

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.612 & 613/SRT/2025**

Assessment Year: (2007-08)

(Hybrid hearing)

Meenaxi Gems Pvt. Ltd., 5/1108-A, 1167/68-B, Santok Diamonds Office No.106, Gurjar Faliya, Haripura, Surat - 395003	Vs.	ITO, Ward – 1(1)(4), Surat
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AADCM4645B		
(Appellant)		(Respondent)

Appellant by	Shri Prakash Jhunjhunwala, AR
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	15/09/2025
Date of Pronouncement	27/11/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These appeals by the assessee emanate from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 28.03.2025 and 31.03.2025 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2007-08. One appeal is against quantum assessment and other is against penalty levied under section 271(1)(c) of the Act. Since facts are same, with consent of the parties, both appeals were heard together and a common order is passed for the sake of convenience and brevity. The quantum appeal in ITA No.612/SRT/2025 is treated as "lead" case.

2. The grounds of appeal in ITA No.612/SRT/2025 are as under:

“1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the validity of notice u/s.148 issued after expiry of 4 years, though the sanction from correct specified/ approving authority viz. Pr. CIT prescribed u/s.151(1) has not been granted;

2.0 On facts and circumstances of the case and in law, the notice u/s 148 is invalid and consequential reassessment order passed u/s 147 is bad in law since had been issued in absence of fresh tangible material, without independent application of judicial mind and without having valid reason to believe of escapement of income;

3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of entire alleged non-genuine purchase [@ 100%] of Rs.38,83,253/ of traded goods (diamonds) made from supplier M/s. Moulimani Impex Pvt Ltd;

4.0 The Ld. CIT(A), before confirming the disallowance of purchase of Rs.38,83,253/- @ 100% of disputed purchase erred in ignoring the understated vital facts, being;

a) The disputed purchase of diamonds is supported with purchase bills, delivery challan, confirmation of account, stock tally and bank statements;

b) The entire payments had been made through banking channel by A/c payee cheques;

c) The statement of 3rd party recorded at back of the appellant without providing a copy for rebuttal and without allowing an opportunity of cross examination is erroneous;

d) The rejection of books of accounts u/s 145(3), without pointing a specific defect, is not justified;

5.0 Without prejudice, a prayer is made to adopt the concept of real income and restrict the addition @ 2% of alleged non-genuine purchase at Rs 77,665/- (2% of Rs 38,83,253/-) since regular profits corresponding to disputed purchase had already been offered to tax.

The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing.”

3. The grounds of appeal in ITA No.613/SRT/2025 are as under:

“1.0 On facts and circumstances of the case and in law, Ld. CIT(A) ought to have deleted the Penalty levied u/s.271(1)(c) of Rs. 11,99,924/-, since the Notice u/s.274 have been issued in general and mechanical manner, without striking-off the specific allegation of 'Concealment of income or Furnishing inaccurate particulars of income'”;

2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the Penalty levied u/s.271(1)(c) of Rs.11,99,924/-, though the initiation of penalty in the assessment order had been made under dual charge of 'Concealment of income' and 'Furnishing inaccurate particulars of income':

3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the Penalty u/s.271(1)(c) of Rs.11,99,924/- in respect of addition made in assessment of alleged non-genuine purchase of traded goods made from M/s Moulimoni Impex Pvt Ltd of Rs.38,83,252/-;

4.0 The Ld. CIT(A), before confirming the Penalty levied u/s.271(1)(c) of Rs.11,99,924/-, ought to have considered the bonafide explanation of the appellant, as under:-

a) The disputed purchase of traded goods are supported with exhaustive documentary evidences such as purchase bills. corresponding sale bills, ledger, confirmation, bank statement, quantity tally and other documentary evidences;

b) The entire payments to the disputed supplier had been made through normal banking channel by A/c Payee cheques/RTGS;

c) The addition of entire purchase of traded goods is seriously unjustified and only the suppressed profits on alleged non-genuine purchase of traded goods could be brought to tax;

d) The penalty proceedings are separate and independent to the assessment proceeding;

e) The appellant had made complete disclosure of all material facts in the return of income and during course of assessment.

The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing.”

ITA No. 612/SRT/2025 (AY 2007-08):

4. Brief facts of the case are that the assessee is a company and filed the return of income for AY 2007-08 on 31.10.2007 declaring total income at

Rs.6,70,840/-. Information was received from the Investigation Wing, regarding the bogus purchases made by assessee from various persons. A search and seizure action were conducted on 03.10.2013 in group concerns of Shri Rajendra Jain and Shri Sachin Pareekh. The company M/s. Moulimani Impex Pvt. Ltd. was controlled and managed by them. Their concerns were engaged in merely paper transaction. Companies of Rajendra Jain Group issue bogus sales bills to various parties on basis of paper stock lying in their books. Statement of Shri Rajendra Jain, director, was recorded and he accepted the modus operandi of giving paper transaction entries without any physical stock. These alleged companies issue bills and give accommodation entries for a commission to various parties. As per the information received, assessee had received paper entry from M/s. Mouliomani Impex (P) Ltd. of Rs.38,83,253/- during the year. Shri Rajendra Jain, director of M/s. Moulimani Impex (P) Ltd., in his statement recorded u/s.132 of the Act accepted all those facts that all the concerns controlled and managed by him were not doing any real trading in diamonds but indulged in paper transactions only.

5. The case of the assessee was reopened u/s.147 of the Act and notice u/s.148 of the Act was issued on 29.03.2014. The assessee replied that return of income filed electronically vide ack. No. 8139211311007, may be treated as return filed in compliance of notice u/s.148 of the Act. Subsequently, notices

u/s.143(2) and 142(1) of the Act were issued during the assessment proceedings, calling for details and proper documents on relevant issue. However, no compliance was made by the assessee. Since no details in form of books of account and supporting bills and vouchers were furnished, therefore, AO invoked the provision u/s.145 of the Act and rejected the books of account of the assessee. Besides, in absence of any cogent documentary evidence and explanation, the purchases of Rs.38,83,253/- made from M/s. Moulimani Impex Pvt. Ltd. was treated as bogus purchases and the amount of Rs.38,83,253/- was added to the total income of the assessee. Penalty proceeding u/s.271(1)(c) of the Act was also initiated in the case of assessee. The assessment order was finalized u/s.144 of the Act on 27.02.2015 determining total income of the assessee at Rs.45,53,730/-.

6. Aggrieved by the order of the AO, assessee preferred appeal before the CIT(A). The CIT(A) after considering the submissions furnished by the assessee dismissed the appeal of the assessee and uphold the addition of Rs.38,83,253/- made by the AO.

7. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the assessee had made bonafide and genuine purchase of goods (diamonds) from M/s. Moulimani Impex Pvt. Ltd. and such purchase

transactions were supported with exhaustive documentary evidences such as PAN/AO details, ledger account/confirmation of account of supplier, purchase bills, corresponding sales bills, bank statement, quantitative tally of diamonds, stock register, etc. The Ld. AR stated that the appellant had received the delivery of the goods (diamonds) and in turn, it had made the payments by A/c. payee cheques/RTGS and the appellant cannot be penalized for any non-genuine transactions entered by its supplier. The Id. AR further submitted that the confirmation of account of the supplier duly confirms the transactions entered by such suppliers with the appellant and that the AO had not found any falsity in above stated documents filed by the appellant. The AO has also not brought any contrary material and evidence to disprove the bonafide transactions of the appellant and therefore, the disallowance of entire purchases made from disputed party was unjustified. The Id. AR alleged that the appellant was not provided an opportunity of cross examination of the disputed party. The Ld. AR further submitted that there cannot be a case of only sales without corresponding purchase. If there is a sale of goods, then it is required to be presumed that there would be corresponding purchase of such goods. The Ld. AR requested to adopt the concept of real income which says that only the real profit embedded in disputed purchases could be brought to tax. The Ld. AR relied upon following decisions in support of his contention: (i) PCIT Vs.

Mohammad Haji Adam & Co., ITA No.1004 of 2016 (Bom), (ii) PCIT Vs. Juned B. Memon, 95 taxmann.com 20 (Guj.), (iii) Mayank Diamond Pvt. Ltd. Vs. ITO (Tax appeal No. 200/2003 (Guj.), (iv) CIT Vs. Simit P. Sheth, 38 Taxmann.com 385 (Guj.), (v) CIT Vs. Bholanath Poy Fab Pvt. Ltd., 355 ITR 290 (Guj.) and (vi) CIT Vs. President Industries, 258 ITR 654 (Guj.).

8. The learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders passed by the lower authorities and requested to uphold the order of the CIT(A).

9. We have heard both the parties and perused the materials on record. We also deliberated various case laws relied upon by the parties. At the outset of hearing, both parties agreed that this is a fairly common and repetitive issue before the Tribunal and is covered by a number of decisions of the ITAT, wherein similar additions have been restricted @ 6% of the respective bogus purchases. It was further submitted that such decision of ITAT in restricting the addition to 6% has been confirmed by the Hon'ble jurisdictional High Court in case of PCIT vs. Surya Impex, 148 taxmann.com 154 (Guj.). The Id. Sr. DR also agreed that the issue is also covered by the decisions of ITAT and Hon'ble jurisdictional High Court. We find that the Hon'ble jurisdictional High Court, in the subsequent decision in case of PCIT vs. Keshri Exports, R/Tax Appeal No.723 of 2024, has upheld the order of ITAT in restricting the addition to 6% of the

bogus purchases/accommodation entries. It was observed that the tax appeals of the department have been dismissed in several matters arising out of transactions with the Bhanwarlal Jain group, where the ITAT assessed the disallowance at 6%. The Hon'ble Gujarat High Court in case of Surya Impex (supra) has also held that the Tribunal was justified in limiting addition in the hands of the assessee @ 6% of the impugned purchases. Respectfully following these decisions, the order of CIT(A) is set aside and the AO is directed to restrict the addition to 6% of the impugned purchases from the said Shri Rajendra Jain group. The ground is partly allowed.

10. Ground Nos.1 and 2 regarding validity of assessment u/s 147 of the Act by issue of notice u/s 148 of the Act has not been seriously argued by the Id. AR and Id. Sr. DR. The same is accordingly dismissed.

11. In the result, the appeal of the assessee is partly allowed.

ITA No.613/SRT/2025 (AY 2007-08):

12. Brief facts of the case are that in the case of assessee, assessment order u/s.144 of the Act was passed on 27.02.2015, determining the total income of the appellant at Rs.45,53,730/- after making addition of Rs.38,83,253/- on account of bogus purchase. Besides, the AO initiated penalty proceedings u/s.271(1)(c) of the Act. Subsequently, after providing reasonable opportunity of being heard to the assessee, the AO passed the penalty order on 25.03.2019,

imposing a penalty of Rs.11,99,924/- u/s.271(1)(c) of the Act for concealment of particulars of income.

13. Aggrieved by the penalty order of the AO, assessee preferred appeal before the CIT(A) who dismissed the appeal of the assessee vide his order passed u/s.250 of the Act.

14. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Ld. AR of the assessee submitted that penalty should be deleted since notice u/s.274 of the Act have been issued in general and mechanical manner without striking off the specific allegation of 'Concealment of income' or 'Furnishing inaccurate particulars of income'. The Ld. AR further submitted that on merits also penalty deserves to be deleted since the disputed purchase of traded goods were supported with exhaustive documentary evidences such as purchase bills, corresponding sales bills ledger confirmation, bank statement, quantity tally and other documentary evidences.

15. The Id. Sr. DR relied on the orders of the lower authorities.

16. We have heard both the sides and perused the material placed on record. The issue involved in the present appeal relates to the levy of penalty of Rs.11,99,924/- u/s 271(1)(c) of the Act, consequent to the quantum addition of Rs.38,83,253/- on account of bogus purchases made from a known accommodation-entry provider belonging to the Shri Rajendra Jain group. The

assessment order was completed u/s 144 of the Act on 27.02.2015, wherein the AO made the addition on account of bogus purchases after rejecting the books u/s. 145(3) of the Act. The AO specifically recorded satisfaction for initiation of penalty proceedings u/s.271(1)(c) of the Act and thereafter issued notice u/s.274 read with section 271(1)(c) of the Act.

17. The penalty levied u/s.271(1)(c) of the Act is based on the quantum addition of Rs.38,83,253/- treated as bogus purchases. In the quantum appeal, the Tribunal in ITA No.612/SRT/2025 (supra), decided above, has held that the purchases cannot be disallowed in entirety and restricted the addition to 6% of such purchases, being the estimated profit element. Once the addition stands reduced to an estimated profit element, the character of the addition itself changes. It is well settled that penalty u/s.271(1)(c) of the Act cannot be imposed where the addition is purely on estimation, without any direct finding of concealment or furnishing of inaccurate particulars. In the present case, the Revenue has not brought any material to show that the assessee concealed particulars of income or furnished inaccurate particulars. The purchases were supported by invoices, quantitative details, bank payments and corresponding sales. The addition sustained only represents a possible inflation of purchase price or profit suppression, computed on an ad hoc and estimated basis. Such an estimated addition cannot form the foundation for levy of penalty. In view of

the fact that the Tribunal has sustained only 6% of the purchase value on estimation basis, we hold that the very basis of the penalty does not survive. The Hon'ble jurisdictional High Court in cases of CIT vs. Subhash Trading Co., (1996) 221 ITR 110 (Gujarat), CIT vs. Whitelene Chemicals, (2013) 214 Taxman 93 (Gujarat) 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. The Co-ordinate Bench of ITAT, Surat in cases of Yogendra Raj U Sanghvi, in ITA No.459/SRT/2021, dated 19.10.2023, Deepak Banwarilal Agarwal, in ITA No.827/SRT/2023, dated 27.02.2024 and DCIT vs. M/s Opulent Jewels Pvt. Ltd., in ITA No. 1855/Ahd/2010/SRT, dated 15.11.2018 have also held that no penalty is leviable on estimated addition. The ITAT, Mumbai in case of Mun Gems vs. ACIT, 155 taxmann.com 1, has held that where AO treated entire purchase as bogus based on findings of Investigation Wing and levied penalty u/s 271(1)(c), since payment of purchase had been made through account payee cheques and there was corresponding sales, ad hoc GP rate applied on alleged bogus purchases to factor in suppression of alleged gross profit could not be basis of levying penalty for furnishing of inaccurate particulars of income or concealing particulars of income. 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.

18. In the result, the appeal of the assessee in ITA No.612/SRT/2025 is partly allowed whereas ITA No.613/SRT/2025 is allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 27/11/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 27/11/2025

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 //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat