

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**1. ITA No. 7714/Mum/2025
(Assessment Year: 2010-11)**

&

**2. ITA No. 7715/Mum/2025
(Assessment Year: 2011-12)**

R. J. Corporation Flat No. 102, Priya Prabha Bldg, Daulat Nagar Road- 10, Borivali (East), Mumbai-400 066.	Vs.	ITO-42(1)(4), Kautilya Bhavan, Mumbai-400 051
PAN/GIR No. AAJFR8046C		
(Applicant)		(Respondent)

Assessee by	Shri Dharan Gandhi, Ld. AR
Revenue by	Shri Annavaram Kosuri, Ld. DR

Date of Hearing	10.02.2026
Date of Pronouncement	11.02.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

These two appeals filed by the assessee are directed against the separate orders passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”], both dated 19.09.2025, passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as

“the Act”], for Assessment Years 2010–11 and 2011–12 respectively, whereby the Ld. CIT(A) confirmed the penalties imposed by the Assessing Officer under section 271(1)(c) of the Act. Since the issues involved in both the appeals are identical and arise out of similar facts, they are heard together and disposed of by this consolidated order.

Facts of the Case

2. The assessee is a partnership firm engaged in the business of Building Material Supplier and allied services and follows mercantile system of accounting. For both the assessment years under consideration, information was received by the Assessing Officer from the Sales Tax Department and DGIT (Investigation), Mumbai, to the effect that certain parties were engaged in issuing accommodation bills without actual delivery of goods and that the assessee was a beneficiary of such bogus purchase bills. On the basis of such information, the assessments for both years were reopened under section 147 of the Act after issuance of notices under section 148. The assessee filed responses treating the original returns as returns filed in response to notices under section 148. Statutory notices under sections 143(2) and 142(1) were issued and served.

3. During reassessment proceedings, the Assessing Officer observed that the assessee had shown purchases from parties declared as hawala dealers by the Sales Tax Department. Notices issued under section 133(6) were returned unserved. The assessee failed to produce the suppliers for verification and did

not furnish delivery challans, transportation details or other primary evidences to establish the genuineness of purchases. The Assessing Officer rejected the books of account under section 145(3) of the Act. However, since the sales declared by the assessee were not doubted, the Assessing Officer estimated the profit element embedded in such purchases at 12.5 percent and made additions accordingly. In the respective assessment orders passed under section 143(3) read with section 147 dated 20.11.2015, the additions were made on account of alleged bogus purchases by estimating profit at 12.5 percent.

4. Thereafter, penalty proceedings under section 271(1)(c) were initiated in both the years and separate penalty orders dated 15.03.2019 were passed levying penalty at 100 percent of the tax sought to be evaded.

5. The assessee preferred appeals before the Ld. CIT(A), who, vide separate orders passed under section 250 of the Act, confirmed the penalties. The relevant particulars for each assessment year are tabulated hereunder:

Particulars	A.Y. 2010-11	A.Y. 2011-12
Date of Return	24.09.2010	18.09.2011
Returned Income	Rs. 2,00,840/-	Rs. 3,41,950/-
Notice u/s 148	Issued on 18.10.2014	Issued on 28.10.2014
Assessment Order	20.11.2015	20.11.2015
Section of Assessment	143(3) r.w.s. 147	143(3) r.w.s. 147
Total Alleged Bogus Purchases	Rs. 1,34,45,643/-	Rs. 38,64,574/-

Profit Rate Applied	12.5%	12.5%
Addition Made	Rs. 16,80,705/-	Rs. 4,83,072/-
Assessed Income	Rs. 18,81,540/-	Rs. 8,25,020/-
Penalty Order Date	15.03.2019	15.03.2019
Section of Penalty	271(1)(c)	271(1)(c)
Penalty Levied	Rs. 5,19,336/-	Rs. 1,49,268/-
Order of CIT(A)	19.09.2025	19.09.2025

6. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising following grounds of appeal:

In ITA No. 7714/MUM/2025 - A.Y. 2010-11

1. *The Penalty order passed u/s 271(1)(c) of the Act dated 15.03.2019 is bad in law and without jurisdiction.*
2. *The Ld. CIT(A), NFAC erred in confirming the penalty of Rs. 5,19,336/- levied by the Ld. AO.*
3. *The notice u/s 274 of the Act is bad in law and therefore, the consequential order is also bad in law.*
4. *The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.*

In ITA No. 7715/MUM/2025 - A.Y. 2011-12

1. *The Penalty order passed u/s 271(1)(c) of the Act dated 15.03.2019 is bad in law and without jurisdiction.*
2. *The Ld. CIT(A), NFAC erred in confirming the penalty of Rs. Rs. 1,49,268/- levied by the Ld. AO.*
3. *The notice u/s 274 of the Act is bad in law and therefore, the consequential order is also bad in law.*
4. *The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.*

7. The Ld. Authorised Representative of the assessee, during the course of hearing before us, reiterated the facts and submitted that the issue involved in the present appeals is squarely covered by the recent judgment of the Hon'ble Jurisdictional High Court in the case of ***Principal Commissioner of Income-tax v. Colo Colour (P.) Ltd.*** reported in [2025] 178 ***taxmann.com*** 458. It was submitted that in the said case also the assessment was reopened on the basis of information received from the Sales Tax Department alleging bogus purchases. The Assessing Officer rejected the books under section 145(3) and estimated the profit element embedded in the purchases at 12.5 percent and further made an addition towards alleged commission. Penalty under section 271(1)(c) was thereafter levied on such estimated additions. The Ld. AR submitted that the Hon'ble High Court, after detailed consideration of the scope of section 271(1)(c), held that where additions are sustained purely on estimate basis or on guesswork, penalty cannot be levied in the absence of clear concealment or furnishing of inaccurate particulars. It was further held that where the purchases are not entirely disallowed and only profit element is estimated, such estimation does not ipso facto establish concealment. It was therefore submitted that in view of the binding decision of the Hon'ble Jurisdictional High Court, the penalty levied under section 271(1)(c) in both assessment years deserves to be deleted.

8. The Ld. Authorised Representative further invited our attention to the notice issued by the Assessing Officer under

section 274 read with section 271 of the Act dated 24.11.2015 for A.Y. 2010-11. From a perusal of the said notice, it is observed that the Assessing Officer has reproduced the standard printed format wherein the relevant portion reads as under:

“have concealed the particulars of your income or furnished inaccurate particulars of such income.”

9. The Ld. AR submitted that in the said notice, the Assessing Officer has not struck off the inapplicable limb of section 271(1)(c), namely, whether the penalty proceedings were initiated for “concealment of particulars of income” or for “furnishing inaccurate particulars of income”. Both the limbs remain intact in the notice and no specific charge has been indicated. The Ld. AR further submitted that though in the assessment order there is a reference to initiation of penalty for furnishing inaccurate particulars, the penalty order ultimately proceeds on the footing that the assessee has concealed income and that tax sought to be evaded on concealed income is leviable. Thus, according to the Ld. AR, there is ambiguity even in the satisfaction recorded by the Assessing Officer.

10. The Ld. Departmental Representative, in rebuttal, submitted that in the present case the assessee has accepted the additions made in the reassessment orders and has not contested the same before the Ld. CIT(A) in quantum proceedings. It was contended that once the assessee has accepted the addition, it necessarily follows that the income was concealed and therefore penalty under section 271(1)(c) is rightly leviable.

11. The Ld. DR further submitted that the reliance placed by the Ld. AR on the decision of the Hon'ble Jurisdictional High Court in the case of *Principal Commissioner of Income-tax v. Colo Colour (P.) Ltd.* is misplaced. The Ld. DR specifically drew attention to the portion of the judgment wherein the Hon'ble High Court, while referring to the decision of the Hon'ble Gujarat High Court in *Vijay Proteins Ltd.* and *Krishi Tyre Retreading and Rubber Industries*, observed that penalty could not have been imposed under section 271(1)(c) when the addition was sustained purely on estimate basis or when the addition was made on pure guesswork. The Ld. DR submitted that in the said case, the addition was characterized as being based on "guesswork", whereas in the present case the addition was not made on guesswork but was made after receipt of specific information from the Sales Tax Department identifying the parties as accommodation entry providers. It was contended that the Assessing Officer had applied a consistent rate of 12.5 percent on purchases found to be non-genuine and therefore the addition was not arbitrary or based on mere conjectures. It was further argued that the purchases were held to be bogus and the books of account were rejected under section 145(3). Once the purchases are found to be non-genuine, the claim made by the assessee in the return of income was factually incorrect and therefore amounted to furnishing of inaccurate particulars of income. The Ld. DR submitted that merely because the Assessing Officer estimated the profit element instead of disallowing the

entire purchase would not dilute the finding that the claim of purchases was not genuine.

12. We have carefully considered the rival submissions, perused the material placed on record and examined the judgment of the Hon'ble Jurisdictional High Court in ***Principal Commissioner of Income-tax v. Colo Colour (P.) Ltd.(supra)***.

13. At the outset, it is not in dispute that in both the assessment years under consideration the Assessing Officer has not disallowed the entire purchases. The books were rejected under section 145(3).The addition was restricted to estimation of profit element at 12.5 percent. Sales have been accepted. The quantum appeals were not pursued by the assessee. Thus, the additions in both years are purely on estimation of profit element embedded in alleged non-genuine purchases.

14. The Hon'ble Bombay High Court in ***Colo Colour (P.) Ltd. (supra)*** has examined an identical factual matrix where purchases were treated as non-genuine and profit was estimated at 12.5 percent. Penalty under section 271(1)(c) was levied and subsequently deleted by the Tribunal. The Hon'ble High Court upheld the deletion. The relevant findings of the Hon'ble High Court are reproduced herein below:

20. We also find that the reliance on behalf of the assessee on the decision of the Gujarat High Court in Vijay Proteins Ltd. (supra) is quite apt. In such decision the Division Bench while referring to the decision in Krishi Tyre Retreading and Rubber Industries (supra) 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.

15. The Ld. DR attempted to distinguish the above decision by contending that in the case before the Hon'ble High Court the addition was based on "guesswork" whereas in the present case the addition is based on specific information from the Sales Tax Department.

16. We are unable to accept this contention. In the present case also the entire purchases were not disallowed. The Assessing Officer himself accepted that goods were purchased from grey market. The addition was confined only to estimated profit element at 12.5 percent. No finding has been recorded that the sales were bogus. No independent evidence has been brought to establish that the entire purchase claim was fictitious. Thus, the foundation of addition remains estimation of profit and not detection of concealed income. The ratio laid down by the Hon'ble Jurisdictional High Court squarely applies.

17. The contention of the Revenue that since the assessee did not contest the quantum addition, penalty must follow, is also devoid of merit. It is a settled principle that penalty proceedings are distinct and independent from assessment proceedings. Merely because the assessee has accepted addition or has not pursued appeal in quantum proceedings does not automatically lead to conclusion of concealment. What is required under section 271(1)(c) is a clear finding of either concealment of particulars of income; or furnishing of inaccurate particulars of income. In the present case, the addition is the result of estimation after rejection of books and not based on detection of specific concealed income.

18. Respectfully following the binding decision of the Hon'ble Jurisdictional High Court in **Colo Colour (P.) Ltd. (supra)**, we hold that where addition is sustained only by estimating profit

element at 12.5 percent on alleged non-genuine purchases, penalty under section 271(1)(c) is not sustainable.

19. Without prejudice to our decision on merits, we also find substance in the preliminary contention raised by the assessee regarding defect in the notice issued under section 274 read with section 271(1)(c) of the Act. From a plain reading of the notice dated 20.11.2015, it is evident that the Assessing Officer has not struck off the inapplicable limb and has retained both the expressions, namely, “have concealed the particulars of your income” and “furnished inaccurate particulars of such income.” Thus, the specific charge for which penalty proceedings were initiated has not been clearly indicated. Further, while the assessment order makes a reference to initiation of penalty for furnishing inaccurate particulars, the penalty order proceeds on the footing that the assessee has concealed income. Such ambiguity in the initiation and conclusion of penalty proceedings reflects absence of clear and unambiguous satisfaction as contemplated under section 271(1)(c) of the Act. Though in the present case we have deleted the penalty on merits following the binding judgment of the Hon’ble Jurisdictional High Court, this additional legal infirmity further supports the conclusion that the penalty is unsustainable.

20. In view of the foregoing discussion, the penalty of Rs. 5,19,336/- levied for A.Y. 2010-11 and the penalty of Rs. 1,49,268/- levied for A.Y. 2011-12 are hereby directed to be deleted.

21. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 11.02.2026.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 11/02/2026
Dhananjay, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai