

आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत ।
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT 'SMC' BENCH, SURAT
[conducted through Hybrid mode at Ahmedabad Bench]

श्री संजय गर्ग, न्यायिक सदस्य एवं
श्री नरेन्द्र प्रसाद सिन्हा लेखक सदस्य के समक्ष।

Before Shri Sanjay Garg, Judicial Member And
Shri Narendra Prasad Sinha, Accountant Member

Sl. No(s)	आयकर अपील सं/ ITA No(s)	निर्धारण वर्ष/ Assessment Year(s)	Appeal(s) by :	
			अपीलार्थी/ Appellant	प्रत्यर्थी/ बनाम/vs. Respondent
1.	1107/SRT/2025	2008-09	Sun Diam C/o. CA Himanshu Gandhi 16 th Floor, D Wing Trade World Building Kamala Mills Compound Lower Parel, Mumbai 400 013 PAN: ABAFS 0852 K (Assessee)	The ITO 2(3)(6) Surat 395 007 (Revenue)
2.	1108/SRT/2025	2009-10	Assessee	Revenue
3.	1109/SRT/2025	2010-11	Assessee	Revenue
4.	1110/SRT/2025	2011-12	Assessee	Revenue
5.	1111/SRT/2025	2012-13	Assessee	Revenue
6.	1112/SRT/2025	2013-14	Assessee	Revenue

Assessee by :	Shri Himanshu Gandhi, CA
Revenue by :	Shri Ajay Uke, Sr.DR

सुनवाई की तारीख/Date of Hearing : 08/12/2025
घोषणा की तारीख /Date of Pronouncement: 27/02/2026

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The captioned six appeals have been preferred by the assessee against the common order of the Commissioner of Income Tax (Appeals), Ahmedabad [hereinafter referred to as 'CIT(A)'] dated 28/08/2025 pertaining to different Assessment Years (AYs) 2008-09 to 2013-14. Since common facts and issues are involved (except quantum) in all these appeals, these were heard together and are being disposed of by a consolidated order. Assessee's appeal in ITA No.1107/SRT/2025 for AY 2008-09 is taken as a lead case for the purpose of narration of facts.

ITA No.1107/SRT/2025 :-

2. The assessee, in this appeal, has taken the following grounds of appeal:

"1. 4. Appellant craves leave to add further grounds OR to amend OR to alter the existing grounds of appeal on OR before the date of hearing.

2. 1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming penalty u/s 271(1)(c) of the Income Tax Act, 1961 on the basis of invalid penalty notice in which the limb of levy of penalty under section 271(1)(c) of Income Tax Act, 1961 not mentioned.

3. 2. On the facts and circumstances of the case and law, the d CIT(A) erred in confirming penalty u/s 271(1)(c) of the Income Tax Act, 1961 which is time barred and thus the penalty order is itself bad in law and required to be quashed.

4. 3. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming penalty of Rs. 1,27,000/- on estimation basis under section 271(1)(c) of Income Tax Act, 1961."

3. The assessee, in this appeal, is aggrieved by the action of the Ld. CIT(A) in confirming the penalty levied by the Assessing Officer (AO) u/s.271 (1)(c) of the Act.

4. At the outset, the Ld. AR of the assessee has stated that the assessee along with its sister Concerns namely M/s Nazar Impex Pvt Ltd. and Sanjay Choudhary HUF, Moulimani Impex Pvt Ltd. was covered under the same search proceeding dated 03.10.2013 and treated as concern of Rajendra Jain, Dharmichand Jain and Sanjay Choudhary Group and centralized with same assessing officer. Similar rate of commission was adopted for computing estimated commission income by same assessing officer. Even this Tribunal passed common order in quantum appeal. The Ld. AR in this respect has referred to the common order of the Tribunal dated 29/12/2021 with the lead case "Sanjay Kumar Choudhary (HUF) vs. ACIT" in ITA No. 1367/AHD/2017 & Ors., wherein, the assessee's quantum appeal have also been dismissed. He has further submitted that in similar facts and circumstances, penalty u/s.271(1)(c) of the Act was also levied in the case of assessee's sister-concerns, namely, Nazar Impex Pvt Ltd. & Sanjay Choudhary HUF and Moulimani Impex Pvt Ltd and the matter reached before the Income Tax Appellate Tribunal Surat Bench. The Co-ordinate Surat Bench of the Tribunal vide order dated 30.06.2022 in ITA Nos. 132&133/SRT/2021 in case of M/s Nazar Impex Pvt Ltd. and vide order dated 30.10.2023 in ITA No. 618/SRT/2023 in case of Sanjay Choudhary HUF and vide order dated 29.08.2025 in ITA No. 533-536/SRT/2025 in Moulimani Impex Pvt. Ltd held that penalty cannot be levied when the commission income computed on estimation basis. He, therefore, has submitted that the issue is squarely covered in favour of the assessee by the aforesaid decisions of the Tribunal in the cases of assessee's sister-concerns. He, therefore, has requested that the impugned additions may be deleted.

4. We have gone through the orders of the Tribunal in the cases of the sister-concerns of the assessee and find that the Tribunal in identical facts and

circumstances, has deleted the penalty levied u/s.271(1)(c) of the Act. The relevant observations of the Co-ordinate Bench of the Tribunal vide order dated 30.06.2022 in ITA Nos. 132&133/SRT/2021 in case of M/s Nazar Impex Pvt Ltd are reproduced as under:

“4. We have heard the submission of the ld. Authorised Representative (AR) of the assessee and the ld. Departmental Representative (DR) for the Revenue and have gone through the orders of authorities below. The ld. AR of the assessee submits that the Assessing Officer made addition in quantum assessment on estimation basis. It is admitted position under the law that no penalty under Section 271(1)(c) of the Act is leviable on estimated additions. The ld. AR prayed to delete the entire penalty.

5. On the other hand, the ld. Sr. DR for the Revenue supported the orders of the lower authorities. The ld. Sr. DR submits that the assessee was indulged in providing accommodation entries and while filing return of income furnished inaccurate particulars thereby concealed the real income. The assessing officer levied penalty on the additions made in the assessment.

6. We have considered the rival submission of both the parties and perused the material available on record. We have also gone through the orders of the lower authorities. We find that there is no dispute that the addition in the assessment order under Section 143(3) r.w.s. 147 dated 29/01/2016 was made on estimation basis, which we have recorded above. It is settled law that no penalty is leviable on estimated addition. In this regard, we draw strength from the following decisions:

** Manish Dhirajlal Mehta Vs ACIT in Tax Appeal No.461 & 464 of 2000 and 833 & 836 of 2005 dated 05.02.2014 (Gujarat High Court);*

** Vijay Proteins Ltd., Vs CIT (Income Tax Reference No.139 of 1996), (Gujarat High Court);*

** Awadhesh Bansiraj Pandey Vs ITO (ITA No.4784/Mum/2018) Mumbai Tribunal and*

** DCIT Vs Anil J Kothari (2048/Ahd/2010), Surat Tribunal.*

7. Considering the fact that addition in the assessment order, on the basis of which the penalty was levied, is purely an estimated addition. It is settled position in law that no penalty under section 271(1)(c) can be levied on additions made on estimation.

The similar view was taken by the Hon'ble Jurisdictional High Court in Manish Dhirajlal Mehta Vs. ACIT, Vijay Proteins Ltd., Vs. CIT (supra), in Vijay Proteins Vs CIT (supra) and other various cases. No contrary facts or law is brought to our notice by the ld. Sr. DR for the revenue at the time of hearing of these appeals. Therefore, considering the totality of facts and circumstances, we direct to delete the penalty levied under Section 271(1)(c) of the Act.

8. In the result, appeal of the assessee is allowed."

5. The issue is squarely covered in favour of the assessee by the decisions of the Co-ordinate Bench of the Tribunal in the cases of sister-concerns of the assessee, who were covered under the same search action and in whose cases identical additions in identical facts and circumstances were made and the penalty u/s. 271(1)(c) was levied. Respectfully following the aforesaid decisions, the impugned penalty is ordered to be deleted.

6. Since the facts and issues involved in all the captioned appeals are identical, hence, our findings given above will mutatis mutandis apply to all the appeals and the impugned penalty in all the captioned appeals is ordered to be deleted.

7. In the result, all the appeals of the assessee stand allowed.

Order pronounced in the Open Court on 27/02/2026.

**Sd/-
(Narendra Prasad Sinha)
Accountant Member**

**Sd/-
(Sanjay Garg)
Judicial Member**

अहमदाबाद / Ahmedabad, दिनांक / Dated 27/02/2026

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-11, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,सूरत /AR, ITAT, Surat/Ahmedabad.
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Surat/Ahmedabad