

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

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1864 to 1868/PUN/2025  
निर्धारण वर्ष / Assessment Years : 2007-08 to 2011-12

|  |     |                       |
|--|-----|-----------------------|
| M/s. Size Control Gauges<br>And Tools Pvt. Ltd.,<br>Plot No.100/101, Tiny<br>Industries Co-op. Estate<br>Ltd., Pisoli Road, Kondhwa<br>(Bk), Pune- 411048.<br>PAN : AACCS3670F | Vs. | DCIT, Circle-5, Pune. |
| Appellant  |     | Respondent            |

Assessee by : Shri Prayag Jha &  
Shri Pratik Jha  
Revenue by : Shri Sanjay Dhivare (Virtual)  
Date of hearing : 23.12.2025  
Date of pronouncement : 21.01.2026

**आदेश / ORDER**

**PER BENCH :**

The above captioned five appeals filed by the assessee are directed against the separate orders dated 10.07.2025 passed by Ld. CIT(A)/NFAC for the assessment years 2007-08 to 2011-12 respectively.

2. Since the identical facts and common issues are involved in all the above captioned five appeals of the assessee, we proceed to dispose of the same by this common order.

3. First, we shall take up the appeal of the assessee in ITA No.1864/PUN/2025 for assessment year 2007-08 as the lead case for adjudication.

**ITA No.1864/PUN/2025, A.Y. 2007-08 :**

4. The appellant has raised the following grounds of appeal :-

- “1. The Ld CIT(A) erred in not appreciating that the Ld Assessing Officer passed Penalty Order under section 271(1)(c) on 12.08.2024 mechanically ignoring the fact that the Penalty Order on the issue involved was already passed under section 271(1)(c) on 16.09.2021 after receipt of the Order of the Ld CIT(A)-2, Pune, and the impugned order is liable to be quashed.*
- 2. The Ld CIT(A) erred in not appreciating that the ITAT had not quashed the original Assessment Order dated 13.06.2014 but had only directed re-computation of disallowance out of alleged bogus purchases as per their direction and the Ld Assessing Officer was not justified in passing fresh Assessment Order on 28.02.2024 and in initiating penalty proceedings under section 271(1)(c).*
- 3. Without prejudice to Ground No. 1 and 2, the Ld CIT(A) erred in not appreciating that the assessee had not concealed particulars of income and the disallowance was made out of alleged bogus purchases on estimate basis and penalty for concealment of income was not imposable in respect of such estimated disallowance.*
- 4. The Ld CIT(A) erred in not appreciating that the assessee had not concealed the particulars of income and provisions of section 271(1)(c) were not attracted to the facts of the case.*
- 5. The above grounds of appeal are without prejudice to one another.*
- 6. The appellant craves leave to amend or alter any of the above Grounds of Appeal or to add new Grounds of Appeal during the course of appeal proceedings.”*

5. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of manufacturing & processing of Gauges & Tools. A survey action was conducted at

the business & factory premises of the assessee on 31.01.2013. During the survey, the director of the assessee company had confirmed that the company made bogus purchases during the year under consideration. Accordingly, vide order dated 13.06.2014 passed u/s 143(3) r.w.s. 147 of the IT Act, the Assessing Officer made addition of Rs.20,31,158/- as bogus purchases being 31.33% of total purchases of Rs.64,82,935/-. Being aggrieved with the aforesaid assessment order, the assessee filed an appeal before the Ld. CIT(A)-2, Pune. The Ld. CIT(A) vide its order dated 09.10.2019 directed the AO to restrict the addition to Rs.6,48,294/- which is 10% of total purchases of Rs.64,82,935/-. Subsequently, the Assessing Officer vide order dated 16.09.2021 imposed penalty of Rs.2,00,132/- u/s 271(1)(c) of the IT Act.

6. Being aggrieved with the order dated 09.10.2019 passed by Ld. CIT(A) in quantum appeal case, the assessee preferred appeal before the Tribunal and the Tribunal vide its consolidated order dated 27.07.2022 in ITA Nos.1778 to 1782/PUN/2019 modified the directions issued by Ld. CIT(A) and directed the Assessing Officer to re-compute the disallowance by restricting the addition to 10% of the bogus purchases of Rs.20,31,158/-, earlier determined by the Assessing Officer. Accordingly, giving effect to the order of the

Tribunal, vide order dated 28.02.2024 the assessment order u/s 143(3) r.w.s. 254 of the IT Act was passed and as per the direction of the Tribunal the addition on bogus purchase was restricted to Rs.2,03,116/- being 10% of the bogus purchases of Rs.20,31,158/- earlier determined by the Assessing Officer. Consequently, fresh penalty proceedings u/s 271(1)(c) were initiated.

7. In response to notice of penalty u/s 271(1)(c) dated 29.02.2024 and 19.07.2024, the assessee furnished reply and after considering the reply of the assessee, the Assessing Officer imposed penalty of Rs.71,684/- u/s 271(1)(c) of the IT Act by observing as under :-

*“3.1 Assessee company furnished its reply on 02.03.2024 stating that penalty order in this case has already been passed on 16.9.2021 u/s 271(1)(c) of the I.T. Act, 1961 by FPO and levied penalty of Rs.6,48,924/- after the receipt of the order of Ld. CIT(A). Assessee further stated that it moved to ITAT against the Ld. CIT(A) order and who directed the AO to make afresh assessment in this case. The assessee also requested to the AO to pass appeal effect order giving effect of the ITAT order but it is still pending. Assessee further stated that the penalty proceeding have already been disposed off and there is no justification or passing the Penalty order again in respect of the same issue and same disallowance.*

*3.2 Reply of the assessee company has duly been considered and found not to tenable because of, on carefully perusal of the Hon'ble ITAT order dated 27.02.2022, it appears that the quantum order of the assessment was quashed for the year under consideration and further directed to the AO to make afresh assessment. Therefore, when the quantum order of the assessment was quashed the penalty u/s 271(1)(c) of the IT Act, 1961 was deemed to be settled nullified for the year under consideration. Assessee company may approach to the Ld. CIT(A) and may also request for finalizing its appeal on the basis of the Hon'ble ITAT order.*

3.3 Further, on perusal of the records and facts of the case, it appears that Hon'ble, ITAT in its order dated 27.07.2022 directed to the Assessing Officer to make afresh assessment and also to determine the bogus purchase for the year under consideration. The Ld. ACIT, Circle-5, Pune recalculated the bogus purchases on the basis of details/documents furnished by the assessee company and made an addition of Rs.2,03,116/-. Therefore, on following the direction of the Hon'ble ITAT, the Ld. AO had passed the fresh assessment order on 28.02.2024 and subsequently initiated the fresh penalty u/s 271(1)(c) of the IT Act, 1961.

Subsequently, the penalty was received before the FPO (Faceless Penalty Officer) for disposal which is time barred on 31.08.2024.

.....

8. I hereby impose a penalty of Rs.71,684/- which is minimum imposable penalty being 100% of the tax sought to be evaded u/s 271(1)(c) of Income Tax Act, 1961 for concealment of the particulars of Income.”

8. Being aggrieved with the above penalty order dated 12.08.2024, the assessee preferred an appeal before Ld. CIT(A)/NFAC. After considering the reply of the assessee, Ld. CIT(A)/NFAC dismissed the appeal of the assessee by observing as under :-

“6.1 The appellant stated that the penalty order passed earlier on 16.09.2021 is to be set aside and quashed and the second order passed on 12.08.2024 should be decided on merits.

The facts of the case are considered. On perusal of pending appeals, it is noticed that no appeal is pending in the worklist against the penalty order passed earlier on 16.09.2021. That order is certainly to be set aside as the original order has been set aside by the Hon'ble ITAT. However, in the absence of that appeal reflected in the worklist, no decision can be taken. However, the AO should not pursue to collect the demand raised by penalty order passed earlier on 16.09.2021 as the assessment order on the basis of which penalty was imposed has been set aside.

In view of above observations, the ground no. 1 is disposed off.

6.2 .....

*The fact of bogus purchases is found to be accepted before the Hon'ble ITAT by the assessee and the profit element is confirmed by the Hon'ble ITAT in the case of the assessee which meant that assessee had concealed income to that extent in garb of purchases which turned out to be bogus. Therefore, the penalty levied by the AO u/s 271(1)(c) is justified and confirmed.*

.....

10. *In the result, the appeal of the appellant is treated as dismissed."*

9. It is the above order against which the assessee is in appeal before this Tribunal.

10. We have heard Ld. Counsels from both the sides and perused the material available on record including the paper book and copy of case laws furnished by the assessee.

11. In ground no.1 the assessee has challenged that the Ld. CIT(A) erred in not appreciating that the Ld. Assessing Officer passed penalty order u/s 271(1)(c) on 12.08.2024 mechanically, ignoring the fact that the penalty order on the issue involved was already passed u/s 271(1)(c) on 16.09.2021 after receipt of the order of the Ld CIT(A)-2, Pune, and the impugned order is liable to be quashed.

12. With regard to above ground no.1, we find that this ground was also raised before Ld. CIT(A) and Ld. CIT(A) has disposed the above ground by observing as under :-

"6.1 .....

*The facts of the case are considered. On perusal of pending appeals, it is noticed that no appeal is pending in the worklist against*

*the penalty order passed earlier on 16.09.2021. That order is certainly to be set aside as the original order has been set aside by the Hon'ble ITAT. However, in the absence of that appeal reflected in the worklist, no decision can be taken. However, the AO should not pursue to collect the demand raised by penalty order passed earlier on 16.09.2021 as the assessment order on the basis of which penalty was imposed has been set aside.*

*In view of above observations, the ground no. 1 is disposed off."*

13. On perusal of the above findings of Ld. CIT(A), we are of the considered opinion that there is no error in the order passed by Ld. CIT(A) on this issue since the assessee went in appeal before Ld. CIT(A) against the penalty order dated 12.08.2024 passed u/s 271(1)(c) of the IT Act and according to Ld. CIT(A) no appeal was pending against penalty order dated 16.09.2021 therefore no decision was delivered by him. Accordingly, the ground no.1 raised by the assessee on this issue is dismissed.

14. In ground no.2 the assessee has challenged that Ld CIT(A) erred in not appreciating that the ITAT had not quashed the original Assessment Order dated 13.06.2014 but had only directed re-computation of disallowance out of alleged bogus purchases as per their direction and the Ld Assessing Officer was not justified in passing fresh Assessment Order on 28.02.2024 and in initiating penalty proceedings u/s 271(1)(c) of the IT Act.

15. With regard to above ground no.2, we find that the Tribunal in its earlier order dated 27.07.2022 has not given any finding with

regard to penalty u/s 271(1)(c) of the IT Act and has only modified the order of Ld. CIT(A) dated 09.10.2019 and directed the Assessing Officer to re-compute the disallowance on account of bogus purchases. The Assessing Officer simply gave effect to the directions issued in the Tribunal's order dated 27.07.2022 and has not passed any fresh assessment order as alleged by the assessee. However, it appears that according to the AO the earlier penalty order becomes infructuous since the issue of quantification of bogus purchases was restored back by the Tribunal to the AO for afresh computation which was the very basis of penalty & therefore it was inevitable for the AO to issue fresh penalty notices. Thus, this ground no.2 is also dismissed.

16. In ground no.3 & 4, the assessee has challenged the imposition of penalty u/s 271(1)(c) of the IT Act for concealment of particulars of income. In this regard, it was the contention of Ld. Counsel of the assessee that the addition was made purely on estimate basis and therefore in the light of various judgements/decisions of coordinate bench of this Tribunal and Hon'ble Courts, penalty is not leviable. In support of this contention, Ld. AR relied on the latest judgement passed by Hon'ble Jurisdictional Bombay High Court in the case of PCIT-6 vs. Colo Colour Pvt. Ltd. Income Tax Appeal

No.48/2022 order dated 16.09.2025 wherein Hon'ble High Court confirmed the order passed by the Tribunal wherein penalty u/s 271(1)(c) was deleted since the addition was made on estimate basis by observing as under :-

*“20. We also find that the reliance on behalf of the assessee on the decision of the Gujarat High Court in Vijay Proteins Ltd. Vs. Commissioner of Income-tax<sup>7</sup> is quite apt. In such decision the Division Bench while referring to the decision in Commissioner of Income Tax vs. Krishi Tyre Retreading and Rubber Industries<sup>8</sup> held that penalty could not have been imposed under Section 271(1)(c) of the Act, when the addition was sustained purely on estimate basis or when the addition was made which was on a pure guess work, hence, no penalty under Section 271(1)(c) of the Act could be said to be leviable on such guess work or estimation. The Court accordingly answered the question in favour of the assessee, rejecting levy of penalty under Section 271(1)(c).*

*21. The aforesaid discussion would make us conclude, that the Assessing Officer could not have come to a conclusion of the present case attracting proceedings for levy of penalty, when the Assessing Officer had already taken a position on materials which were available before him in the course of assessment proceedings, in computing the amount of tax payable by the assessee, by making appropriate additions on the basis of estimates derived in passing of the assessment order. In other words, for the purpose of assessment proceedings, the relevant materials were accepted, to be not amounting to concealment of particulars of income or furnishing of inaccurate particulars of income. In such circumstances, under the garb of penalty proceedings, there ought not to be an occasion that such material again be labelled as amounting to concealment of income or furnishing of inaccurate particulars of income. If such approach is accepted, it would result in taking away the very basis of the assessment, apart from dragging the assessee into unwarranted penalty proceedings. There cannot be two opinions that Section 271(1)(c) of the Act, would be required to be strictly construed, hence in the absence of such clear position of a concealment of particulars of income or furnishing of inaccurate particulars of income, in the facts of the present case, penalty proceedings could not have been initiated. This more particularly when the penalty proceedings are initiated clearly on the basis of additions made in the re-opening proceedings thereby leaving no room for a doubt of the disclosures made by the assessee, warranting penalty proceedings. In the present case such material essentials were completely lacking.”*

17. Considering the totality of the facts of the case and respectfully following the above judgement of Hon'ble Bombay High Court in the case of Colo Colour Pvt. Ltd. (supra), we deem it appropriate to set-aside the order passed by Ld. CIT(A)/NFAC and direct the Assessing Officer to delete the penalty imposed u/s 271(1)(c) of the IT Act since the addition, on the basis of which penalty u/s 271(1)(c) was imposed, was made on estimate basis. Thus, the ground no.3 & 4 raised by the assessee are allowed.

18. In the result, the appeal filed by the assessee in ITA No.1864/PUN/2025 for A.Y. 2007-08 is partly allowed.

**ITA Nos.1865 to 1868/PUN/2025,**  
**A.Ys. 2008-09 to 2011-12 :**

19. Since the facts and issues involved in the appeal of the assessee for the assessment year 2007-08 are identical to the facts of the case in remaining four appeals of the assessee for assessment years 2008-09 to 2011-12, therefore, our decision in ITA No.1864/PUN/2025 for A.Y. 2007-08 shall apply *mutatis mutandis* to the remaining four appeals of the assessee in ITA Nos.1865 to 1868/PUN/2025 for A.Ys. 2008-09 to 2011-12 respectively. Accordingly, the remaining four appeals of the assessee in ITA

Nos.1865 to 1868/PUN/2025 for A.Ys. 2008-09 to 2011-12 are also partly allowed.

20. To sum up, all the above captioned five appeals filed by the assessee are partly allowed.

Order pronounced on this 21<sup>st</sup> day of January, 2026.

**Sd/-**  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> January, 2026.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.