

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

ITA No.7064/MUM/2025
(Assessment Year: 2014-2015)

ITA No.7065/MUM/2025
(Assessment Year:2015-2016)

ITA No.7066/MUM/2025
(Assessment Year: 2016-2017)

ITA No.7067/MUM/2025
(Assessment Year: 2017-2018)

ITA No.7068/MUM/2025
(Assessment Year:2018-2019)

ITA No.7069/MUM/2025
(Assessment Year: 2019-2020)

&

ITA No.7070/MUM/2025
(Assessment Year:2020-2021)

Deputy Commissioner of Income Tax 3(1)(1), Mumbai

607, Aaykar Bhavan, M. K.Road,
Mumbai – 400020, Maharashtra.

..... **Appellant**

Vs

Relcon Infraprojects Limited

4th Floor, Relcon House Premise, CSL, 15/A,
M. G. Road, Vile Parle (East),
Mumbai – 400057. Maharashtra
[PAN:AADCR4459E]

..... **Respondent**

Appearance

For the Appellant/Department : Shri Annavarani Kosuri
For the Respondent/Assessee : Shri Ravikant Pathak

Date

Conclusion of hearing : 08.01.2026
Pronouncement of order : 19.01.2026

ORDER

Per Bench:

1. This is a batch of seven appeals preferred by the Revenue for the Assessment Years 2014-2015 to 2020-2021. In appeal for the Assessment Year 2014-2015, 2015-2016 and 2016-2017 the Revenue had challenged the order passed by the Commissioner of Income Tax (Appeals)-53, Mumbai [hereinafter referred to as 'the **CIT(A)**'] deleting the levy of penalty under Section 271(1)(c) of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'], whereas appeal(s) for the Assessment Year 2017-2018 to 2020-2021 were

directed against the order of the Learned CIT(A) deleting penalty levied under Section 270A of the Act. Since the present three appeals preferred by the Revenue pertaining to the Assessment Years 2014-2015, 2015-2016, and 2016-2017 involved identical issues arising from common factual matrix the same were heard together and are, therefore, being disposed off by way of the present common order. With the consent of both the sides we would first take up appeal pertaining to Assessment Year 2014-2015 as the lead matter.

ITA No.7064/Mum/2025
[Assessment Year 2014-2015]

2. The Revenue has preferred the appeal against the Order, dated 18/08/2025, passed by the Learned CIT(A) partly allowing the appeal against the Penalty Order, dated 29/03/2024, passed under Section 271(1)(c) of the Act for the Assessment Year 2014-2015.
3. The Revenue is aggrieved by the fact that the Learned CIT(A) has deleted the penalty of INR.1,76,120/- levied by the Assessing Officer under Section 271(1)(c) of the Act and has raised following grounds of appeal for the Assessment Year 2014-2015:
 - "1. *The Ld. CIT(A) erred in deleting the penalty of Rs.1,76,120/- u/s.271(1)(c) of the Act being 100% of alleged tax sought to be evaded on estimation disallowance made of Rs.5,18,153/- 2% on bogus purchases made by the assessee in the assessment order by holding that the assessee has concealed the particulars of income."*
4. The relevant facts emerging from record are that the Assessee is a company engaged in the business of civil contract. At the relevant time it procured and performed construction contracts from Government and Semi-Government Authorities.
5. For the Assessment Year 2014-2015, the Assessee filed return of income on 30/11/2014 declaring income at INR.43,49,06,998/-. The

case of the Assessee was selected for scrutiny assessment, and assessment proceedings were completed on 27/12/2016 accepting the returned income of the Assessee as the assessed income.

6. Subsequently, a search action under Section 132 of the Act took place at the premises of the Assessee on 06/11/2019 and proceedings under Section 153A of the Act were initiated. For the Assessment Year 2014-2015, the aforesaid proceeding culminated into passing of the Assessment Order, dated 30/09/2021, under Section 143(3) read with Section 153A of the Act. The Assessing Officer assessed the income of the Assessee at INR.58,16,60,720/- after making the following additions/disallowances:

Sr. No.	Particulars	Amount (in INR)
1.	Alleged bogus purchases	13,00,68,426
2.	Addition of cash credit under Section 68 of the Act	2,06,16,167
	Total additions/disallowance	15,06,84,593

7. The Assessee challenged the above additions/disallowances in appeal before the Learned CIT(A). Vide Order, dated 15/07/2022, the Learned CIT(A) disposed off the said appeal deleting the addition of INR.2,06,16,167/- made by the Assessing Officer under Section 68 of the Act in respect of alleged unsecured loan. As regards the addition of INR.13,00,68,426/- made by the Assessing Officer in respect of alleged bogus purchases is concerned, the Learned CIT(A) noted that the same could be bifurcated into the following three parts:

Sr. No.	Particulars	Amount (in INR.)
1.	Parties not found at addresses; however, the Assessee filed new addresses of all the parties/parties from whom material bought has weak financials	8,78,99,519
2.	Party from whom material bought is different than the party who is identified as accommodation entry provider by the Assessing Officer	1,62,61,239
3.	Allegedly cash has been received back as against the payment made towards purchases per the statement of Director Shri Jainendra P. Shah	2,59,07,668
	Total	13,00,68,426

The Learned CIT(A) deleted the addition made by the Assessing Officer in respect of alleged bogus purchases of INR.8,78,99,519/- (at serial number 1. in table above) and INR.1,62,61,239 (at serial number 2. in table above). As regards the addition of INR.2,59,07,668/- (at serial number 3. in table above), the Learned CIT(A) restricted the disallowance to INR.5,18,153/- [@2% of INR.2,59,07,668/-] and deleted the remaining addition of INR.2,53,89,514/-.

8. Being aggrieved, both, the Assessee as well as Revenue, filed appeal before the before the Tribunal [ITA 2275/Mum/2022 and 2626/Mum/2022]. Vide Common Order dated 26/05/2023, (disposing off Cross-Appeals pertaining to Assessment Years 2014-2015 to 2020-2021), the Tribunal dismissed the aforesaid cross-appeals for the Assessment Year 2014-2015. Thus, out of total addition of INR.13,00,68,426/- made by the Assessing Officer on account of alleged bogus purchases for the Assessment Year 2014-2015 only the addition to the extent of INR.5,18,153/- got sustained.
9. Thereafter, the Assessing Officer passed Penalty Order, dated 29/03/2024, levying penalty of INR.1,76,210/- under Section 271(1)(c) of the Act in respect of above addition of INR.5,18,153/- sustained by the Tribunal in the quantum proceedings.
10. In appeal preferred by the Assessee challenging the levy of above penalty under Section 271(1)(c) of the Act, the CIT(A), vide order dated 18/08/2025, deleted the penalty holding as under:

"Decision:

6. *Ground no.1 is general in nature, hence the same is Dismissed.*
7. *Ground no.2 is related to levy of penalty u/s.271(1)(c) of the Act.*

- 7.1 *The AO has passed assessment order u/s.143(3) r.w.s153A of the Act on 30.09.2021 determining total income of Rs.58,16,60,723/- wherein he had made addition of Rs.13,00,68,426/- on account of bogus purchases and addition of Rs.2,06,16,167/- on account of bogus unsecured loan. The assessee had filed an appeal before CIT(A) against the assessment order. The CIT(A) vide his order dated 15.07.2022 has partly allowed the appeal of the assessee and confirmed the addition to the extent of Rs.5,18,153/- in respect of disallowance of bogus purchases made by the AO. Subsequently, the Hon'ble ITAT, Mumbai vide its order dated 26.05.2023 has confirmed the order of the CIT(A). Thereafter, the AO had issued show cause notice u/s.271(1)(c) of the IT Act for concealing the particulars of income. The assessee had filed its submission. However, the AO did not accept the same. The AO in his order has mentioned that during the assessment proceedings, the assessee has failed to provide required corroborative evidence whereby the purchase transactions made by the assessee could be verified and hence the AO has disallowed entire purchases made from the bogus parties. However, the CIT(A) has confirmed the addition to the extent of Rs.5,18,153/- (being 2% of the purchase from Dahisar Service Station, Madhani Infraprojects Pvt. Ltd., Omkar Transport and N.K. Bhoir Transport). The AO further mentioned that since the assessee has concealed the income for the year under consideration, penalty u/s.271(1)(c) is applicable on the assessee. Accordingly, the AO has levied penalty of Rs.1,76,120/- u/s.271(1)(c) of the IT Act.*
- 7.2 *During the course of appellate proceedings, the assessee has submitted that the CIT(A) has estimated disallowance to the extent of 2% in respect of the purchases made by it which was subsequently confirmed by the ITAT. Therefore, the assessee mentioned that since the disallowance has been made on estimated basis, it does not justify penalty u/s.271(1)(c) of the Act. The assessee has also relied on the following case laws: "Dev Engineers vs DCIT [ITA No 6002/Mum/2024] dated 20/02/2025 ACIT vs Chetan Pravin Chitalia [ITA No 2100/Mum/2025] dated 16/05/2025 ITO vs Tisya Jewels [ITA 869/Mum/2025] dated 27/06/2025."*
- 7.3 *I found that CIT(A) has estimated disallowance of Rs.5,18,153/- which is 2% of the purchases made by the assessee from various parties and the ITAT has confirmed the order of the CIT(A). Further, I found that ITAT, Mumbai in the*

case of Dev Engineers vs. DCIT [ITA No.6002/Mum/2024] dated 20.02.2025 has deleted the penalty levied u/s.271(1)(c) of the Act in respect of the addition made on estimated basis. The relevant portion of the Mumbai, ITAT is reproduced as under:

"5.2. It is a fact on record as noted both by Id. Assessing Officer and Id. CIT(A), tabulated above that additions sustained are purely on estimate basis. The issue before us is no longer res integra and it is a settled law that in the said factual position, penalty is not imposable on additions sustained on estimate basis. It is an accepted fact that whenever an addition is made on the basis of estimate, penalty u/s 271(1)C is not leviable. There is no scope to levy penalty under the said section. Accordingly, in the given set of facts, the penalty levied u/s.271(1)(c) is deleted. Ground raised by the assessee is allowed."

7.4 In view of the facts of the case and the decisions of the Hon'ble ITAT referred above, penalty of Rs.1,76,120/- levied by the AO u/s.271(1)(c) of the Act is deleted. Accordingly, this ground of the appeal is Allowed.

8. In the result, the appeal of the assessee for A.Y.2014-15 is Partly Allowed"

11. Being aggrieved, the Revenue has now preferred the present appeal before the Tribunal on the grounds reproduced in Paragraph 3 above.
12. We have heard both the sides, and have perused the material on record including the orders passed in the quantum proceedings as well as penalty proceedings placed before us and have taken into consideration the judicial precedents cited during the course of hearing, as well as the written submission, dated 08/01/2026, filed by the Learned Departmental Representative.
13. We note that the Learned CIT(A) had deleted penalty levied under Section 271(1)(c) of the Act observing that the addition in respect of alleged bogus purchases was sustained to the extent of 2% such purchases, and since the addition was sustained on estimate basis,

penalty under Section 271(1)(c) of the Act could not be levied. This has been challenged by the Revenue by way of present appeal.

14. It is admitted position that in the quantum proceedings the Tribunal had dismissed the appeal preferred by the Assessee as well as Revenue for the Assessment Year 2014-2015 and had confirmed the order passed by the Learned CIT(A) restricting the quantum addition to 2% of alleged bogus purchases of INR.2,59,07,668/-. The relevant extract of the Common Order dated 26/05/2023, (disposing off Cross-Appeals pertaining to Assessment Years 2014-2015 to 2020-2021), whereby the Tribunal had dismissed the aforesaid cross-appeals for the Assessment Year 2014-2015 [ITA 2275/Mum/2022 and 2626/Mum/2022] reads as under:

"13. Accordingly an assessment order under section 153A read with section 143(3) of the act was passed determining the total income of the assessee at ₹ 481,660,720 against the returned income of ₹ 430,976,130 wherein two additions/disallowances were made, (1) disallowance of bogus purchases of ₹ 130,068,426/- and (2) addition under section 68 on account of unexplained cash credit of ₹ 20,616,167/-.

14. In similar manner, following additions or disallowances were made for other assessment years:-

serial number	Assessment year	Addition on account of alleged bogus purchases	Addition on account of alleged cash credit under section 68 of the act
1	2015 – 16	20,17,69,283	33,33,334
2	2016 – 17	15,80,15,644	6,10,000
3	2017 – 18	7,30,88,524	6,08,334
4	2018 – 19	8,85,94,455	5,20,833
5	2019 – 20	12,52,40,878	17,80,590
			under section 69C of the act being alleged unexplained expenditure
6	2020 – 21	11,58,20,929	Nil

15. Assessee preferred appeal before the learned CIT-A. The learned CIT-A passed a consolidated order for assessment year 2014-15 to 2020-21.

16. *Appellate proceedings before the learned CIT – A resulted into the appellate order wherein:-*

i. xx xx

ii. *With respect to the disallowance of bogus purchase of ₹ 136,800,426/-, assessee claimed that the disallowance has been made with respect to purchases from 21 parties.*

a) *It was submitted that addition with respect to parties listed at serial number 1 to 11 is for the reason that these parties have not been found at the addresses and were not accompanied with delivery challans. Parties at serial number 12 to 15 were disallowed stating that suppliers have weak financials.*

b) *With respect to one party M/s Nidhi Enterprises, the learned AO made the addition for the reason that the proprietor of the firm does not know anything about the business and she has given her permanent account number to someone at a monthly compensation of ₹ 10,000.*

c) *With respect to parties stated at serial number 17 to 21, the disallowance is made based on statement of Mr. J P Shah.*

d) xx xx

e) xx xx

f) ***With respect to the other parties where the statement of directors was recorded, it was submitted that the transaction stated by the director happened only in year 2018 and not in the current year. Therefore, it has no relevance during other Assessment years other than AY 2019-20. It was submitted that the statement of Mr. Shah was accepted partly for making addition and rejected partly wherein he stated that the relevant transaction***

pertaining to only one year. Therefore, the addition requires to be deleted.

- g) The learned CIT – A divided the transaction of disallowance in three parts (1) the parties for which some incriminating evidences were found during search, (2) this 11 is with respect to purchases from Nidhi enterprises, (3) other parties.
- h) With respect to the parties for which some incriminating evidences found during the course of search, the learned CIT – A found that statement of director was recorded under section 132 (4) of the act and also a document was found and seized from the residence of the director. The amount mentioned in the loose seat was cash received from the vendors to whom assessee paid through cheques. The difference because of over booking of expenses was returned in cash to the cashier at different site. The statement of the director proved that the cash was received back from the vendors for booking of inflated expenses. The names of certain parties were also mentioned in those loose seats. **The learned CIT-A also rejected the argument of the assessee that though the period mentioned therein was 11/11/2018 to 21/11/2018 but the fact remains that the purchases were made by the appellant also during assessment year 2014 – 15 from the five parties. Therefore, the purchases made from these parties were not considered as genuine to the extent of inflated expenses and action of the learned assessing officer was upheld.**
- i) With respect to the above parties, the learned CIT – A noted that when there are non genuine purchases, only to the extent of cash received back the purchases could be treated as non genuine. With respect to the balance parties, there has been no

evidence about the extent of inflated purchases. It was also not on record that the above parties have not supplied the goods. Therefore, purchases are made but bills are inflated to the extent cash is received back by the cashier. The assessee has made a total purchase of Rs2,59,07,668/- from the above five parties therefore, the disallowance of purchase amounting to **2% of ₹ 2,59,07,668/-** in respect of purchases made from them was **upheld and balance disallowance was deleted.**

j. to l xx xx

iii & iv. xx xx

17. As already stated, learned CIT – A passed a consolidated order for assessment year 2014-15 to assessment year 2020-21. The effect of the above order is as under:

assessment year	addition made by the AO on account of bogus purchases	addition confirmed by the learned CIT – A
2014 – 15	13,00,68,426	5,18,153
2015 – 16	20,17,69,283	6,81,939
2016 – 17	15,80,15,644	9,40,590
2017 – 18	7,30,88,524	7,76,720
2018 – 19	8,85,94,455	5,91,572
2019 – 20	12,52,40,878	5,89,107
2020 – 21	11,58,20,929	6,95,649

18. With respect to the addition under section 68 or under section 69C of the learned CIT [A] by this consolidated order deleted the addition/confirmed the addition as under:-

Assessment year	Addition made by the AO on account cash credit/unexplained expenditure	Addition confirmed by the learned CIT-A
2014 – 15	2,06,16,167	Nil
2015 – 16	33,33,334 (loan of ₹25lakhs and interest of ₹ 1 lakh thereon)	Nil

	<i>along with another interest of ₹ 633,334)</i>	
<i>2016 – 17</i>	<i>6,10,000 (only interest portion)</i>	<i>Nil</i>
<i>2017 – 18</i>	<i>6,08,003 and 34 (interest only)</i>	<i>Nil</i>
<i>2018 – 19</i>	<i>520,833 (interest only)</i>	<i>Nil</i>
<i>2019 – 20</i>	<i>70,80,590/- expenditure under section 69C</i>	<i>₹ 7,080,590</i>
<i>2020 – 21</i>	<i>Nil</i>	<i>Nil</i>

19. *Thus the learned assessing officer is aggrieved by the addition deleted by the learned CIT – A with respect to bogus purchases and assessee is aggrieved by the amount of addition confirmed by the learned CIT – A and therefore both the parties are in appeal before us.*

20-26 xx xx

27. *We have carefully considered the rival contention and perused the orders of the lower authorities. We have also considered the three-paper books submitted by the assessee containing 945 pages. In all these appeals, there are two kinds of additions made by the learned assessing officer. (1) Disallowance of purchase, (2) and under section 68 of the act with respect to the loans in the first 2 years i.e. assessment year 2014-15 and assessment year 2015-16 and subsequent payment of interest in the respective years to the lenders.*

28-30 xx xx

31. *The last leg of the purchase is with respect to the purchases made from five parties by the assessee wherein the learned assessing officer has disallowed the purchases completely. The claim of the assessee is that the disallowance was made on the basis of the statement of Mr. JP Shah who did not state that the payments made towards purchases were received back by the assessee. It is lose sheets, which suggests so for FY 2018-19. However, the learned assessing officer has ignored the statement that the transaction of receiving the cash happened*

once only and that too in assessment year 2018-19. For this proposition assessee relied upon the decision of the honourable Gujarat High Court in 252 ITR 417, 270 TTJ 70 65 TTJ 327 and 56 TTJ 460. The learned CIT – A with respect to these parties where statement of the director of the assessee recorded under section 132(4) during the search proceedings in which he has stated that loose sheet seized from his resident by assessee from vendors of the assessee, remain unchallenged. The amount mentioned in the loose sheet was cash received from the vendor to whom assessee has paid through cheques. The difference on account of over booking of expenses was returned in cash to the cashier at different sites. The cashier in turn handed over the cash to the director. Therefore, the statement of Shri J P Shah proves that the cash was received back from the vendor for booking of inflated expenses. The assessee has reflected the relevant transactions for the period 11/11/18 to 21/11/2018. **The learned lower authorities have stated that though these transactions does not pertain the assessment year 2014-15 to 2017-18, but held that these activities of inflation of the expenses must be continuing in other period also i.e. in the current assessment year. The statement of the director was with respect to the amount of cash received, which are the inflated expenses. Therefore, the fact shows that the amount of inflation in the expenses is not the total expenses but some percentage of such expenses. As there is no information available and no evidence is available about the extent of inflated purchases, the learned CIT-A confirmed 2% of the total purchases from the above-mentioned parties as non genuine. The claim of the assessee before us is that in absence of any evidence for this assessment year, no disallowance can be made. The learned authorized representative could not show us any reason that why the same system should not be presumed to have been carried on in this year also which were found in assessment year 2019-20. The claim of the assessee is that it cannot prove negative. The learned departmental representative also stated that there is a presumption available against the assessee that assessee is booking inflated expenses with respect to these parties. On the facts and circumstances of the case and in the interest of justice, we do not find any infirmity in the order of the learned CIT-A in upholding the disallowance of 2% of such purchases, because it is beyond the human probabilities**

that the assessee has carried out inflation of expenditure with respect to this parties only for the period of assessment year 2019 – 20. Accordingly, the order of the learned CIT – A is upheld. Ground number 1 and 2 of the appeal of the AO and ground number 3 of the appeal of the assessee is dismissed.

32. xx xx

33. *Accordingly, appeals of the assessee as well as the learned assessing officer for AY 2014-15 are dismissed.*

34. *As the facts for assessment year 2015-16 to 2020-21 are similar, the grounds of appeal of the parties are also similar, the arguments of the parties are also the same, and therefore, we do not incline to change our reasons also. In view of our finding for assessment year 2014-15, we uphold the order of the learned CIT-A in deleting the disallowance of purchase expenses to the extent deleted by him, deleting the disallowance of interest expenditure paid on loans added under section 68 of the income tax act. In the result, for all these years appeals filed by the AO as well as the assessee are dismissed.*

35. *In the result all 14 appeals filed in case of Relcon Infra projects Limited by the assessee and the learned assessing officer for assessment year 2014-15 to 2020-21 are dismissed.” (Emphasis Supplied)*

15. On perusal of above extract of the decision of the Tribunal in quantum proceedings for the Assessment Year 2014-2015, we find that the Co-ordinate Bench of the Tribunal had held that:

(a) The lower authorities had concluded that even though the statement of Shri Jainendera P Shah pertained to transactions for the financial year 2018-2019 relevant to the Assessment Year 2019-2020, the activities of inflation of the expenses must have continued in other periods (including the previous year relevant to the Assessment Year 2014-2015). It was beyond the human probabilities that the Assessee had inflated purchase expense related to alleged bogus purchases made

from same parties/vendors only for the Assessment Year 2019–2020. Therefore, the contention of the Assessee that the purchases were not inflated in Assessment Year other than Assessment Year 2019-2020 cannot be accepted.

- (b) No information or evidence was available about the extent of inflated purchases and therefore, the order of the Learned CIT(A) had confirmed the addition to the extent of 2% of the alleged bogus purchases. The claim of the Assessee that in absence of any evidence, no disallowance can be made was not acceptable as the Assessee could not show any reason as to why the system found to be in operation for the Assessment Year 2019–2020 should not be presumed to have been carried on during the Assessment Year 2014-2015.

16. On perusal finding returned by the Co-ordinate Bench of the Tribunal in the quantum proceedings, it becomes clear that the addition in respect of alleged bogus purchases were sustained to the extent of 2% of alleged bogus purchases on estimate basis in absence of any material to determine the extent of inflation of purchase expenses. The Tribunal had observed that though there was no information or evidence available regarding the extent of inflation of purchases the order passed by the Learned CIT(A) restricting the disallowance to 2% of the alleged bogus purchases did not warrant any interference as it was beyond human probabilities to conclude that Assessee would have inflated expenditure only for the Assessment Year 2019-2020. It was presumed that the same system would have operated during the previous year relevant to the Assessment Year 2014-2015 also. Given the aforesaid, we do not find any infirmity in the order passed by the Learned CIT(A) in deleting the penalty levied under Section 271(1)(c) of the Act by placing reliance upon the decision of the Tribunal in the case of Dev Engineers Vs. Deputy Commissioner of Income Tax [ITA No 6002/Mum/2024, dated

20/02/2025], Assistant Commissioner of Income Tax Vs. Chetan Pravin Chitalia [ITA No 2100/Mum/2025, dated 16/05/2025] and Income Tax Officer Vs. Tisya Jewels [ITA 869/Mum/2025, dated 27/06/2025] cited on behalf of the Assessee during the course of hearing before the Learned CIT(A).

17. In the case of Assistant Commissioner of Income Tax Vs. Chetan Pravin Chitalia [ITA No 2100/Mum/2025, dated 16/05/2025] the Tribunal had deleted the penalty levied under Section 271(1)(c) of the Act in respect of additions made in respect of alleged bogus purchases on the ground that the said additions were made on estimate basis holding as under:

"7. *We have heard both the parties and perused the materials available on record. We have also deliberated upon the decisions relied upon by the parties. Though the revenue has raised 10 grounds of appeal, they are either inter-connected or are general in nature. Hence, the grounds are decided together in terms of the discussion made hereafter. The re-assessment order was passed u/s 143(3) r.w.s. 147 of the Act by disallowing 100% of the purchases of Rs.1,01,43,657/- from M/s Reliance Steel Traders and M/s CR Enterprises. The disallowance was restricted to 12.5% of the impugned purchase by CIT(A) and ITAT. Thus, it is clear that the additions all through have been made on estimation basis. The penalty u/s 271(1)(c) of the Act has been levied on the estimated addition by the AO, which has been deleted by the CIT(A). The Id. AR has argued that different ITATs, Hon'ble Supreme Court and High Courts 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, Mumbai in cases of Elcon Pipe and Fittings (supra) and Mun Gems vs. ACIT, 155 taxmann.com 1 (Bom.) and ITAT, Surat in cases of Yogendra Raj U Sanghvi, ITA No. 459/SRT/2021, dated 19.10.2023 and DCIT vs. M/s Opulent Jewels Pvt. Ltd., 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 (supra) has held that where AO treated entire purchase as bogus based on findings of investigation wing and levied penalty u/s 271(1)(c) of the Act, since payment for purchases had been made through account payee cheques and there were 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 u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income or concealing particulars of income. Since the facts are similar, following the above decisions, the order of CIT(A) in deleting the penalty levied u/s 271(1)(c) of the Act is upheld. Accordingly, the grounds of the revenue are dismissed.

8. *In the result, appeal of the revenue is dismissed”*

18. In view of the above, we hold that the order passed by the Learned CIT(A) deleting penalty of INR. INR.1,76,210/- levied under Section 271(1)(c) of the Act for the Assessment Year 2014-2015 does not suffer from any infirmity and therefore, we decline to interfere with the same. All the grounds raised by the Revenue are dismissed.
20. In result appeal preferred by the Revenue is dismissed.

ITA No.7065/Mum/2025 & ITA No.7066/Mum/2025
[Assessment Year 2015-2016 & 2016-2017]

21. Next we would take up appeal preferred by the Revenue for the Assessment Year 2015-2016 and 2016-2017.
22. The Revenue is aggrieved by the fact that the Learned CIT(A) has deleted the penalty of INR.2,31,791/- and INR.3,25,519/- levied by the Assessing Officer under Section 271(1)(c) of the Act for the Assessment Years 2015-2016 and 2016-2017, respectively.

23. The Revenue has raised following grounds of appeal in ITA No.7065/Mum/2025 [Assessment Year 2015-2016] :

"1. The Ld. CIT(A) erred in deleting the penalty of Rs.2,31,791/- u/s.271(1)(c) of the Act being 100% of alleged tax sought to be evaded on estimation disallowance made of Rs.6,81,952/- (2% of Rs.3,40,97,530/-) on bogus purchases made by the assessee in the assessment order by holding that the assessee has concealed the particulars of income."

24. The Revenue has raised following grounds of appeal in ITA No.7066/Mum/2025 [Assessment Year 2016-2017] :

"1. The Ld. CIT(A) erred in deleting the penalty of Rs.3,25,519/- u/s.271(1)(c) of the Act being 100% of alleged tax sought to be evaded on estimation disallowance made of Rs.9,40,590/- 2% on bogus purchases made by the assessee in the assessment order by holding that the assessee has concealed the particulars of income."

25. During the course of hearing both the sides adopted the submissions made in respect of appeal for the Assessment Year 2014-2015 and agreed that our finding/adjudication on the grounds raised in appeal for the Assessment Year 2014-2015 shall apply mutatis mutandis to grounds raised in appeal for the Assessment Year 2015-2016 and 2016-2017. Accordingly, keeping in view identical facts and circumstances, and adopting the reasoning given while adjudicating appeal for the Assessment Year 2014-2015 [ITA No.7064/Mum/2025] hereinabove, we dismiss the ground raised by the Assessee in appeal for the Assessment Year 2015-2016 and Assessment Year 2016-2017 and decline to interfere with the Orders passed by the Learned CIT(A) for the Assessment Years 2015-2016 and 2016-2017, both dated 18/08/2025, deleting penalty of

INR.2,31,791/- and INR.3,25,519/- levied under Section 271(1)(c) of the Act, respectively.

26. In result, the present appeal preferred by the Revenue for the Assessment Year 2015-2016 [ITA.No.7065/Mum/2025] and Assessment Year 2016-2017 [ITA.No.7066/Mum/2025] are dismissed.

ITA No.7067/Mum/2025 [Assessment Year 2017-2018]

27. Now we would take up appeal preferred by the Revenue against the order, dated 18/08/2025, passed by the Learned CIT(A) whereby the Learned CIT(A) had partly allowed the appeal against the Penalty Order, dated 29/03/2024, passed under Section 270A of the Act for the Assessment Year 2017-2018.
28. The Revenue is aggrieved by the fact that the Learned CIT(A) has deleted the penalty of INR.5,37,613/- levied by the Assessing Officer under Section 271(1)(c) of the Act for the Assessment Years 2017-2018 and has raised following grounds of appeal in ITA No.7067/Mum/2025 [Assessment Year 2017-2018] :

"1. The Ld. CIT(A) erred in deleting the penalty of Rs.5,37,613/- u/s.270A of the Act being 200% of alleged tax sought to be evade on estimated disallowance made of Rs.7,76,720/- 2% on bogus purchases made by the assessee in the assessment order by holding that the assessee had under reported income in consequence of misreporting of income."

29. We note that in facts and circumstances identical to those prevailing in the previous year relevant to the Assessment Year 2014-2015, Penalty of INR.5,37,612/- was levied upon the Assessee under Section 270A of the Act for the Assessment Year 2017-2018. The aforesaid penalty was deleted by the Learned CIT(A) vide Order

dated 18/08/2025. Being aggrieved, the Revenue has now preferred the present appeal on the grounds reproduced at Paragraph 28 above.

30. The Learned Departmental Representative adopted the arguments made for the Assessment Year 2014-2015. In addition the Learned Departmental Representative submitted that the Learned CIT(A) has failed to appreciate that in the present case the Assessee has clearly misreported his income and therefore, penalty was leviable upon the Assessee in terms of Section 270A of the Act. Relying upon the Common Order, dated 26/05/2023, passed by the Tribunal in Cross-Appeals in quantum proceedings for the Assessment Year 2014-2015 to 2020-2021 the Learned Departmental Representative submitted that the Tribunal had confirmed the order of the Learned CIT(A) sustaining the addition to the extent of INR.7,76,720/- being 2% of the alleged bogus purchases of INR.3,88,35,977/- made from identified parties. Therefore, it was beyond doubt that the Assessee had under reported its income. The Assessing Officer had recorded that the claim of expenditure to the extent of INR.7,76,720/- was not supported by any evidence and therefore it was establish beyond doubt that the Assessee had under reported income in consequence of misreporting income in terms of Section 270A(1)(9)(c) of the Act.
31. Per contra the Learned Authorized Representative for the Assessee reiterated the stand taken for the Assessment Year 2014-2015. It was submitted that for the Assessment Year 2017-2018 the addition was made on estimate basis, therefore, no penalty under Section 270A of the Act could be levied on the Assessee in view of the decision of Pune Bench of the Tribunal in the case of Rajendra Sadashiv Patil Vs. Assistant Commissioner of Income Tax [ITA No.669/Pune/2022]. It was further submitted that relevant documents and details submitted by the Assessee in relation to the alleged bogus purchases during the assessment proceedings and

that the Assessing Officer had failed to point out any infirmity in the same. The addition was sustained by the Tribunal on the presumption that the system which was operational in the Assessment Year 2017-2018 [as per statement of Mr. Jainendra P. Shah recorded during the search proceedings] was also operational during the relevant previous year.

32. We have given thoughtful considerations to the rival considerations and have perused the material on record.
33. It is clear that facts and circumstances identical to Assessment Year 2014-2015, the Assessing Officer had made disallowance of INR.3,88,35,977/- in respect of alleged bogus purchases made from parties identified on the basis of statement of Mr. Jainendera P Shah for the Assessment Year 2017-2018. The aforesaid disallowance was restricted to INR.7,76,720/- [being 2% of the such purchases] by the Learned CIT(A). Vide Common Order, dated 26/05/2023, the Tribunal had confirmed the order passed by the Learned CIT(A) dismissing the cross-appeals for the Assessment Year 2017-2018. On perusal of Paragraph 13, 14, 17, 33 and 34 of the aforesaid Common Order, dated 26/05/2023, (disposing off Cross-Appeals pertaining to Assessment Years 2014-2015 to 2020-2021 in quantum proceedings - relevant extract reproduced in paragraph 14 above), we find that the Tribunal had after taking note of parity of facts, dismissed the cross-appeals for the Assessment Year 2017-2018 [ITA 2278/Mum/2022 and 2629/Mum/2022] adopting the reasoning/finding given in Cross-Appeals for the Assessment Year 2014-2015. Therefore, our finding/adjudication in appeal for the Assessment Year 2014-2015 to the effect that the addition in the hands of the Assessee was made on estimate basis hold good for the Assessment Year 2017-2018. While adjudicating appeal preferred by the Revenue for the Assessment Year 2013-2014, we have noted that in the quantum proceedings the addition was confirmed to the

extent of 2% of the alleged bogus purchases on estimate basis as there was no material on record to establish the extent of inflation of alleged bogus purchases. At the same time it cannot be said that the Assessee had offered explanation which was bonafide and the Assessee had disclosed all material facts to substantiate the explanation so offered. To the contrary the contention of the Assessee that the purchases were not inflated was rejected by the Tribunal in the quantum proceedings. However, in absence of any material regarding the extent of inflation, the addition was made on estimate basis at 2% of alleged bogus purchases. Therefore, the benefit of Section 270A(6) of the Act cannot be extended to the Assessee in the facts and circumstances of the present case. Accordingly, we reject the contention of the Assessee that no penalty under Section 270A of the Act could have been levied upon the Assessee in terms of Section 270A(6) of the Act in the present case. Having concluded as aforesaid, we do find merit in the contention advanced on behalf the Assessee that the case before us is not one in which deduction was claimed by the Assessee without any material. We note that in the quantum proceedings the Assessee had placed before the Assessing Officer the following document/details to substantiate the purchases - (a) sample invoices showing the vehicle number of vehicle used for transportation, (b) Ledger Account of parties maintained by the Assessee and by the of counter party or vendor. However, the same were rejected by the Assessing Officer in view of the statement of Mr. Jainendera P Shah. In the aforesaid statement, recorded on 08/11/2019 under Section 132 of the Act had, Mr. Jainendera P Shah had stated, inter alia, as under:

"Q.22 I am showing you loose sheet as page number 4 of the Seized Material. Please confirm it is found from your residence and please comment on the same.

Ans. Sir, I confirm that the said loose sheet is found from my residence. The names mentioned in the right half of the paper are the vendors of M/s.Relcon Infraprojects Ltd. at Padga, Kharghar and Nagla Sites. These amounts are received in cash from the vendors to whom M/s. RelconInfraprojects Ltd. paid through cheque. The difference on account of overbooking of expenses is returned in cash to the cashier at different sites, who in turn hands over the cash to me. During the period of 11.11.2018 to 21.11.2018 total cash of Rs.70,80,590/- was handed over by the cashier at different sites to me. I have handed over the said cash of Rs.70,80,590/- to the cashier of Ms/ Relcon Infraprojects Ltd. Which constitutes over expenditure booked by M/s.Relcon Infraprojects Ltd. in its books accounts.

Q.23 Please state how many times you have received cash in such from during the last six years.

Ans. Sir, as far I know we have done it only once."

34. In the above statement, Mr. Jainendera P Shah had admitted that the Assessee had inflated purchased expenses and received back part of inflated purchase consideration in cash for specified transaction. Though the transactions disclosed by Mr. Jainendera P Shah were undertaken between 11/11/2018 to 21/11/2018, falling within the previous year 2018-2019 relevant to Assessment Year 2019-2020, it was presumed by the Learned CIT(A) that the same state of affairs had existed in other years (including previous year relevant to the Assessment Year 2017-2018). The aforesaid Order passed by the Learned CIT(A) stands confirmed by the Tribunal vide Common Order, dated 26/05/2023.
35. We note that in the Assessment Order, dated 30/09/2021, for the Assessment Year 2017-2018, the Assessing Officer has initiated penalty proceedings recording as under:

"6.11. *In view of the above discussion, it is clearly explained that the assessee has claimed bogus purchase to inflate the expenses and to reduce the taxable income. Thus, bogus purchase expenses of Rs.7,30,88,524/-, claimed as purchase from the bogus parties, as discussed above in FY 2016-2017 relevant to Assessment Year 2017-18 is hereby disallowed and is added to the total income of the assessee in Assessment Year 2017-18 as bogus expense. Penalty proceedings under Section 270A of the Income Tax Act 1961 are hereby initiated on this issue for concealing the particulars of the income and for furnishing inaccurate particulars of the taxable income." (Emphasis supplied)*

36. Thus, the penalty proceedings were initiated for 'concealing the particulars of income and for furnishing inaccurate particulars of taxable income'. Though, Section 270A of the Act was mentioned there was no reference to under-reporting or misreporting of income. In the subsequent notice dated 18/01/2022 and 10/11/2023 issued under Section 274 read with 270A of the Act, the Assessing Officer confronted the Assessee with the charge of under-reporting of income in consequence of misreporting. In reply it was contended by the Assessee that the Assessee Clause (a) to (e) of Section 270A(9) of the Act were not attracted in the case of the Assessee. Finally, the Assessing Officer passed Penalty Order, dated 29/03/2024, levying penalty under Section 270A(9)(c) of the Act. We have noted hereinabove that in the present case in order to substantiate the entries of purchases recorded in the books of accounts, the Assessee had furnished documents/details which were considered by the Tribunal in the quantum proceedings. However, based upon the statement of Mr. Jainendra P Shah (relevant extract reproduced in Paragraph 14 above), it was concluded that the purchases were inflated and the addition was restricted to 2% alleged bogus purchases. Therefore, in the facts and circumstances of the present case, it cannot be said that in the present case the

claim for deduction for purchase expenses was '*not substantiated by any evidence*'. Therefore, the under-reporting of income by the Assessee cannot be regarded as under-reporting in consequence of misreporting falling within the ambit of Section 270A(9)(c) of the Act. Accordingly, we concur with the conclusion reached by the Learned CIT(A) that the penalty levied by the Assessing Officer under Section 270A(9)(c) of the Act in the present case cannot be sustained. Thus, all the grounds raised by the Revenue are dismissed.

37. In result the present appeal preferred by the Revenue for the Assessment Year 2017-2018 is dismissed.

ITA No.7068/Mum/2025 [Assessment Year 2018-2019]
ITA No.7069/Mum/2025 [Assessment Year 2019-2020]
& ITA No.7070/Mum/2025 [Assessment Year 2020-2021]

38. Next we would take up appeal preferred by the Revenue for the Assessment Year 2018-2019, 2019-2020 and 2020-2021.
39. The appeals for the Assessment Year 2018-2019, 2019-2020 and 2020-2021 have been preferred by the Revenue against orders passed by the Learned CIT(A) whereby the Learned CIT(A) had partly allowed the appeal against the Penalty Order, dated 29/03/2024, passed under Section 270A of the Act. The Revenue is aggrieved by the fact that the Learned CIT(A) deleted the penalty of INR.4,09,464/-, INR.5,52,285/- and INR.4,86,174/- levied by the Assessing Officer under Section 270A of the Act for the Assessment Year 2018-2019, 2019-2020 and 2020-2021, respectively.
40. The Revenue has raised following grounds of appeal in ITA No.7068/Mum/2025 [Assessment Year 2018-2019] :

"1. *The Ld. CIT(A) erred in deleting the penalty of Rs.5,37,613/- u/s.270A of the Act being 200% of alleged*

tax sought to be evade on estimated disallowance made of Rs.7,76,720/- 2% on bogus purchases made by the assessee in the assessment order by holding that the assessee had under reported income in consequence of misreporting of income.”

Identical grounds have been raised by the Revenue for the Assessment Year 2019-2020 and 2020-2021.

41. During the course of hearing both the sides substantially adopted the submissions made in respect of appeal for the Assessment Year 2017-2018 and agreed that our finding/adjudication on the common contentions raised in appeal for the Assessment Year 2017-2018 shall apply mutatis mutandis to contentions raised in appeal for the Assessment Year 2018-2019, 2019-2020 and 2020-2021. Accordingly, keeping in view identical facts and circumstances, and adopting the reasoning given while adjudicating appeal for the Assessment Year 2017-2018 [ITA No.7067/Mum/2025] hereinabove, we concur with the conclusion reached by the Learned CIT(A) that the penalty levied by the Assessing Officer under Section 270A(9)(c) of the Act for the Assessment Year 2018-2019, 2019-2020 and 2020-2021 cannot be sustained. We dismiss all the grounds raised by the Revenue in appeal for the Assessment Year 2018-2019, 2019-2020 and 2020-2021 and decline to interfere with the order passed by the Learned CIT(A) deleting penalty of INR.4,09,464/-, INR.4,12,132/- and INR.4,86,174/- levied under Section 270A of the Act for the Assessment Year 2018-2019, 2019-2020 and 2020-2021, respectively.

Additional contention for the Assessment Year 2019-2020

42. Before parting we would like to deal with additional contention raised by the Assessee in appeal for the Assessment Year 2019-2020. It was contended on behalf of the Assessee that penalty levied under

Section 270A of the Act in respect of alleged bogus purchases for the Assessment Year 2019-2020 cannot be sustained since penalty under Section 271AAC of the Act has already been levied in respect of addition made by the Assessing Officer under Section 69C of the Act in respect of the same purchases. In order to deal with the aforesaid contention raised by the Assessee it would be pertinent to refer to the relevant factual background.

- 42.1. For the Assessment Year 2019-2020, vide Assessment Order, dated 30/09/2021, passed under Section 143(3) read with Section 153A of the Act the Assessing Officer assessed the income of the Assessee at INR30,65,14,720/- after making the following additions and/or disallowances:

Sr. No.	Particulars	Amount (in INR)
1.	Alleged bogus purchases	12,52,40,878
2.	Disallowance of unexplained expenditure under Section 69C of the Act	70,80,590
	Total additions/disallowance	13,23,21,468

- 42.2. The Assessee challenged the additions/disallowances made by the Assessing Officer in appeal before the Learned CIT(A). Vide Order, dated 15/07/2022, the Learned CIT(A) disposed off the said appeal confirming the addition of INR.70,80,590/- made by the Assessing Officer under Section 69C of the Act in respect of cash received back by the Assessee from suppliers/vendors. As regards the addition of INR.12,52,40,878/- made by the Assessing Officer in respect of alleged bogus purchases is concerned, the Learned CIT(A) deleted the addition made by the Assessing Officer in respect of alleged bogus purchases of INR.9,57,85,536/-. As regards the balance addition of INR.2,94,55,536/- made by the Assessing Officer in respect of alleged bogus purchases made from suppliers/vendors (*in relation to which incriminating documents relating to overbooking of expenses as well as receipt/return of cash was found during search*), the Learned CIT(A) restricted the disallowance to INR.5,89,107/- [@2%

of INR.2,94,55,536/-] and deleted the remaining addition of INR.2,53,89,514/-.

- 42.3. Being aggrieved, both, the Assessee as well as Revenue, filed appeal before the before the Tribunal [ITA 2275/Mum/2022 and 2626/Mum/2022]. Vide Common Order, dated 26/05/2023, (disposing off Cross-Appeals pertaining to Assessment Years 2014-2015 to 2020-2021), the Tribunal dismissed the aforesaid cross-appeals for the Assessment Year 2019-2020. Thus, For the Assessment Year 2019-2020, addition of INR.70,80,590/- made by the Assessing Officer under Section 69C of the Act and addition made by the Assessing Officer on account of alleged bogus purchases for the Assessment Year 2019-2020 only to the extent of INR.5,89,107/- got sustained.
- 42.4. The appeal under consideration preferred by the Revenue pertains to penalty levied under Section 270A of the Act vide Penalty Order, dated 29/03/2024 in relation to the above addition of INR.5,89,107/- which was deleted by the Learned CIT(A). A separate penalty order, dated 29/03/2024, was passed by the Assessing Officer levying penalty of INR.5,52,285/- under Section 271AAC of the Act in respect of addition of INR.70,80,590/- made under Section 69C of the Act which was brought to tax at the rate of 60% under Section 115BBE of the Act.
- 42.5. The addition under Section 69C of the Act was made in respect of cash received back by the Assessee in respect of purchases made from identified parties. The transactions relevant for the aforesaid addition were those undertaken by the Assessee between 11/11/2018 and 21/11/2018. Whereas, the disallowance of INR.5,52,285/- was made in respect of purchase made from the same parties during the relevant previous year and the charge against the Assessee was inflation of purchases. Since there was no

material to determine the quantum of inflation, the disallowance was made on estimate basis at the rate of 2% of aggregate alleged bogus purchases of INR.2,94,55,536/- made from the said parties. Therefore, it cannot be said that addition of INR.5,52,285/- resulted in double taxation of same income in absence of one to one correlation between the inflated purchases made from the specified parties/vendors and cash received back from such specified parties/vendors in respect of inflated purchases. Further, if the contention of the Assessee is accepted then taking into consideration the addition of INR.70,80,590/- made under Section 69C of the Act in respect of cash received specified parties/vendors and the aggregate purchases of INR.2,94,55,536/- made from the said parties, the extent of inflation of purchases would come to a figure much higher than the inflation of 2% of alleged purchases estimated by the appellate authorities. Therefore, we reject the contention of the Assessee that penalty levied under Section 270A of the Act in respect of alleged bogus purchases for the Assessment Year 2019-2020 cannot be sustained since penalty under Section 271AAC of the Act has already been levied in respect of addition made by the Assessing Officer under Section 69C of the Act in respect of the same purchases. It is clarified that we have already confirmed the order passed by the Learned CIT(A) deleting penalty levied for the Assessment Year 2019-2020 under Section 270A of the Act, albeit, for different reasons. In our view, penalty levied by the Assessing Officer under Section 270A of the Act for the Assessment Year 2019-2020 was also not sustainable on account of the fact that in Paragraph 6.11 of the Assessment Order, dated 39/03/2024, passed for the Assessment Year 2019-2020 under Section 153A read with Section 143(3) of the Act the Assessing Officer had recorded that penalty proceedings were being initiated under Section 271(1)(c) of the Act for '*concealing the particulars of income and for furnishing inaccurate particulars of the taxable income*' and not under Section

270A of the Act for under-reporting/misreporting of income.

43. Thus, in conclusion, in view of Paragraph 20, 26, 37, 41 and 42.5 above, all the seven appeals preferred by the Revenue are dismissed.

Order pronounced on 19.01.2026.

Sd/-
(Vikram Singh Yadav)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated :19.01.2026
Milan,LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai