

IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH (Virtual) JODHPUR

BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER AND
SHRI NARINDER KUMAR, HON'BLE JUDICIAL MEMBER

ITA No. 598/Jodh/2024 (A.Y. 2009-10)

ITA No. 599/Jodh/2024 (A.Y. 2010-11)

Shri Champa Lal Mehta, C/o. Prem Kumar Panpaliya, Shop No. 09, 1 st Floor, Chandan Plaza, Raniwara Road, Sanchore – 343041. PAN NO. AASPM0857F	Vs.	ITO, Ward-2, Jalore.
Assessee by	Shri Prem Panpaliya, CA	
Revenue by	Smt. Ayushi Sharma, JCIT (DR)	
Date of Hearing	11.09.2025.	
Date of Pronouncement	29.09.2025.	

ORDER

DR. MITHA LAL MEENA, A.M.:

These two appeals by the assessee are directed against the separate order of National Faceless Appeal Central, Delhi (hereinafter referred to as "NFAC/CIT(A)") in respect of assessment year 2009-10 and 2010-11 challenging therein confirmation of levy of penalty u/s 271(1)(c) of Rs. 67200/- and 67200/- respectively on an addition made purely on an estimate basis.

2. We have heard both the sides, perused the record file and case law cited before us. Admittedly, the source of purchase made from the alleged firm were duly recorded in the books of the assessee and the sales related to

these purchases were certified and additional income has been added by the AO on the basis of estimated net profit rate of 12.5% on these purchases recorded in the trading account which was although restricted to the net profit rate of 4.5% by the Ld. CIT(A). Further, the assessee has paid VAT on all these bills against these purchases, and the purchase bills are recorded in the books along with the related sales. Thus, the assessee has neither concealed any income nor furnished any wrong facts. Meaning thereby that the Ld. AO has imposed penalty only on estimated basis, based on 3rd party information received with rebutting the material evidence furnished on record by the assessee. We are of the view, that where the addition is sustained on the estimated basis, no penalty u/s 271(1)(c) of the Act can be levied.

3. It is evident from the record that the AO failed to prove the concealment of income or furnishing of inaccurate particulars of income on part of the assessee and therefore, it is unjustified to levy of penalty of Rs. 67,200/- u/s 271(1)(C) on the estimated basis with respect to assessment year 2009-10. Our view gets supports from the decision given by the ITAT MUM Bench, in the case of M/s Shri Poonam k. prajapati Vs. ITO ward 19(2)(5) Mumbai, ITA No. 1953/mum/2022, whereⁱⁿ it was held that –

"We find the A.O has made ad hoc disallowance of bogus purchases and has accepted the sales in the books of accounts. On appeal, the CIT(A) has



restricted the addition considering the profit element @ 25% and on further appeal the Honble Tribunal has restricted the addition to the extent of 9%. We are of the opinion, that where the addition is sustained on the estimated basis no penalty u/s 271(1)(c) of the Act can be levied. The disallowance of purchases on adhoc/estimated basis does not tantamount to furnishing inaccurate particulars of income under the provisions of Section 271(1) (c) of the Act. The A.O. has not doubted the sales and made disallowance of bogus purchases, and we rely on the ratio of the Honorable Jurisdictional High Court in the case of M/s Nikunj Eximp Enterprises Vs CIT (W.P.No 2860 dated 18-06-2014). Further the assessing officer made an addition based on the information received from Sales tax department Maharashtra. Further we are of the opinion that once the revenue accepts that penalty is levied on the basis of information from the outside agency/ department, the penalty is not sustained. Accordingly, we considering the facts, circumstances and judicial decisions set aside the order of the CIT(A) and direct the assessing officer to delete the penalty and allow the grounds of appeal in favour of the assessee."

4. On similar facts, recently the TAT MUM Bench, in the case of M/S. Om Sai Traders Vs. ITO ward -3(1) Thane, ITA No. 6023/Mum/2024 Assessment Year 2011-12 & 2010-11 has held as under:

"After hearing both the parties and on perusal of the material placed on record, we find that the source of purchases made from the alleged hawala parties are from the books and corresponding sales from such purchases has not been disturbed. Once the purchases are reflected in

the trading account and addition has been made by applying some higher GP rate of 12.5% on alleged bogus purchases and that to be on estimated basis, then no penalty can be levied u/s.271(1)(c). Further, in A. Y. 2009-10 it has been stated that on similar application of GP rate on bogus purchases, penalty initiated by the Id. AO was dropped by him. In any case, it cannot be a case of furnishing of inaccurate particulars of income as held by the Id. AO, because all the particulars of purchases have been shown in the books alongwith corresponding sale. Accordingly, penalty levied by the Id. AO and sustained by the Id. CIT (A) is deleted in both the appeals.

5. In the present case, all the particulars of purchases have been shown in the books alongwith corresponding sale and addition has been made by applying higher GP rate of 12.5% on alleged bogus purchases and that ^{too} ~~to be~~ on estimated basis, then no penalty can be levied u/s.271(1)(c). In view of that matter, the impugned order is held to be infirm and perverse to the facts on record and bad in law.

6. Considering the factual ^mMatrix and judicial ^pprecedents, the penalty levied Rs. 67200/- by the Id. AO and sustained by the Id. CIT (A) is deleted in the appeal [/] ~~in~~ ITA No. 598/Jodh/2024.

7. ITA No. 599/Jodh/2024 Assessment Year: 2010-11

The assessee vide application dated 13/05/2025 ^{has} requested to withdraw this appeal. ^{been} Wherein it ^{has} ~~was~~ stated that "in the meantime my demand for the A.Y.

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2010-11 has been extinguished by the Ld. AO on the Income Tax portal in compliance with the budget provisions of the Finance Department, now the penalty in the A.Y. 2010-11 has been Nil. So, the purpose for which I filed the appeal before the Hon'ble ITAT has been resolved, so I do not need to continue the appeal. So, I want to withdraw the appeal filed before the Hon'ble ITAT. Please pass an order to allow me to withdraw the above appeal".

7.1 The learned JCIT (DR) has ^{no} objection to the said request of the Assessee.

7.2 Accordingly, we accept the request of the assessee as genuine, and as such the instant appeal is allowed to be withdrawn.

8. In the result, the appeal of the assessee in ITA No. 598/Jodh/2024 Assessment Year: 2009-10 is allowed and ITA No. 599/Jodh/2024 Assessment Year: 2010-11 is dismissed as ^{having been} withdrawn.

Order pronounced on 29/09/2025 under Rule 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

— sd —

(NARINDER KUMAR)
JUDICIAL MEMBER

— sd —

(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Dated : 29/09/2025

Copies to :

- (1) The appellant.
- (2) The respondent.

- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

By Oder
Assistant Registrar,
Income Tax Appellate Tribunal,
Jodhpur Bench,
Jodhpur.