents and noted the absence of corroboration. Fifth, the Assessing Officer's penalty order is mechanical, lacking the reasoned satisfaction required by law.

56.On these premises, and notwithstanding the partial sustainment in quantum owing to the assessee's voluntary offer, we hold that the statutory preconditions for penalty are not met. The amounts may have been reckoned as income for quantum purposes, but they do not qualify as "undisclosed income" for penalty under section 271AAB when measured against the text of the statute and the facts on record. The learned CIT(A) was therefore correct in deleting the penalties. The Revenue's grounds on this issue stand rejected.

Result / Final Conclusion

57. Having dealt with each penalty issue in detail, it is now appropriate to summarise the overall conclusions. The

Revenue has assailed the orders of the learned CIT(A) across multiple additions, contending that the deletion of penalty was erroneous. The issues covered corporate guarantee commission, provision for diminution in stock, professional fees, non-compete fees, alleged bogus purchases, salary expenses, and finally, unexplained cash income and expenditure under sections 69A and 69C.

58.On each issue, we have found that the penalties levied by the Assessing Officer were unsustainable: they were either based on debatable claims, arose out of estimation, rested on voluntary disclosures, or failed to meet the strict statutory definition of "undisclosed income." The assessee had disclosed all material particulars; there was no concealment or furnishing of inaccurate particulars; and in several years, the quantum additions themselves did not survive.

59. The learned CIT(A), in deleting the penalties, has taken a view that is firmly anchored in both fact and law. We see no infirmity in his orders.

60. In the result, all the appeals filed by the Revenue are dismissed.

61. In so far as cross objections filed by the assessee are concerned, since we have dismissed all the appeals of the Revenue, the cross objections filed by the assessee are treated as academically infructuous. Accordingly, all the cross objections of the assessee are dismissed.

62. In the result, all the appeals filed by the Revenue stand dismissed.

Order pronounced on 29th September, 2025.

Sd/-	**Sd/-**
(PRABHASH SHANKAR)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 29/09/2025
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai