

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

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

आयकर अपील सं. / ITA No.477/PUN/2025
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. M. M. Brothers, Plot No.16, Ansar Nagar, Eighty Ft. Road, Dhule- 424001. PAN : AAPFM5447C	Vs.	ITO, Ward-1, Dhule.
Appellant		Respondent

Assessee by : Shri Sharad A. Vaze
Revenue by : Shri Bharat Andhale (Virtual)

Date of hearing : 02.12.2025
Date of pronouncement : 10.02.2026

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 26.12.2023 passed by Ld. CIT(A)/NFAC for the assessment year 2014-15.

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

- "1. The learned CIT(A) erred in confirming the penalty u/s 271(1)(c) of Rs.5,41,176 levied by the A.O. without appreciating that the specific limb/ charge of section 271(1)(c) on the basis of which the penalty proceedings were initiated was neither communicated by the A.O. in the asst. order nor in the notice u/s 274 r.w.s. 271(1)(c) and therefore, the penalty order u/s 271(1)(c) passed in the instant case was bad in law in view of the*

law laid down by Hon'ble Jurisdictional Bombay High Court in Mohd. Farhan Shaikh [434 ITR 1] and other decisions.

2. *The assessee humbly prays that all the relevant facts pertaining to the legal issue raised in Ground No. 1 are already available on record and hence, the said issue may kindly be decided by Hon'ble ITAT without remanding the matter back to the CIT(A) to adjudicate this legal issue in view of the ratio laid down by Hon'ble Jurisdictional Bombay High Court in case of Coca Cola India (P) Ltd. [368 ITR 487].*
3. *Without prejudice to the above grounds, the learned CIT(A) erred in confirming the penalty u/s 271(1)(c) of Rs.5,41,176 levied by the A.O. without appreciating that in the quantum appeal, the CIT(A) had modified the basis for making the addition and hence, if at all, penalty was to be levied on the modified addition, then separate penalty proceedings u/s 271(1)(c) ought to have been initiated and levied by the CIT(A) and therefore, the penalty order passed by the A.O. was bad in law.*
4. *Without prejudice to the above grounds, the learned CIT(A) erred in confirming the penalty u/s 271(1)(c) of Rs.5,41,176 levied by the A.O. without appreciating that the addition was made by the CIT(A) on an estimate basis and therefore, as per the well settled law, no penalty u/s 271(1)(c) was leviable in respect of the above addition made on estimation basis.*
5. *The appellant craves leave to add/ alter/ amend any of the grounds of appeal.”*

3. Facts of the case, in brief, are that the assessee is a partnership firm carrying on the wholesale business of steel & PVC pipes etc and has furnished its return of income on 30.11.2014 declaring an income of Rs.2,13,120/-. The case was selected for scrutiny under CASS. The Assessing Officer vide assessment order dated 29.11.2016 determined total income at Rs.37,18,924/- as against the income of Rs.2,13,120/- returned by the assessee. The above

assessed income includes addition of Rs.33,70,804/- towards bogus purchases and other additions of Rs.1,35,000/-. The Assessing Officer also initiated penalty proceedings u/s 271(1)(c) of the IT Act.

4. Subsequently, Ld. CIT(A) in quantum appeal proceedings vide order dated 03.08.2017 directed the Assessing Officer to estimate the gross profit @ 2.25% and re-compute the profit instead of making addition on account of bogus purchases since Ld. CIT(A) was of the view that once the profit is estimated separate addition on account of bogus purchases cannot be made. Other relief of Rs.42,500/- was also allowed by Ld. CIT(A).

5. Subsequently, the Assessing Officer vide order dated 25.03.2019 levied penalty of Rs.5,41,076/- u/s 271(1)(c) of the IT Act on the alleged concealed income of Rs.14,64,299/- which was recomputed by estimating gross profit @ 2.25% as per the direction of Ld. CIT(A).

6. Being aggrieved with the above penalty order, the assessee preferred an appeal before Ld. CIT(A)/NFAC. Since the assessee remained absent Ld. CIT(A)/NFAC dismissed the appeal filed by the assessee.

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

8. 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. In this regard, we find that in quantum case Ld. CIT(A) has directed the Assessing Officer to re-compute the profit on estimate basis and the addition of Rs.14,64,299/- was made by applying /estimating 2.25% gross profit. Admittedly, the impugned penalty u/s 271(1)(c) of the IT Act was levied on the basis of above estimated gross profit addition.

We further find that the appeal against the penalty order was dismissed *ex-parte* by Ld. CIT(A)/NFAC for want of prosecution. Before us, the assessee has raised as many as four grounds of appeal. In alternative 4th ground of appeal, the assessee has contended that no penalty can be imposed on the basis of estimated addition. In this regard, the assessee relied on the order passed by the coordinate bench of this Tribunal in the case of Khodiyar Impex vs. ITO in ITA No.2199/MUM/2025 order dated 26.08.2025 and also placed reliance on the judgement passed by Hon'ble Bombay High Court in the case of the PCIT vs. Colo Colour Private Ltd.

order dated 16.09.2025 wherein Hon'ble Court deleted penalty imposed u/s 271(1)(c) of the IT Act by observing as under :-

“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.”

9. Respectfully following the above judgement passed by Hon'ble Bombay High Court in the case of Colo Colour Private Ltd. (supra), we are of the considered opinion that penalty u/s 271(1)(c) of the IT Act cannot be levied on the basis of estimated addition. Accordingly, we find force in the arguments of Ld. counsel of the assessee and in view of above judgement passed by Hon'ble

Bombay High Court in the case of Colo Colour Private 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 of Rs.5,41,176/- levied u/s 271(1)(c) of the IT Act. Thus, ground of appeal no.4 raised by the assessee is allowed.

10. Since we have allowed alternate ground no.4 raised by the assessee and deleted the penalty imposed u/s 271(1)(c) of the IT Act the other grounds raised by the assessee becomes infructuous hence not adjudicated.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 10th day of February, 2026.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10th February, 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, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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