

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1996 to 1999/Chny/2025
निर्धारण वर्ष/Assessment Years: 2018-19 to 2021-22

M/s. Sabari Diamonds & Jewels, 6, Sabari Street, Binny Compound, Tirupur-641 601.	v.	The DCIT, Central Circle-3(3), Chennai.
[PAN: ABGFS 4243 Q]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.T. Banusekar, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Ms.R. Anitha, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	08.10.2025
घोषणाकीतारीख /Date of Pronouncement	:	24.10.2025

आदेश / ORDER

PER BENCH:

The captioned appeals filed by the assessee are directed against the orders of the Ld. Commissioner of Income Tax (Appeals), Chennai – 20 ['CIT(A)' in short] dated 28.05.2025 passed for the assessment years 2018-19 to 2021-22.

2. The assessee is engaged in the business of manufacturing of jewels & retail trade of diamonds & other jewellery and the only common issue for adjudication is regarding the levy of penalty u/s.270A on additions



:: 2 ::

made in respect of gross profit towards unaccounted purchases for each of the assessment years, details of which are tabulated as under:

(Amount in INR)

Particulars	AY 2018-19	AY 2019-20	AY 2020-21	AY 2021-22
Returned Income	10,71,380	13,59,430	12,97,720	30,87,150
Amount of addition made by the AO in respect of gross profit towards unaccounted purchases	7,05,165	6,14,913	12,56,464	1,97,841
Amount of penalty levied by the AO u/s.270A(9)(e)	4,35,794	3,83,706	7,84,034	1,23,452

3. The brief facts of the case are that a search action u/s.132 was initiated on 10.11.2020 in the case of Mohanlal Jewellers (P) Ltd. (MJPL), Mohanlal Jewellers Chennai (P) Ltd., Shri.Suresh Kumar Khatri and others. During the course of search proceedings u/s.132, it was found that the group had been using customized software named "JPACK" for recording the accounted and unaccounted gold and cash transactions carried out by Mohanlal Jewellers group concerns in an Iball Desktop PC. It is mentioned by the Assessing Officer in the assessment order that pen drives containing JPACK data were also found and seized from the residential premises of Shri.Rajendra Kothari (Accountant of MJPL). Statements were recorded from Shri.Suresh Kumar Khatri on 11.11.2020 and on 04.12.2020. Statements were also recorded from



:: 3 ::

Shri.Rajendra Kothari on 10.11.2020 and on 30.11.2020. Based on the above statements and on identification of ledgers from the JPACK software, it is mentioned by the Assessing Officer in the assessment order that a ledger named "SABARI" was found, which was extracted and provided to the assessee during the course of assessment proceedings. The Assessing Officer based on the ledger extracted from JPACK software arrived at the unaccounted purchases made by the assessee across the assessment years in appeal and made additions in respect of gross profit towards unaccounted purchases for each of the assessment years. Subsequently, the Assessing Officer initiated penalty proceedings and passed orders u/s.270A for the assessment years involved levying penalty u/s.270A(9)(e) on the addition in respect of gross profit towards unaccounted purchases at the rate of 200% of the tax sought to be evaded for the reason that the assessee had under-reported its income in consequence of misreporting of income.

4. Assessee, aggrieved by the penalty orders passed u/s.270A, the assessee preferred appeals before the Id.CIT(A) who vide orders u/s.250 dismissed the appeals of the assessee, confirming the levy of penalty u/s.270A.

5. At the outset, the Ld. Authorized Representative (AR) submitted that the assessee has filed appeals against the penalty orders challenging



:: 4 ::

the levy of penalty u/s.270A independently despite not having filed appeals against the corresponding assessment orders and choosing to pay taxes in respect of the additions made in such assessment orders in order to purchase peace with the department purely on the principle that penalty proceedings are independent of assessment proceedings. It was pointed out by the Ld. AR that the assessee despite denying the fact that the transactions reflected in the ledger named "SABARI" for each of the assessment years involved do not pertain to them, went on to accept the additions made by the Assessing Officer only in order to co-operate and purchase peace with the department. The said fact was also reproduced in the assessment order by the Assessing Officer in each of the years involved in appeal.

To canvass the fact that penalty proceedings are independent of assessment proceedings, the Ld. AR placed reliance on the decision of the Hon'ble Supreme Court in *Anantharaman Veerasinghaiah & Co. v C.I.T [1980] 123 ITR 457 (SC)*, wherein the Hon'ble Supreme Court has stated as follows:

"6.In the penalty proceeding the taxing authority is bound to consider the matter afresh in the material before it and, in the light of the burden to prove resting on the Revenue, to ascertain whether a particular amount is a revenue receipt. No doubt, the fact that the assessment order contains a finding that the disputed amount represents income constitutes good evidence in the penalty proceeding but the finding in the assessment proceeding cannot be regarded as conclusive for the purposes of the penalty proceeding."



:: 5 ::

It was further submitted by the Ld. AR that similar views have been taken in the following catena of cases:

- I. B.MuniappaGounder v CIT [1976] 102 ITR 7987 (Mad)*
- II. Krishnan Lal Shiv Chand Rai v CIT [1973] 88 ITR 293 (P&H)*
- III. CIT v J K Synthetics Ltd. [1996] 219 ITR 267 (Del)*
- IV. CIT v Doris S. Luiz [1974] 96 ITR 646 (Ker)*

The Ld. AR also placed reliance on the decision of the Hon'ble Supreme Court in the case of *CIT v Khoday Eswarsa & Sons [1972] 83 ITR 369 (SC)* wherein it was held that penalty cannot be levied solely on the basis of the reasons given in the original order of assessment.

The Ld. AR on the basis of the above judicial precedents, submitted that even in penalty proceedings, the assessee is not barred from challenging the findings of the assessment order based on which the Assessing Officer levied penalty particularly in view of the fact that penalty proceedings are distinct from assessment proceedings and that penalty cannot be levied solely on the basis of the reasons given in the original order of assessment.

With respect to the merits of the case, the Ld. AR submitted that the Assessing Officer on the basis of statements recorded from Shri.Suresh Kumar Khatri and Shri.Rajendra Kothari and on identification of ledgers from the JPACK software named "SABARI" for each of the assessment



:: 6 ::

years involved in appeal, arrived at the unaccounted purchases purportedly made by the assessee and made additions in respect of gross profit towards such purported unaccounted purchases for each of the assessment years and consequently, levied penalty u/s.270A(9)(e) at the rate of 200% of the tax sought to be evaded on such additions for the reason that the assessee had under-reported its income in consequence of misreporting of income. The Ld. AR in this regard, firstly, submitted that the ledger extracted from JPACK ledger relied upon by the Assessing Officer to make additions in respect of gross profit towards sale of purported unaccounted purchases only states the name as "SABARI" and not the name of the assessee which is M/s.Sabari Diamonds & Jewels. It was submitted that merely because the name "SABARI" is reflected in the ledger, the same does not mean that it relates to the assessee. It was also submitted that the name "SABARI" is a very common name in the southern parts of India and it cannot be inferred that the name "SABARI" denotes the assessee for the simple reason that there can be many other assesseees across the country having the same common name. The Ld. AR submitted that the name "SABARI" does not refer to the assessee and the assessee has time and again denied undertaking any transactions with MJPL barring the sole purchase transaction undertaken in the financial year 2018-19 relevant to assessment year 2019-20 which was duly substantiated with proper evidence in the form of ledger account of MJPL



:: 7 ::

in the books of the assessee and bill in respect of the same. The Ld. AR as regards the said contention finally submitted that only "Sabari Diamonds & Jewels" refers to the assessee and the Assessing Officer's reliance on ledger named "SABARI" which is not the name of the assessee, to pin the additions of the assessee, without any corroborative evidence is devoid of any merits. The Ld. AR, secondly, contended that the sworn statements recorded from Shri.Suresh Kumar Khatri and Shri.Rajendra Kothari do not contain a whisper about the assessee (M/s.Sabari Diamonds & Jewels) anywhere in their statements, and more particularly there is no statement identifying that the transactions in the ledger by name "SABARI" actually pertains to the assessee. In fact, the Ld. AR pointed out to the sworn statement of Shri.Suresh Kumar enclosed in the Paper Book and submitted that, at best, in the sworn statement of Shri.Suresh Kumar Khatri in response to Q.No.27, he identifies the ledgers grouped under customers and states that the same is contained in Annexure to the statement wherein it may be seen that the name "SABARI" is not to be found anywhere, which is not even the actual name of the assessee, thereby proving that the assessee had not entered into any unaccounted purchase transactions with MJPL. The Ld. AR further pointed out various discrepancies in the ledger by name "SABARI" extracted from the JPACK software, which was relied upon by the Assessing Officer (AO), details of such discrepancies are reproduced assessment year wise as under:



:: 8 ::

a) ASSESSMENT YEAR: 2018-19

Before pointing out the discrepancies in the ledger named "SABARI" extracted from the JPACK software reflecting transactions purportedly carried out by the assessee with MJPL for the assessment year 2018-19, the Ld. AR drew reference to the table present at Page 3 of the assessment order of AY 2018-19 which is reproduced as under:

Ledger Name	SABARI					
F.Y	2017-18					
	Receipt			Issued		
	Metal		Amount	Metal		Amount
	Gross	Net		Gross	Net	
Opening Balance	0	0	0			
Purchases during the F.Y	661.64	636.16	77410	1074.6	1032.28	774.10
Closing Balance				412.96	396.12	

It was submitted by the Ld. AR that the above table reproduced in the assessment order denotes the summary of transactions that the assessee has purportedly carried out with MJPL during the financial year 2017-18 relevant to assessment year 2018-19 wherein the column "Issued" reflects purported purchases made by the assessee from MJPL and the column "Receipt" reflects purported sales made by the assessee to MJPL. The Ld. AR specifically pointed out that under the receipt column, the figures 661.64 as gross weight and 636.16 as net weight appears which denotes that the assessee has purportedly sold gold to MJPL. The Ld. AR



:: 9 ::

also drew reference to the relevant extract of table at Page 5 of the assessment order which shows the break-up of transactions in the ledger "SABARI" for the financial year 2017-18 relevant to assessment year 2018-19, which is as under:

Tr. Code Details	Receipt				Issued			
	Gross	Touch	Net Wt	Amount	Gross	Touch	Net Wt	Amount
15/09 METAL ISSUE					661.64	96.15	636.16	

From the above table, the Ld. AR pointed out that under the Issued column, the figures 661.64 as gross weight and 636.16 as net weight appears, thereby denoting that the assessee had purportedly purchased gold from MJPL.

It was submitted by the Ld. AR that on comparison of the manner in which the above transaction is reflected at two different pages of the assessment year, it is clear that the said entry cannot be relied upon since at one place the said entry denotes that the assessee has sold gold to MJPL and on the other the very same entry denotes that the assessee has purchased gold from MJPL, which definitely cannot be the case.

Apart from the above, the Ld. AR submitted details of the other discrepancies in the ledger "SABARI" extracted from the JPACK software



:: 10 ::

reflecting transactions for the assessment year 2018-19 which are as under:

Tr. Code Details	Receipt				Issued			
	Gross	Touch	Net Wt	Amount	Gross	Touch	Net Wt	Amount
13/01 RATE PURCHASE NIL	18.890	135.26	25.550					774.10
Balance					412.960	95.92	396.120	

- 1) The Assessing Officer in the assessment order has clearly stated in Para 8.2 (i) at Page 6 of the assessment order for AY 2018-19 that column 2 "TOUCH" signifies purity of gold. That being the case, it may be noted that in the transaction dated 13.01.2018, the touch % (Purity of gold) of 18.890 gms is stated as 135.26% which is not possible in the jewellery business.
- 2) In the closing balance of 412.960 gms, the touch % of 95.92% is arbitrary. At best, it could have been only the average of last 3 entries dated 18.03.2018, 23.03.2018 and 31.03.2018 which works out to 95.67% and not 95.92% as stated in the ledger.

b) ASSESSMENT YEAR: 2019-20

Tr. Code Details	Receipt				Issued			
	Gross	Touch	Net Wt	Amount	Gross	Touch	Net Wt	Amount
30/06 METAL ISSUE NIL					3.370	0.59	0.020	
18/11 METAL RECEIPT	0.010	100.00	0.010					
27/11 CASH BILL MJPL				11271.25				
09/12 RATE PURCHASE NIL	371.140	95.65	355.000					11271.25



:: 11 ::

- 1) In the transaction dated 30.06.2018, the touch % (Purity of gold) of 3.370 gms is stated as 0.59% which is not possible in the jewellery business.
- 2) In the transaction dated 18.11.2018, it is not possible to transact 0.010 gms of gold with a touch % (Purity of gold) of 100%.
- 3) In the transaction dated 27.11.2018, the amount is mentioned as 11271.25 which actually tallies with the books of the assessee and duly supported by the copy of the ledger account of MJPL in the books of the assessee and the GST bill. However, even in respect of this transaction, the Ld. AR submitted that the following discrepancies arise:
 - There are no quantity details present against the 27.11.2018 entry.
 - Payment for this purchase was made through banking channels on two different dates, a fact that is also recorded in the assessment order by the Assessing Officer but in the ledger, the narration is mentioned as CASH.
 - Moreover, the gross and net weight figures in the subsequent entry dated 09.12.2018 do not match with the gross weight as per the purchase bill of the assessee dated 27.11.2018. In the entry dated 09.12.2018 in the JPACK ledger, the gross weight is shown as 371.140 gms whereas the gross weight as per the purchase bill was 369.790 gms.

c) ASSESSMENT YEAR: 2020-21

Tr. Code Details	Receipt				Issued			
	Gross	Touch	Net Wt	Amount	Gross	Touch	Net Wt	Amount
07/07 METAL ISSUE NIL					1.170			
21/03 METAL ISSUE NIL					11.27 0	0.27	0.030	

- 1) In the transaction dated 07.07.2019, it is stated that the assessee has purchased 1.170 gms of gold where such low quantities are not transacted by dealers.
- 2) In the transaction dated 21.03.2020, it is not possible to transact 11.270 gms of gold with a touch % (Purity of gold) of 0.27%.



:: 12 ::

Therefore, in the light of above table, the Ld. AR finally concluded that the additions made in the assessment order though accepted by the assessee solely for the reason of purchasing peace with the department cannot become a reason for automatic levy of penalty u/s.270A of the Income Tax Act and thus prayed that the penalty u/s.270A levied by the Assessing Officer be deleted for all the assessment years involved in appeal.

The Ld. AR further submitted that the additions cannot be based on mere loose sheets and consequently no penalty can be levied on such additions. In this regard, the Ld. AR submitted that the loose sheets, in the instant case, extracts of the ledger named "SABARI" from the JPACK software have no evidentiary value and the additions based on the same without any corroborative evidence is not valid in the eyes of law. In support of the same, the Ld. AR relied on the following decisions:

- a) *CIT(A) v Sunil Kumar Sharma [2024] 165 taxmann.com 846 (SC)*
- b) *DCIT v Sunil Kumar Sharma [2024] 469 ITR 197 (Kar)*
- c) *Common Cause (A Registered Society) v UOI [2017] 394 ITR 220 (SC)*
- d) *CBI v V.C.Shukla and Others [1998] 3 SCC 410*

It was also submitted that the Assessing Officer has not brought on record any material or other corroborative evidence to show that the assessee had indeed made unaccounted purchases from MJPL. In fact, even the statements recorded from Shri.Suresh Kumar Khatri and



:: 13 ::

Shri.Rajendra Kothari where they identify the list of customers grouped in the JPACK software, has no mention of a customer by name "SABARI", leave alone the mentioned of the actual name of the assessee firm M/s.Sabari Diamonds & Jewels. In such a case, it was contended by the Ld. AR that mere reliance on ledger extracts which does not even have the name of the assessee, for making additions and consequently levying penalty u/s.270A on the said additions is not warranted in the facts and circumstances of the case.

The Ld. AR further submitted that since opportunity of cross examination not provided, the same renders the assessment invalid. For this proposition, the Ld. AR placed reliance on the following decisions of the Hon'ble Supreme Court:

Andaman Timber Industries v CCE [2015] 281 CTR 241 (SC)

Kishinchand Chellaram v CIT [1980] 125 ITR 713 (SC)

The Ld. AR in this regard submitted that the assessee during the course of assessment proceedings had specifically requested for an opportunity to cross examine which was denied by the Assessing Officer for the following reasons:

- a) That Shri.Suresh Kumar Khatri has only identified the JPACK ledger pertaining to the assessee and that there was no other statement or information given by him against the assessee.
- b) That the JPACK ledger account pertains to the assessee was proved beyond doubt as on cross verification it was found that many of the transactions recorded in the JPACK account match with the transactions recorded in the books of accounts of the assessee.



:: 14 ::

- c) That besides the above reasons, the unaccounted income is determined based on the analysis of the entries in the seized material and not based on the statement of Shri.Suresh Kumar Khatri.

The Ld. AR in this connection, submitted that the above observations of the Assessing Officer in denying the opportunity of cross examination were incorrect since:

- a) There is no shred of evidence to demonstrate that Shri.Suresh Kumar Khatri in his statement had identified that the ledger "SABARI" extracted from the JPACK software belonged to the assessee. In fact, in Para 6.6 at Page 3 of the assessment order for the assessment year 2018-19, it can be seen that the Assessing Officer has merely stated that *"On further investigation of the said "J Pack" Software, it is found that a ledger named "SABARI" is maintained."* This goes on to show that the observation of the Assessing Officer in this regard to deny the opportunity to cross examine was not valid.
- b) The observation of the Assessing Officer that on cross verification it was found that many of the transactions recorded in the JPACK account match with the transactions recoded in the books of accounts of the assessee is also not valid since it was demonstrated beyond doubt that the assessee had entered into only one solitary purchase transaction with MJPL across the 4 assessment years involved in appeal and that no other transactions as reflected in the ledger "SABARI" extracted from the JPACK software pertained to the assessee.

Therefore, it was contended by the Ld. AR that since the reasons for denying opportunity of cross examination fails, the assessment order is rendered invalid and thus the additions made have no legs to stand, much less the penalty levied on such additions.

6. Per contra, the Ld. Departmental Representative (DR) has relied on the impugned orders of the lower authorities. Apart from doing so, the Ld. DR during the course of hearing also contended that the assessee had brought out all the deficiencies in the materials relied upon by the Assessing Officer (Sworn statements and loose sheets being ledger extracts) for the first time only before the Hon'ble Tribunal and that the same could not have been done.



:: 15 ::

7. As regards the contention of the Ld. DR, the Ld. AR submitted that since the penalty proceedings are independent of assessment proceedings, the assessee can and has brought out all the deficiencies in the materials which were relied upon by the Assessing Officer and has not brought out any fresh material to challenge the levy of penalty. The Ld. AR also submitted that the discrepancies are in the very same material relied upon by the Assessing Officer and not with reference to any other material. The Ld. AR also pointed out that this Hon'ble Tribunal being the final fact finding authority, is empowered to entertain the contentions of the assessee on the deficiencies in the material relied upon by the Assessing Officer in its effort to challenge the levy of penalty u/s.270A in the instant case.

8. We have carefully considered the rival submissions and examined the records before us. At the outset, we concur with the Learned Authorised Representative (Ld. AR) that penalty proceedings are distinct and independent from assessment proceedings, as consistently upheld by the Hon'ble Supreme Court in the cases cited before us. Consequently, the assessee is entitled to contest the imposition of penalty independently, even if no appeal was filed against the assessment order wherein the original additions were made. We also agree with the Ld. AR that the Tribunal, being the final fact-finding authority, has the power to allow the



:: 16 ::

assessee to question the correctness of the additions forming the basis for the penalty during the course of penalty proceedings.

9. During the hearing, the Bench sought clarification on the applicability of the Hon'ble Supreme Court's decision in *MAK Data (P.) Ltd. v. CIT* [2013] 358 ITR 593 (SC), which held that where income was surrendered following detection by the Assessing Officer, such surrender could not be regarded as voluntary, and penalty under section 271(1)(c) was justified. The Ld. AR submitted that the facts of *MAK Data* differ from the present case. In *MAK Data*, the assessee merely disclosed income to "buy peace" without providing any explanation for such disclosure. In contrast, the present assessee has denied any link to the transactions recorded in the JPACK ledger under the name "SABARI." The additions were accepted solely to avoid prolonged litigation and not due to any detection of undisclosed income by the Assessing Officer. Furthermore, during the penalty proceedings, the assessee challenged the validity of the additions and provided adequate explanations to counter the Department's findings. Therefore, simply because the assessee did not appeal against the assessment order does not automatically justify the levy of penalty under section 270A. Considering these distinctions, we hold that the decision in *MAK Data (P.) Ltd.* is not applicable to the present case.



:: 17 ::

10. Regarding the other submissions of the Ld. AR, we note that the additions forming the basis of penalty under section 270A were made from loose sheets (JPACK ledger extracts) and sworn statements of Shri Suresh Kumar Khatri and Shri Rajendra Kothari, without any corroborative evidence proving that the assessee engaged in unaccounted purchases from MJPL. Based on the case law cited, we agree that penalty levied merely on the basis of loose sheets are unsustainable in law, and consequently, the penalty imposed on such additions fails. Moreover, the Assessing Officer did not provide the assessee an effective opportunity for cross-examination, despite a specific request. The reasons cited for denying cross-examination lack merit, rendering the penalty themselves invalid.

11. It is also relevant that the name "SABARI" mentioned in the JPACK ledger does not appear in any of the sworn statements, nor can it conclusively be linked to the assessee "Sabari Diamonds & Jewels." Hence, reliance solely on the ledger extracts and statements to impose penalty under section 270A was unjustified. Even assuming the additions could have been made, they suffer from several inconsistencies, as pointed out by the Ld. AR, showing that the material relied upon is insufficient to establish unaccounted purchases.



ITA Nos.1996 to 1999 /Chny/2025
(AYs 2018-19 to 2021-22)
M/s. Sabari Diamonds & Jewels

:: 18 ::

12. We also find merit in the Ld. AR's contention that the discrepancies now highlighted arise directly from the same material used by the Assessing Officer and not from any new evidence, which the Department's Representative (Ld. DR) suggested. Since the Tribunal is the final fact-finding authority and penalty proceedings are independent of assessment proceedings, the assessee is well within its rights to raise such discrepancies before us.

13. In view of the above, as the penalty levied for Assessment Years 2018-19 to 2021-22 are unsustainable in law, we hold that no penalty under section 270A can be levied. Accordingly, we direct the Assessing Officer to delete the penalties imposed for these years.

14. In the result, captioned appeals of the assessee are allowed.

Order pronounced on the 24th day of October, 2025, in Chennai.

Sd/-
(जगदीश)
(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 24th October, 2025.

TLN

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF