

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.76/MUM/2026 ITA No.75/MUM/2026
(Assessment Year:2010-2011) (Assessment Year:2011-2012)**

M/s. Perg Advertising Pvt. Ltd.

Sahar Plaza, Bonanza B-111, J. B. Nagar,
Andheri Kurla Road, Andheri (East),
Mumbai - 400059. Maharashtra
[PAN:AACCP5115A]

..... **Appellant**

Vs

**Deputy Commissioner of Income Tax
Circle 2(3)(1), Mumbai**

Room No.552, 5th Floor, Ayakar Bhavan,
M. K. Road, Mumbai-400020. Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Sameer G. Dalal
For the Respondent/Department : Shri Virabhadra S. Mahajan

Date

Conclusion of hearing : 06.04.2026
Pronouncement of order : 17.04.2026

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are two appeals preferred by the same Assessee challenging the Order passed by the National Faceless Appeal Centre (NFAC), Delhi confirming the Penalty levied under Section 271(1)(c) of the Act. The appeals were heard together and are being disposed off by way of common order.

2. We would first take-up appeal for the Assessment Year 2010-2011.

ITA No.76/MUM/2026 (Assessment Year 2010-2011)

3. The present appeal preferred by the Assessee is directed against the Order, dated 15/12/2025, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the '**CIT(A)**'] whereby Learned CIT(A) had dismissed the appeal against the Penalty Order,

dated 31/03/2017, passed under Section 271(1)(c) of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'], for the Assessment Year 2010-2011.

4. The Assessee has raised following grounds of appeal :

- "1. The CIT(A) erred in confirming the penalty of Rs.21,68,839 levied u/s 271(1)(c) without establishing concealment or furnishing of inaccurate particulars, as the impugned addition arises solely from an estimate disallowance.*
- 2. The authorities below failed to appreciate that the Appellant had produced primary evidences including invoices and account-payee cheque payments. No evidence was brought on record to show the purchases were bogus.*
- 3. The CIT(A) erred in replying on generic 'hawala dealer' lists and non-service of notices u/s.133(6), neither of which constitute proof of concealment.*
- 4. Penalty on estimated income is contrary to settled judicial principles and has been consistently deleted in similar cases by various ITAT benches.*
- 5. The penalty order is bad in law as there is no clear and specific satisfaction recorded by the Assessing Officer during assessment regarding concealment or inaccurate particulars."*

5. The relevant facts in brief are that for the Assessment Year 2010-2011 vide Assessment Order, dated 01/12/2016, passed under Section 143(3) read with Section 147 of the Act addition of INR.43,00,258/- was made in the hands of the Assessee in respect of alleged bogus purchases since the Assessee had failed to furnish corroborative documents. The profit element embedded alleged bogus purchases was computed at 14.60% of the alleged bogus purchases of INR.2,94,53,819/-. In the quantum appeal, the Learned CIT(A) vide Order dated 19/03/2019 reduced the addition to 12.5% of alleged bogus purchases. No further appeal was preferred by the appellant against the order of the Learned CIT (A) in quantum proceedings.

6. Thereafter, vide Penalty Order, dated 04/02/2022, the Assessing

Officer levied a penalty of INR.21,68,839/- under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income. The Learned CIT(A), vide impugned Order, dismissed the appeal of the Assessee and confirmed the penalty levied under Section 271(1)(c) of the Act. Being aggrieved, the Assessee has preferred the present appeal before this Tribunal on the grounds reproduced in paragraph 4 above.

7. We have heard both the sides and have perused the material on record.
8. On perusal of the Assessment Order, dated 01/12/2016, passed under Section 143(3) read with Section 147 of the Act, we find that the Assessing Officer had made an addition of INR.43,00,258/- in respect of alleged bogus purchases holding as under:

"In the 'Purchases' (Net of VAT and Cartage) amounting to Rs.2,94,53,819/- from Siddhi Vinajayak Trading Company, Nisha Enterprises and Shree Ganesh Trading Company, Gross Profit embedded therein being 14.6% (which is the % of Gross Profit for the year) is held as suppressed income in respect of such unproven purchases and accordingly a sum of Rs.43,00,258/- is added to the income of the assessee as its suppressed Gross Profit."

9. In the quantum appeal preferred by the Assessee the Learned CIT(A) restricted the disallowance to 12.5% of alleged bogus purchases observing as under:

"3.3. In view of the above discussion, it is clear that the AO has established beyond doubt that appellant company has utilized accommodation entry from the said party without actually receiving goods. The AO has treated that goods were actually purchased but not from the parties which have been claimed in the books of accounts of the appellant company but from the grey market. After discussing the various facets, it is more than fair in disallowing only 12.5% of the total purchases from suspicious dealers which is based on the judgment of Hon'ble Gujarat High Court in case of Simit P. Sheth. Thus, considering the facts and circumstances in totality, the disallowance of 12.5% of Rs.3,06,34,977/- is confirmed and grounds associated with this disallowance are dismissed."

10. From the above, it is apparent that the addition has been made in the hands of the Assessee on estimate basis. During the course of hearing Learned Authorized Representative for the Assessee had relied upon the decision of the Tribunal in the case of Income Tax Officer, Ward – 41(2)(2) Vs. In Coach Builders [ITA No.7993/Mum/2025, Assessment Year 2009-2010, dated 18/02/2026] wherein penalty levied under Section 271(1)(c) of the Act in respect of alleged bogus purchases was deleted for the reason that the additions were made on estimate basis estimated by the Tribunal holding as under:

- "5. *Thus, it is evident from the record that the AO made the addition on account of bogus purchases on an estimated basis of 20%, which was further reduced by the Tribunal to 15%. Therefore, the entire addition for the year under consideration has been made solely on the basis of estimates.*
6. *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 about the justification for the imposition of a penalty where the addition is made on the basis of an estimate is no longer res integra.*
7. *Thus, respectfully following the aforesaid decisions, we are of the considered view that the penalty under section 271(1)(c) of the Act cannot be levied merely on the basis of an estimated addition. Accordingly, the grounds raised by the Revenue are dismissed, and the decision of the learned CIT(A) in deleting the penalty is upheld.*
8. *In the result, the appeal by the Revenue is dismissed.*

11. The above decision is squarely applicable to the facts of the case. Accordingly, respectively following the same we delete the penalty of

INR.1,58,955/- levied upon Assessee under Section 271(1)(c) of the Act. Thus, Ground No. 4 raised by the Assessee is allowed while all the other grounds are dismissed as having been rendered infructuous.

12. In result, in terms of paragraph 11 above, the appeal preferred by the Assessee is allowed.

ITA No. 75/MUM/2026 [Assessment Year 2011-2012]

13. Now we would take up appeal preferred by the Assessee for the Assessment Year 2011-2012 against the Order, dated 28/11/2025, passed by the Learned CIT(A) whereby Learned CIT(A) had dismissed the appeal against the Penalty Order, dated 04/02/2022, passed under Section 271(1)(c) of the Act.

14. The Assessee has raised following grounds of appeal :

- "1. The CIT(A) erred in confirming the penalty of ₹1,58,955 levied u/s 271(1)(c), despite the fact that the underlying addition is purely an estimated disallowance of 12.5% on alleged unverifiable purchases, with no finding of concealment or furnishing of inaccurate particulars.*
- 2. The authorities failed to appreciate that the Appellant produced invoices and bank statements evidencing genuine payments through account-payee cheques. No evidence was brought to establish that the purchases were bogus.*
- 3. The AO erred in relying on non-service of notices u/s 133(6) as a basis for alleging bogus purchases, without conducting any further verification, field inquiry, or cross-examination.*
- 4. Penalty cannot be levied on estimated additions, as held consistently by various High Courts and Tribunals. The CIT(A) failed to consider binding precedents prohibiting penalty in such cases*
- 5. The penalty order is invalid for lack of clear, specific satisfaction regarding concealment in the assessment order, contrary to judicial requirements.*
- 6. The CIT(A) erred in confirming the penalty by mechanically relying on general observations regarding hawala cases without demonstrating any specific concealment by the Appellant."*

15. We have heard the both the sides and have perused the material on record in relation to the above grounds raised by the Assessee. We find that the Learned CIT(A) has disposed off the appeal preferred by the Assessee without dealing with the submissions filed by the Assessee during the appellate proceedings. Therefore, the Impugned Order dated 28/11/2025 passed by the Learned CIT(A) cannot be sustained and the same is set aside with the directions to Learned CIT(A) to adjudicate the appeal preferred by the Assessee afresh after granting Assessee a reasonable opportunity of being heard and after taking into consideration the submissions filed by the Assessee including the judgment of the Hon'ble Bombay High Court in the case of The Principal Commissioner of Income Tax-6 Vs. Colo Colour Pvt. Ltd. [ITA No.48 of 2022, dated 16/09/2025] and the decision of the Tribunal in the case of Coach Builders [ITA No.7993/Mum/2025, Assessment Year 2009-2010, dated 18/02/2026]. In terms of aforesaid, Ground No.1 raised by the Assessee is treated as allowed for statistical purposes while all the other grounds raised by the Assessee are dismissed as having being infructuous since we have set aside the impugned order with the aforesaid directions.
16. In result, in terms of paragraph 15 above, the appeal preferred by the Assessee is treated as allowed for statistical purposes.
17. In conclusion, ITA No.76/MUM/2026 (Assessment Year 2010-2011) is allowed while ITA No. 75/MUM/2026 [Assessment Year 2011-2012] is treated as allowed for statistical purposes.

Order pronounced on 17.04.2026.

Sd/-
(Vikram Singh Yadav)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 17.04.2026
Milan, LDC

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ The CIT
4. प्रधान आयकर आयुक्त/ Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai