

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.	Assessment Year
8691/Mum/2025	2009-10
8692/Mum/2025	2010-11
8693/Mum/2025	2011-12

Shri Ratnaram Kohlaram Chaudhary Prop. Of M/s. Nutech Metal Office No. 14, 1 st Floor, Building No. 8, Haji Kasam Chawl, Durgadevi Street, Mumbai-400 004	Vs.	Income Tax Officer, Ward 19(3)(1) Matru Mandir, ITO, Tardeo Road, Grant Road, Mumbai-400 007
PAN/GIR No. AEAPC 6124 R		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Ravi Gupta
Respondent by	:	Shri Annavaram Kosuri, Sr. AR

Date of Hearing	:	10.02.2026
Date of Pronouncement	:	13.02.2026

ORDER

Per Saktijit Dey, Vice President:

Captioned appeals by the same assessee, arise out of three separate orders, passed by National Faceless Appeal Centre (‘NFAC’ for short), Delhi confirming the penalty imposed u/s. 271(1)(c) of the Income Tax Act, 1961 (‘the Act’ for short) for the assessment years (A.Y. for short) 2009-10 to 2011-12.

2. Since, facts leading to the imposition of penalty in all the appeals are more or less identical, we deem it appropriate to discuss them. The assessee is a resident individual, stated to be engaged in the business of reseller in ferrous and non-ferrous metals through its proprietary concern M/s. Nutech Metal. For all the assessment years under dispute, the

assessee had filed his returns of income in regular course u/s. 139 of the Act. The returns so filed by the assessee were initially processed u/s. 143(1) of the Act.

3. Subsequently, based on report of the Investigation Wing, which in turn received information from the Sales Tax Department, that certain entities have indulged in providing accommodation entries through bogus purchase bills without supplying any goods physically and as per the information, the assessee being one of the beneficiaries, the Assessing Officer (A.O. for short) reopened the assessment u/s. 147 of the Act for all these years. In course of assessment proceedings, when the A.O. brought up the issue of alleged bogus purchase, the assessee vehemently contested such allegation and submitted that he has not indulged in any bogus purchases. The A.O., however, was not convinced. Relying upon the allegations of the Sales Tax Department, which formed the basis of the Investigation Wing report, the A.O. ultimately concluded that the assessee is a beneficiary of accommodation entries through bogus purchase bills availed through certain entities. However, since the assessee had recovered the purchases in its books, the A.O. was of the view that the assessee might have purchased the goods from some other source and by availing bogus purchase bills has regularized such purchases. By adopting such method, the assessee has suppressed his real profit. Hence, he proceeded to determine the profit on the alleged bogus purchases. While doing so, he determined the profit at 25% in A.Y. 2009-10 and at 12.5% in A.Ys. 2010-11 and 2011-12 and, accordingly, made the additions.

4. The assessee contested the additions by filing appeals before the first appellate authority.

5. While deciding the appeals, Id. First appellate authority reduced the additions made by the A.O. to 6.5% in A.Y. 2009-10 and 6% in A.Y. 2010-11 and 2011-12.

6. Though, the assessee went in further appeal before the Tribunal, however, no additional relief was given to the assessee. Be that as it may, based on the additions sustained at the appellate stage, the A.O. initiated proceedings for imposition of penalty u/s. 271(1)(c) of the Act, alleging furnishing of inaccurate particulars of income. In response to the show cause notice issued u/s. 274 r.w.s. 271(1)(c) of the Act, though the assessee opposed imposition of penalty, however, rejecting such objection, the A.O. proceeded to impose penalty in all the assessment years under appeal. Though, the assessee challenged the imposition of penalty by filing appeals before Id. First appellate authority, however, he was unsuccessful.

7. We have considered rival submissions and perused the materials on record. Undisputedly, the assessments in case of the assessee were reopened based on report of the Investigation Wing which suggested that information received from Sales Tax Department disclosed that the assessee had availed accommodation entries through bogus purchase bills issued by the certain entities. However, a reading of the impugned assessment orders clearly reveal that the A.O. though had alleged that the assessee is a beneficiary of accommodation entries, however, he has given a categorical finding that the purchases were recorded in the books of account, hence, only the profit element embedded therein at 25% in A.Y. 2009-10 and 12.5% in A.Ys. 2010-11 and 2011-12 can be added. Though the A.O. has not used the word 'estimate', while determining the profit element at certain percentage, however, there cannot be any manner of doubt that the determination of

suppressed profit element is purely on estimate basis, as the A.O. has not elaborated how the quantum of 25% or 12.5% was arrived at. Whereas, while deciding assessee's appeals, Id. First appellate authority has reduced the percentage of profit to 6.5% in A.Y. 2009-10 and to 6% in A.Ys. 2011-12 and 2010-11. Such huge difference between the quantum of profit element determined by the A.O. and Id. First appellate authority clearly demonstrates that such determination of profit rate is based on guess work and estimation and nothing else. Therefore, the issue which arises for consideration is, when the additions made on account of alleged bogus purchases are purely on the basis of estimation, whether the assessee can be accused of furnishing inaccurate particulars of income to be visited with penalty u/s. 271(1)(c) of the Act. In this context, we may refer to the decision of the Hon'ble Jurisdictional High Court in case of *Pr. CIT vs. Colo Colour Pvt. Ltd.* (in ITA No. 48 of 2022 vide order dated 16.09.2025), wherein while dealing with identical nature of dispute, the Hon'ble Jurisdictional High Court has held as under:

Analysis

14. *On the aforesaid backdrop, we have heard learned Counsel for the parties. At the outset, we may observe that this is a case wherein the Assessing Officer has passed an assessment order dated 29 August 2016, clearly considering the purchase bills invoices as submitted on behalf of the assessee, however, disbelieving them to be bogus. The Assessing Officer has made a categorical observation that the purchases made by the assessee cannot be doubted, and although in making such observations, the Assessing Officer proceeded on the basis of enquiries made by him with the Sales Tax Department, and so called investigation as undertaken by him, to come to a conclusion that there is an element of suspicion on the books of account, including the purchases which, according to him, were doubtful and did not represent the true profit derived by the assessee from its business. For such reason, the books of account of the assessee to the extent of these purchases were rejected under Section 145(3) of the Act. On such premise, the Assessing Officer, however, estimated that the benefit on account of difference in the purchase price amounted to 12.5% of the purchase price of Rs.59,26,206/- as set out in the bills issued in the invoices which were alleged to be bogus, and accordingly, computed an addition of income of Rs.7,40,776/- to the total income. He also added the expenditure towards commission outside the books of accounts for obtaining the bogus purchase bills at the rate of 1% of the value of the bogus bills and made an addition of Rs.59,262/- towards unexplained expenditure.*

15. *On such conspectus, whether it was open to the Assessing Officer to invoke the provisions of Section 271(1)(c) of the Act so as to reach to a conclusion that the assessee be held liable for a penalty, on the count of furnishing inaccurate particulars or there was concealment of income, is the issue.*

16. It is well settled that the condition precedent for levy of penalty under Section 271 (1)(c) is only when the Assessing Officer, in the course of proceedings, is satisfied that an assessee has concealed the particulars of his income or has furnished inaccurate particulars of income. Thus, in applying the penalty provisions under Section 271(1)(c), it was necessary for the Assessing Officer to reach to a conclusion, that the assessee had consciously concealed the particulars of his income and/or had deliberately furnished inaccurate particulars of income to gain an undue advantage of not offering the real income to tax. A clear subjective satisfaction of these essentials is a sine qua non for the Assessing Officer to levy a penalty. Penalty proceedings are penal in nature, as the intention of such provisions is to create an effective deterrent, which will restrain the assessee from adopting any practices detrimental to the fair and realistic assessment as the law would mandate.

17. In the facts of the present case, in our opinion, the approach of the assessee was certainly, not of the nature which can be recognized to involve any concealment of particulars of income and/or furnishing inaccurate particulars of income. The reason being that the penalty could not have been levied when an ad-hoc estimation of the assessee's income was made by the Assessing Officer who restricted the profit element in the purchases at 12.5%. This encompasses that the Assessing Officer accepted the sales made by the assessee and which were subject matter of the invoices / bills which were produced by the assessee. Thus, this is not the case where the Assessing Officer outrightly for want of a tangible material rejected the books of accounts and or the documents as submitted by the assessee in supporting such accounts, when it related to the alleged bogus purchases so as to bring to tax the entire amount of such invoices, on the alleged bogus purchases, to be added to the income of the assessee. The Assessing Officer on his own enquiry with the Sales Tax Department formed an opinion on some materials, which appear to be only known to him and not furnished to the assessee so as to label the purchases to be bogus.

18. Thus, in these circumstances, there was no allowance or a basis for the Assessing Officer to reach to a conclusion that this was a case where the provisions of Section 271(1)(c) were required to be invoked, to levy a penalty on the ground that the assessee had furnished inaccurate particulars or had concealed its income. Further, in the assessment proceedings leading to the assessment order passed under Section 143(3) read with Section 147 of the Act, in so far as the bogus purchases were concerned, the assessee had taken a clear position that the assessee had agreed for the addition to buy peace of mind and to avoid a protracted litigation. Hence, the assessee agreeing with such addition, did not mean that the assessee had accepted, that the assessee had concealed income or furnished inaccurate particulars of income, so as to take a position contrary to the invoices/bills submitted by the assessee supporting its returns. This position not only on the part of the assessee but also on the part of the Assessing Officer formed the basis of the assessment, leading to the additions as made by the Assessing Officer. Thus, in our clear opinion, there was no warrant for invoking the penalty provision under Section 271(1)(c) of the Act, as rightly observed in the concurrent findings of the CIT(A) and the Tribunal. It is also a settled position of law that penalty proceedings and assessment proceedings are independent of each other, hence the parameters which are applicable for passing assessment orders are completely distinct from those applicable not only to initiate penalty proceedings but also in passing a penalty order under the provisions of Section 271(1)(c) of the Act.

19. We may also observe that the bills/invoices being categorised as bogus purchases, was purely on the basis of the information received by the Assessing Officer or his investigation with the Sales Tax Department, when admittedly such material was not furnished to the assessee, there being nothing on record to indicate that the assessee had accepted such material or the investigation as undertaken by the Assessing Officer to accept the purchases to be bogus. Hence, there was no independent application of mind by the Assessing Officer when he appears to have relied on the information of the Sales Tax Department. In this view of the matter, when the Assessing Officer proceeded to estimate the income from the bogus purchases at 12.5%, we do not find that this could be conceived to be a case of concealment of income or a case of inadequate particulars of income being furnished by the assessee. In such context, we may refer to the decision

of the Division Bench of this Court in *Pr. Commissioner of Income Tax-1 Vs. SVD Resins & Plastics Pvt. Ltd.* to which one of us (G. S. Kulkarni, J.) was a member, wherein the Court held that the information derived by the Assessing Officer from the Sales Tax Department without the same being furnished to the Assessee and not proved, was not a sound approach. The following observations as made by the Court need to be noted.

"11. We may observe that in the facts of the present case, the basic premise on the part of the A.O. so as to form an opinion that the disputed purchases were not having nexus with the corresponding sales, appears to be not correct. It is seen that what was available with the department was merely information received by it in pursuance of notices issued under section 133(6) of the Act, as responded by some of the suppliers. However, an unimpeachable situation that such suppliers could be labeled to be not genuine qua the assessee or qua the transaction entered with the assessee by such suppliers, was not available on the record of the assessment proceedings. It is an admitted position that during the assessment proceedings, the assessee filed all necessary documents in support of the returns on which the ledger accounts were prepared, including confirmation of the supplies by the suppliers, purchase bills, delivery bank statements etc. to justify the genuineness of the purchases, however, such documents were doubted by the Assessing Officer on the basis of general information received by the Assessing Officer from the Sales Tax Department. In our opinion, to wholly reject these documents merely on a general information received from the Sales Tax Department, would not be a proper approach on the part of the Assessing Officer, in the absence of strong documentary evidence, including a statement of the Sales Tax Department that qua the actual purchases as undertaken by the assessee from such suppliers the transactions are bogus. Such information, if available, was required to be supplied to the assessee to invite the response on the same and thereafter take an appropriate decision. Unless such specific information was available on record, it is difficult to accept that the Assessing Officer was correct in his approach to question such purchases, on such general information as may be available from the Sales Tax Department, in making the impugned additions. This for the reason that the same supplier could have acted differently so as to generate bogus purchases qua some parties, whereas this may not be the position qua the others. Thus, unless there is a case to case verification, it would be difficult to paint all transactions of such supplier to all the parties as bogus transactions.

12. In our opinion, a full addition could be made only on the basis of proper proof of bogus purchases being available as the law would recognise before the Assessing Officer, of a nature which would unequivocally indicate that the transactions were wholly bogus. In the absence of such proof, by no stretch of imagination, a conclusion could be arrived, that the entire expenditure claimed by the petitioner qua such transactions need to be added, to be taxed in the hands of the assessee.

13. In a situation as this, the A.O. would be required to carefully consider all such materials to come to a conclusion that the transactions are found to be bogus. Such investigation or enquiry by the Assessing Officer also cannot be an enquiry which would be contrary to the assessments already undertaken by the Sales Tax Authorities on the same transactions. This would create an anomalous situation on the sale purchase transactions. Hence, in our opinion, wherever relevant any conclusion in regard to the transactions being bogus, needs to be arrived only after the A.O. consults the Sales Tax Department and a thorough enquiry in regard to such specific transactions being bogus, is also the conclusion of the Sales Tax Department. In a given case in the absence of a cohesive and coordinated approach of the A.O. with the Sales Tax Authorities, it would be difficult to come to a concrete conclusion in regard to such purchase/sales transactions being bogus merely on the basis of general information so as to discard such expenditure and add the same to the assessee's income.

14. Any half hearted approach on the part of the Assessing Officer to make additions on the issue of bogus purchases would not be conducive. It also cannot be on the basis of superficial inquiry being conducted in a manner not known to law in its attempt to weed out any evasion of tax on bogus transactions. The bogus transactions are in the nature of a camouflage and/or a dishonest attempt on the part of the assessee to avoid tax, resulting in addition to the assessee's income. It is for such reason, the approach of the Assessing Officer is required to be well considered approach and in making such additions, he is expected to adhere to the lawful norms and well settled principles. After such scrutiny, the transactions are found to be bogus as the law would understand, in that event, they are required to be discarded by making an appropriate permissible addition.

16. The assessee has happily accepted such finding as this has benefited the assessee, looked from any angle. However, in a given case if the Income-tax Authorities are of the view that there are questionable and/or bogus purchases, in that event, it is the solemn obligation and duty of the Income-tax Authorities and more particularly of the A.O. to undertake all necessary enquiry including to procure all the information on such transactions from the other departments/authorities so as to ascertain the correct facts and bring such transactions to tax. If such approach is not adopted, it may also lead to assessee getting away with a bonanza of tax evasion and the real income would remain to be taxed on account of a defective approach being followed by the department."

[emphasis Supplied]

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* is quite apt. In such decision the Division Bench while referring to the decision in *Commissioner of Income Tax vs. Krishni Tyre Retreading and Rubber Industries* 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).

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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.

22. In the light of the above discussion, no interference is called for in the orders passed by the Tribunal. This appeal does not give rise to the substantial question of law. It is accordingly dismissed. No costs.

8. When the aforesaid observations of the Hon'ble Jurisdictional High Court is read in context of facts involved in the present appeal, in our view, the ratio laid down by the Hon'ble Jurisdictional High Court clearly applies. Hence, in our considered opinion, there is no case for imposition of penalty u/s. 271(1)(c) of the Act in the present appeals. Accordingly, we delete the penalty imposed in all the assessment years under dispute.

9. In the result, the appeals are allowed.

Order pronounced in the open court on 13.02.2026
Sd/- Sd/-

(Makarand V Mahadeokar)
Accountant Member

(Saktijit Dey)
Vice President

Mumbai; Dated : 13.02.2026

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai