

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 8369/Mum./2025

(Assessment Year : 2009-10)

Hitesh Jayantilal Mehta (HUF),

133, 3/15, Gopal Niwas,
Princess Street Kalbadevi,
Mumbai – 400002
PAN : AACHH7939H

..... Appellant

v/s

Income Tax Officer, Ward – 23(1)(6),

Piramal Chambers, Lower Parel,
Mumbai – 400012

..... Respondent

Assessee by : Shri Ayush Chhajed
Shri Veetrag Chhajed,
Revenue by : Shri Ritesh Misra, CIT-DR

Date of Hearing – 24/03/2026

Date of Order – 27/03/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 30.10.2025, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], which in turn arose from the penalty order passed under section 271(1)(c) of the Act, for the assessment year 2009-10.

2. In this appeal, the assessee has raised the following grounds: -

"1. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal erred in confirming the penalty without appreciating that notice issued u/s 274 r.w.s. 271(1)(c) did not mention the charge under which the said notice was issued as whether it was towards "Concealment of income" or "furnishing of inaccurate particulars" and notice itself was bad in law as held by Honourable Supreme Court in case of SSA's Emerald Meadows, 242 taxman 180.

2. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) ought to have appreciated that order passed u/s 271(1)(c) was time barred by period of limitation as mentioned under section 275(1)(a) and therefore is bad in law.

3. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) erred in confirming the penalty without appreciating that the addition as made purely on estimation basis and therefore penalty could not have been imposed.

4. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) ought to have appreciated that the Quantum Proceedings and the Penalty Proceedings are different hence every Quantum addition cannot result in imposition of penalty."

3. The only grievance of the assessee, in the present appeal, is against the deletion of penalty under section 271(1)(c) of the Act.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that for the year under consideration, the assessee filed its return of income on 30.09.2009, declaring a total income of Rs.59,054/-. On the basis of the information received from the office of DGIT (Inv.) Mumbai, and the Sales Tax Authority that the assessee is a beneficiary of an accommodation entry transaction of bogus purchases, proceedings under section 147 were initiated, and notice under section 148 of the Act was issued. Vide order dated 11.03.2015, passed under section 143(3) read with section 147 of the Act, the Assessing Officer ("AO") made an addition of Rs. 18,25,326/- by estimating the profit element

@12.5% on the total purchases found to be bogus. In further appeal, the learned CIT(A) upheld the addition made by the AO.

5. In the meanwhile, penalty proceedings under section 271(1)(c) of the Act were initiated separately. After considering the submissions of the assessee, the AO vide order dated 29.03.2018 passed under section 271(1)(c) of the Act levied a penalty of Rs. 3,14,364/-. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the penalty levied under section 271(1)(c) of the Act.

6. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the penalty in the present case has been levied without specifying the head under which the same has been levied. The learned AR, by referring to the penalty notice dated 13.03.2015, issued under section 274 r/w section 271(1)(c) of the Act, submitted that the AO has not specified whether the penalty has been levied for concealment of particulars of income or for furnishing inaccurate particulars of income. The learned AR further submitted that the impugned penalty has been levied on an estimated addition by the AO.

7. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the lower authorities.

8. We have considered the rival submissions and perused the material available on record. From the perusal of the notice dated 13.05.2015, issued under section 274 r/w section 271(1)(c) of the Act, we find that the AO did not strike-off any of the twin charges, i.e., concealment of particulars of

income or furnishing of inaccurate particulars of income. The case of the assessee is squarely covered by the decision of the Hon'ble Jurisdictional High Court in Mohd. Farhan A. Shaikh v/s CIT, reported in [2021] 434 ITR 1 (Bom.), wherein the Larger Bench of the Hon'ble Court has held that the defect in notice by not striking off the irrelevant matter would vitiate the penalty proceedings.

9. It is further evident from the record that the AO made the addition on account of bogus purchases on an estimated basis of 12.5%, which was affirmed by the learned CIT(A) in quantum appellate proceedings. Therefore, the entire addition for the year under consideration has been made solely on the basis of estimates.

10. We find that the Hon'ble Rajasthan High Court in CIT v/s Krishi Tyre Retreading and Rubber Industries, reported in [2014] 360 ITR 580 (Raj.), held that where an addition is made purely on an estimate basis, no penalty under section 271(1)(c) of the Act is leviable. Similar view has been expressed by the Hon'ble Punjab & Haryana High Court in CIT v/s Sangrur Vanaspati Mills Ltd., reported in [2008] 303 ITR 53 (P&H), wherein the Hon'ble High Court held that when the addition has been made on the basis of estimate and not on any concrete evidence of concealment, penalty under section 271(1)(c) of the Act is not leviable. Further, the Hon'ble Gujarat High Court in CIT v/s Subhash Trading Co. Ltd., reported in [1996] 221 ITR 110 (Guj.) has taken a similar view in respect of levy of penalty under section 271(1)(c) of the Act on estimated additions. Therefore, it is evident that the issue of the

justification for imposing a penalty when the addition is based on an estimate is no longer *res integra*.

11. Thus, on both counts, the penalty levied under section 271(1)(c) of the Act in the present case is unsustainable. Accordingly, respectfully following the decisions of the Hon'ble High Courts cited *supra*, the penalty order passed under section 271(1)(c) of the Act is quashed.

12. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 27/03/2026

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/03/2026
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai