

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
SHRI SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No. 1445/Kol/2025
Assessment Year : 2014-2015**

M/s Jewel India Jewellers,

41, Manohar Dass Street,

Burra Bazar - 700007

[PAN: AACFJ4832H]

..... **Appellant**

vs.

**Deputy Commissioner of Income Tax,
Central Circle 4(4), Kolkata,**

Aayakar Bhawan Poorva,

Shanti Palli, 110, Eastern Metropolitan

Bypass, Opposite Ruby,

Kasba - 700107

Respondent

Appearances by:

Assessee represented by : Sunil Surana, AR

Department represented by : P.N. Barnwal, CIT-DR

Date of concluding the hearing : 08.09.2025

Date of pronouncing the order : 27.10.2025

ORDER

PER SONJOY SARMA, JUDICIAL MEMBER:

1. The present appeal is filed against the order u/s 250 of the Income Tax Act, 1961 (hereafter "the Act"), dated 25.06.2025, passed by the Ld. Commissioner of Income Tax (Appeals), Kolkata-27 (hereafter "the Ld. CIT(A)].

2. Brief facts of the case are that a survey under Section 133A of the Act was conducted in the case of the assessee, who is a key person connected with M/s. Jewel India Jewellers, a concern engaged in the business of manufacturing and trading in gold ornaments. The survey

was part of a group action in the “Jewel India” group, wherein search and seizure operations were also conducted in the premises of related entities at Kolkata. The assessee had originally filed a return of income under Section 139(1) declaring total income of ₹10,16,90,340/-. Subsequently, in compliance with notice issued under Section 153A, the assessee again filed return of income on 10.06.2017 declaring the same total income of ₹ 10,16,90,340/-. The assessment was completed under Section 153A read with Section 143(3) determining total income at ₹ 10,20,05,278/-. The Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act holding that the assessee had deliberately concealed particulars of income and accordingly levied penalty of ₹ 2,64,79,224/- vide order dated 25.06.2019.

3. Before the CIT(A) and the Tribunal, the primary contention of the assessee is that there was no concealment of income or furnishing of inaccurate particulars thereof. The income declared in the course of the survey had already been disclosed in the original return filed under Section 139(1). Therefore, there was no case of concealment warranting penalty under Section 271(1)(c) of the Act.

4. The assessee further submitted that the CIT(A) erred in confirming the penalty by assuming that the income surrendered during the course of survey was disclosed only in the return filed under Section 153A, whereas, in fact, the same was already included in the original return filed under Section 139(1) of the Act. Since the income was voluntarily disclosed and accepted by the Department, no penalty could be levied. Reliance was placed on the judgment of the Hon’ble Calcutta High Court in CIT vs. Roopshree Jewellers Pvt. Ltd. (ITA No. 45 of 2008, dated 04.03.2008), wherein it was held that Explanation 5 to Section 271(1)(c) applies only in cases of search and not survey and that where the excess stock or income detected during the course of survey is duly disclosed

in the return and accepted by the Department, no penalty under Section 271(1)(c) can be imposed.

5. The learned Departmental Representative supported the orders of the lower authorities, contending that the assessee had surrendered income only after the detection during the survey and therefore, the penalty was rightly imposed.

6. We have heard the rival submissions and perused the material available on record. It is an undisputed fact that in the present case, a survey under Section 133A of the Act was conducted in the business premises of the assessee. Soon thereafter, the assessee voluntarily disclosed the true income in its return filed under Section 139(1) of the Act. Subsequently, although a search under Section 132 of the Act was also conducted in the premises of the assessee, no further undisclosed income was found or brought to tax. The assessee had disclosed the additional income voluntarily in the return filed under Section 139(1), which was subsequently accepted by the Department. The provisions of Explanation 5 to Section 271(1)(c) of the Act are applicable only in cases of search and not in survey proceedings. Therefore, invocation of the said provision in the case of the assessee is not legally sustainable. The Hon'ble Calcutta High Court in the case of CIT vs. Roopshree Jewellers Pvt. Ltd (supra) has categorically held that when excess stock or income detected during survey is duly disclosed and accepted by the Department, no penalty under Section 271(1)(c) of the Act can be levied. The facts of the present case being identical, we find no reason to deviate from the said binding precedent.

7. Accordingly, we hold that the penalty imposed under Section 271(1)(c) of the Act is not sustainable in law. The Assessing Officer is directed to delete the penalty.

8. In the result the appeal of the assessee is allowed.

Order pronounced on 27.10.2025

Sd/-
(Rajesh Kumar)
Accountant Member

Sd/-
(Sonjoy Sarma)
Judicial Member

Dated: 27.10.2025

AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches