

**IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH,
MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.7407/MUM/2025
(A.Y. 2011-12)**

P Cube Construction Private Limited 1/A/101, Umiya Nagar Vishweshwar Nagar Road Off Aarey Road, Goregaon (East), Mumbai – 400 063, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Circle – 13(1)(2), Aayakar Bhavan, Maharishi Karve Marg, Churchgate, Mumbai – 400020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADCP9320N		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Shailesh Sethi, CA
Respondent by :	Shri Virabhadra Mahajan, (Sr. DR)

Date of Hearing	22.01.2026
Date of Pronouncement	02.02.2026

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 18.09.2025 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to penalty order passed u/s. 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 28.03.2019 for the Assessment Year [A.Y.] 2011-12.



2. The grounds of appeal are as under:

1. *The learned Commissioner of Income Tax Appeals, National Faceless Appeal Centre, erred in law and on facts in upholding the penalty of Rs. 9,73,221 levied under section 271 1 c of the Income tax Act, 1961, without appreciating that the addition of Rs. 10,49,860 sustained in the quantum proceedings represents only an estimated profit element. The learned CIT A failed to appreciate the essence of the fact of the case that the impugned addition was itself an estimated figure and therefore could not form the foundation for levy of penalty. Penalty under section 271 1 c cannot be imposed WHERE the addition is based purely on estimation.*
2. *Without prejudice, the learned CIT A further erred in confirming the levy of penalty at 300 per cent of the tax sought to be evaded, which is excessive, arbitrary and wholly unjustified. Even assuming, without admitting, that penalty was leviable on the facts of the case, the imposition of the maximum penalty is unwarranted, disproportionate and contrary to the settled principles governing the exercise of discretion under section 271 c.*

3. In this case, addition of Rs.83,98,884/- was made by the Assessing Officer in respect of certain purchases stated to be bogus in nature. The ld.CIT(A) in the subsequent quantum appeal, restricted the addition to 12.5% only and thus, sustaining the addition to Rs. 10,49,860/-. Subsequently, ITAT upheld the action of the CIT(A) in its **order in ITA No. 4787/Mum/2017**. Accordingly, the AO proceeded to impose penalty u/s 271(1)(c) of the Act on the addition sustained.

4. In the subsequent appeal against the penalty order, the assessee contested the penalty stating that the Assessing Officer erred in passing the impugned order as the inaccurate particulars furnished by the appellant related to the identity of the vendors and not to the income of the assessee and that the law provided for penalty for furnishing



inaccurate particulars of income and not for furnishing inaccurate particulars of vendors. It was also submitted that the Assessing Officer had issued notice under section 274 read with section 271(1)(c) without being specific about the charge i.e. whether there was concealment of income or furnishing of inaccurate particulars by the assessee and that such notice was invalid and so was the order under section 271(1)(c) passed by the AO. It was also stated that addition similar to that made for the year under consideration, was made for the AY 2009-10 and that even though the facts for both of these years were identical, the AO had not levied any penalty. The ld.CIT(A) observed that the assessee had sought to evade tax and hence, the AO had rightly invoked the provisions of section 271(1)(c) in the instant case. The assessee had sought to evade tax on this amount of 12.5% of Rs. 83,98,884/- by way of furnishing inaccurate particulars of income and hence, the Assessing Officer had rightly levied the penalty at the rate of 300% of the amount of tax sought to be evaded.

5. Before us, the ld.AR has contested the appellate order claiming that no penalty could be levied in the case where the addition made was reduced on estimate basis by the appellate authorities. It was stated that the courts including ITAT Benches have consistently held that in such



circumstances, no penalty was justified. Per contra, the ld.DR has relied on the orders of lower authorities.

6. We have carefully considered all the relevant facts of the case, perused the records. We note that on similar cases of estimated addition sustained by appellate authorities, similar penalties have been deleted by the coordinate bench of ITAT, Mumbai in a plethora of cases. In this regard, we place reliance on certain recent decisions on the matter. Relevant parts of the order in the case of **Trustar Diamond** in **ITA No.1542/ Mum/ 2025** are extracted as below for the sake of brevity:

“8. What is concealment of income or inaccurate particulars of such income as contemplated by [Section 271\(1\)\(c\)](#), has been explained by the Hon'ble Supreme Court in the case of the [CIT Vs. Reliance Petro Products \(P.\) Ltd.](#) as reported in 322 ITR 158 wherein it has been held as under: -

"A glance at the provision of [s. 271\(1\)\(c\)](#) would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the [s. 271\(1\)\(c\)](#) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. Therefore, it is



obvious that it must be shown that the conditions under [s. 271\(1\)\(c\)](#) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income."

9. On perusal of the case in hand we have noticed that the initial return was filed [u/s 143](#) of the Act and the same was processed and accepted [u/s 143\(1\)](#) of the Act. The case was selected for scrutiny assessment on the basis of information received from DGIT (Inv.), Mumbai, who on the basis of search action upon **Bhanwarlal Jain group** was of the opinion that the assessee was beneficiary of accommodation entries of bogus purchases provided by Bhanwarlal Jain group. During the course of scrutiny the assessee supplied all necessary documents showing the genuineness of the purchases and the documents find mentioned in para 4.3 of the assessment order. The AO was of the view that the genuineness of the purchase parties are doubted but the genuineness of the purchases on a whole cannot be doubted in this case, therefore only the profit margin embedded in such a transaction could be taxed. He further observed that this is a fairly accepted principle and the same would apply in the case of the assessee. The AO after analyzing the entire material was of the opinion that the profit margin embedded in these transaction is taken at 3% of the value of the purchases made from the 7 parties mentioned in para no. 4 of the assessment order. Accordingly, the said amount is added to the total income of the assessee for the year under consideration and penalty proceedings were initiated.

10. The 100% penalty of Rs. 3,74,900/- was levied vide penalty order dated 29.03,2019. Against which the assessee filed appeal which was dismissed by the Ld. CIT(A) vide impugned order dated 10.02.2025 confirming the penalty so imposed at Rs. 3,74,900/- and did not agree with the contention of the assessee and distinguished the case relied by Ld. AR including the ITAT Mumbai Benches cases. In this given background, it was argued before us by the Ld. AR that addition has been made on estimation basis, therefore penalty [u/s 271\(1\)\(c\)](#) cannot be levied. The Ld. AR has relied upon the recent order of Jurisdictional ITAT Mumbai Bench in the case of **Atul Properties vs. ACIT Circle 24, Mumbai (ITA No. 4967/Mum/2024, 4968/Mum/2024 order dated 06.11.2024** also reported 2024 (11) TMI 366-ITAT Mumbai and one of us was Member of the Bench which decided this appeal and the para no. 5 and 5.1 containing the finding of the Tribunal which supports the contention of Ld. AR are extracted below:-



5.1. In the instant case, **the AO has added 100% value of bogus purchases. However, the Ld.CIT(A)** has restricted the addition to the extent of 12.5%, meaning thereby the addition has been sustained by the Ld.CIT(A) on estimated basis. The Hon'ble Rajasthan and Punjab & Haryana High Courts have expressed the view that the penalty u/s. 271(1)(c) of the Act is not leviable when the addition is made on estimation basis. Accordingly, following the above said decision, we hold that the penalty u/s.271(1)(c) of the Act is not leviable in the present cases. Accordingly, we set aside the order passed by the Ld.CIT(A) in both the years under consideration and direct the AO to delete the penalties levied in both the years.

11. Moreover, the facts and circumstances of the present case are squarely covered by the judgment of the Coordinate Bench referred and relied by the Ld. AR and we respectfully follow the Ld. Coordinate Bench in ITA No. 3565/Mum/2023 (supra) and are of considered opinion that the revenue has failed to show that the assessee has concealed the particulars of income or has furnished inaccurate particulars of such income and thus the case of the assessee is not covered u/s 271(1)(c) of the Act. Accordingly the penalty imposed on accepting addition made on estimation basis is not sustainable. The grounds of appeal are accordingly decided in favour of the assessee. We accordingly direct the Ld. AO to delete the penalty amount.”

7.1 Similar decision was taken by ITAT in **Nakodiam Diamonds**

Private Limited in ITA Nos. 1766, 1783 & 1812/Mum/2024 as below:

“On the similar issue, ITAT Mumbai in the case of **Bhuraram V. Choudhary vs ITO vide ITA No. 4402 to 4404/Mum/2023 dated 10.07.2024** held that penalty levied on estimated addition is not sustainable. The relevant extract of the decision is reproduced as under:

"6. Heard both the sides and perused the material on record. The case was reopened u/s 147 of the Act on the basis of information received from investigation wing regarding bogus purchases made by the assessee during the year under consideration as discussed supra in this order. The assessing officer stated that assessee failed to prove the genuineness of the purchases made from the parties listed in the list received from the Sales Tax Department, therefore estimated the profit element embedded in such purchases at 12.5% of the purchase amount of Rs. 108,71,191/- and made addition of Rs.13,58,899/- to the total income of the assessee. During the course of assessment, the assessee



has furnished detail of purchases and other documentary evidences connected with the purchases made from the said dealers as referred at para 7 of the assessment order by the assessing officer reproduced as under:

"Similarly, details of corresponding sales of goods were also called for as per annexure-B and link the purchase with sales supported by bills and vouchers and reflection in the stock register of its entry and exit item by item. The assessee was also asked to produce books of accounts, bills and vouchers for verification but could not link the purchases with that of corresponding sales. The assessee produced books of accounts for verification. However, the AR of the assessee vide his written submission dated 12.03.2015 sated that the assessee has already submitted purchase details alongwith correspondence sales and bills along with stock details. The assessee firmly believes that there are valid reasons for not treating purchases as fictitious and also believes that no addition on account of disallowance of purchase should be made.

The assessee has request to consider the case amicably. Assessee plead for non-levy of penalty of prosecution as consent letter is given to buy peace of mind and avoid further litigation cost, since the assessee has submitted all the documentary evidences in connection with the purchases from the said dealers. Kindly consider the same."

However, the assessing officer has not agreed with the submission of the assessee and estimated profit element embedded in impugned purchases at 12.5% of the purchase amount of Rs.108,71,191/-. However, the ITAT has restricted such amount of disallowance to the extent of 6.5% of such purchases. The Assessing Officer had only made estimation addition of profit element involved in such amount of purchases made from the dealers which were listed by the Sale Tax Department involved in providing accommodation bills without supplying the goods. We have also perused the decision of ITAT, Mumbai as referred by the ld. counsel in the case of **Jatin Enterprises Vs. ACIT-19(2) dated 21.03.2024 where on ITA Nos. 1766, 1783 & 1812/Mum/2024 identical fact also the CIT(A) has restricted the addition to the extent of 12.5% on estimation basis.** The ITAT has deleted the penalty holding that penalty levied u/s 271(1)(c) of the Act on estimation addition is unsustainable. The relevant extract of the decision of the ITAT is reproduced as under:

"4. We have heard the submissions made by rival sides. It is an undisputed fact that the Assessing Officer has made addition in the case of assessee on account of alleged bogus purchases. The Assessing



Officer made addition of 100% of unproved purchases, the CIT(A) restricted the addition to 12.5% of such purchases. The addition made by the Assessing Officer and subsequently restricted by the CIT(A) to 12.5% is merely on estimations.

5. The Hon'ble Rajasthan High Court in the case of CIT vs. Krishi Tyre Retreading and Rubber Industries reported as 360 ITR 580 has held that where addition is made purely on estimate basis, no penalty u/s. 271(1)(c) of the Act is leviable. Similar view has been expressed by the **Hon'ble Punjab & Haryana High Court in the case of CIT vs. Sangrur Vanaspati Mills Ltd. reported as 303 ITR 53**. The Hon'ble High Court approving the order of Tribunal held that when the addition has been made on the basis of estimate and not on any concrete evidence of concealment, penalty u/s. 271(1)(c) of the Act is not leviable. **The Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Co. Ltd. reported as 221 ITR 110** has taken a similar view in respect of penalty levied u/s. 271(1)(c) of the Act on estimated additions. There are catena of decisions by different High Courts and various Benches of the Tribunal wherein penalty levied u/s. 271(1)(c) of the Act on estimated additions has been held to be unsustainable.

6. Thus, in the facts of the instant case and the decisions [referred above](#), we hold penalty levied u/s. 271(1)(c) of the Act unsustainable. Ergo, the Assessing Officer is directed to delete the penalty."

In the case of the assessee the supporting material as referred at para 7 of the assessment order was furnished however the addition on estimation basis of 12.5% of the purchase amount was made on the ground of extra profit earned by the assessee on such purchases because the parties were involved in issuing accommodation bills of purchases as per the information supplied by the Sales Tax Department. It is clear that in the case of the assessee the addition was made on estimation basis therefore following the decision of ITAT as referred supra we consider that penalty levied in the case of the assessee on estimated addition is not sustainable. Therefore, the penalty levied is deleted. Accordingly, both the grounds of appeal of the assessee are allowed.

7. The appeal of the assessee is allowed."

7. Following the decision of ITAT, we don't find any infirmity in decision of Id. CIT(A) for deleting the penalty levied on the estimated addition made by the assessing officer as discussed supra in this order. Therefore, all the grounds of



the appeal of the revenue are dismissed. Accordingly, the appeal of the revenue stand dismissed.”

7. Having considered the relevant facts of the case and respectfully following consistent view of the coordinate benches of ITAT, Mumbai on identical facts and circumstances, we hold that no penalty u/s 271(1)© of the Act could be justified on an estimated addition upheld by the authorities. Accordingly, the grounds of appeal of the assessee are allowed.

8. In the result, **the appeal filed by the assessee is allowed.**

Order pronounced in the open court on 02/02/2026.

Sd/-

NARENDER KUMAR CHOUDHRY

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 02.02.2026

Lubhna Shaikh / Steno

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2. प्रत्यर्थी / The Respondent.
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