आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 159/Srt/2026
Assessment Year: 2007-08

Sharad Jain, C/o Ketan H. Shah, Advocate 512,Times Square-I, Opp. Ram Baug Bungalow, Thaltej Shilaj Road, Thaltej, Ahmedabad	बनाम/ Vs.	The Income Tax Officer, Ward-3(3)(4), Surat
(Assessee/Appellant)		(Revenue/Respondent)
PAN: ACXPJ4341G		

Assessee by	Shri Aman Shah, CA
Revenue by	Shri Ashish Kumar, Sr. D.R.
Date of Hearing	02-07-2026
Date of Pronouncement	13-07-2026

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by the order of first appeal dated 30.01.2026 passed by learned Commissioner of Income-tax-NFAC, Delhi [“Ld. CIT(A)”], which in turn arises out of the penalty-order dated 29.03.2019 passed by learned ITO, Ward-3(3)(4), Surat [“Ld. AO”] u/s 271(1)(c) of Income-tax Act, 1961 [“the Act”] for assessment-year [“AY”] 2007-08, the assessee has filed this appeal on following grounds:

"1. In passing penalty order u/s 271(1)(c) imposing penalty of Rs. 37,30,939/- vide order dated 29-03-2019 and CIT(A) erred in confirming the same vide order dated 30-01-2026, it is said that the penalty is illegal, unwarranted and contrary to settled legal position.

2. In passing and upholding penalty orders u/s 271(1)(c) in light of the fact that the issue of penalty in the case of ad-hoc additions is settled by jurisdictional ITAT Surat bench in case of Ramprakash Vijayvergia ITA No. 125/Srt/2024 and in the case of Borda Brothers in ITA 1062 of 2024 of Surat. Hence, penalty being illegal, may be deleted and the impugned order be quashed.

3. The appellant craves leave to add, amend, alter or delete any of the grounds in the interest of justice."

2. The background facts leading to present appeal are as under:

(i) The assessee-individual is engaged in the business of diamond.

(ii) For AY 2007-08 under consideration, the assessee filed return u/s 139 which was assessed. Subsequently, the case of assessee was re-opened for assessment u/s 147 based on the information collected by tax authorities in a search conducted upon "Bhanwar Lal Jain Group" revealing that the said group was involved in providing accommodation by issuing non-genuine bills. The assessee was also identified as one of the beneficiaries of such accommodation. During assessment proceedings, the Ld. AO observed that the assessee made bogus purchases of Rs. 8,93,53,079/-. Ultimately, while completing re-opened assessment, the AO made an addition of Rs. 2,23,38,270/- equivalent to 25% of the amount of bogus purchases. The assessee carried matter in first-appeal whereupon the Ld. CIT(A) reduced the rate of addition from 25% to 12.50%. Accordingly, the Ld. CIT(A) granted part-relief to assessee while sustaining addition to the extent of Rs. 1,11,69,135/-. Ld. AR for assessee pointed out that the assessee went in next appeal to ITAT in ***ITA No. 1390/Ahd/2017***; the said appeal stands disposed off by ITAT, Surat Bench vide order dated 18.07.2022 in which the addition made by AO has been further reduced from 12.5% to 6%.

(iii) Simultaneous with completion of assessment as aforesaid, the Ld. AO also initiated penalty proceeding u/s 271(1)(c) against assessee. Ultimately, the AO passed penalty-order dated 29.03.2019 imposing a penalty of Rs. 37,30,939/- *qua* the addition of Rs. 1,11,69,135/- sustained by Ld. CIT(A). Aggrieved by penalty so imposed, the assessee filed appeal to Ld. CIT(A) but did not get any success. Now, the assessee has come in present appeal challenging the penalty imposed by AO and upheld by CIT(A).

3. Presently, the issue before us is the penalty imposed by Ld. AO u/s 271(1)(c) and upheld by Ld. CIT(A).

4. Ld. AR for assessee submitted that the AO has imposed penalty *qua* the addition of bogus purchases. However, the said addition was made on adhoc/estimation basis which has been further reduced by Ld. CIT(A)/ ITAT. Thus, the addition is solely on adhoc/estimation basis. He submitted that the penalty u/s 271(1)(c) cannot be imposed on adhoc/estimated

addition. He submitted that the case of assessee is directly covered by two orders of Co-ordinate Benches of ***ITAT, Surat,*** viz. (i) ***ITA No. 125/SRT/2024 – Shri Ramprakash Vijayvergia Vs. ITO, dated 16.04.2024*** and (ii) ***ITA No. 655/SRT/2025 – Santosh Singh Hukam Singh Vs. Income-tax Officer, dated 25.11.2025***. He submitted that the facts and governing law are identical in those decisions and present matter before this bench, there is absolutely no change whatsoever. He filed copies of the orders of ITAT. We re-produce below relevant paras from order of ***ITA No. 125/SRT/2024 – Shri Ramprakash Vijayvergia (supra)***:

> *"4. We have heard the submissions of the learned Authorised Representative (ld. AR) of the assessee and the learned Senior Departmental Representative (ld. Sr. DR) for the revenue. The Id. AR of the assessee submits that the assessee has neither concealed the income nor furnished inaccurate particulars thereof. The Assessing Officer merely made disallowances of purchases on the basis of allegation of bogus purchases which were based on the information about the search carried out on Bhanwarlal Jain Group in Mumbai. The Assessing Officer made 100% of disallowance of purchases shown from Ankita Exports and Megha Gems. However, on appeal before the ld. CIT(A), the addition was restricted to Rs.62,34,360/- which is 12.5% of the disputed/bogus purchases. The ld. AR of the assessee submits that on further appeal by revenue before the Tribunal, th addition was restricted to 5% of Gross profit. The ld. AR of the assessee submits that it is settled position under law that no penalty under Section 271(1)(c) of the Act is leviable on the addition made on estimated/ ad hoc basis. The entire penalty is to be deleted.*
>
> *5. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities. The Id. Sr. DR for the revenue submits that the penalty to the extent of bogus purchases confirmed by the ld. CIT(A) may be upheld.*
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> *6. We have considered the submissions of both the parties and perused the record carefully. There is no dispute that initially, the Assessing Officer made disallowances / addition of Rs. 4.98 crores on the basis of information of Investigation Wing, Mumbai that the assessee is one of the beneficiaries of purchases shown from Ankita Exports and Megha Gems which are managed by Bhanwarlal Jain Group. There is no further dispute that on appeal before the ld. CIT(A), the quantum addition was restricted to 12.5%. We find that on further appeal before the Tribunal, the addition instead of restricting to the bogus purchases, the gross profit of assessee was restricted to 5%. Thus, admittedly, the ultimate addition was restricted on ad hoc basis. It is settled*

position under law that no penalty on the addition made on ad hoc basis, is to be levied. Similar view has been taken by Hon'ble Jurisdictional High Court in CIT Vs Subhash Trading Co. (1996) 86 Taxman 30 (Guj), Navjivan Oil Mills Vs CIT (2002) 124 Taxman 392 (Guj), CIT Vs Valimkbhal H Patel (2006) 280 ITR 487 (Guj) and in ITO Vs Bombaywala Readymade Stores (2015) 55 taxmann.com 258 (Guj). So far as reliance on various case laws relied by Id CIT(A) in his order, we find that the facts in all such case laws are at variance and the decisions of all such cases are not at all applicable as far as facts of the present case is concerned. Thus, we do not find any justification in levying such penalty under section 271(1)(c).

7. Thus, we direct the Assessing Officer to delete the entire penalty levied vide order dated 09/03/2018. In the result, the grounds of appeal raised by the assessee are allowed.

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

5. Per contra, Ld. DR for revenue submitted that it is not a simple case of adhoc/estimated addition, it is a case of bogus purchases made by assessee by obtaining non-genuine bills from suppliers although the addition has been made on estimation basis. Therefore, the penalty u/s 271(1)(c) is certainly triggered and the lower authorities are right in imposing/upholding penalty. Ld. DR submitted even if there are favourable decisions of Co-ordinate Benches as relied by Ld. AR, this bench should give a considerate thought and uphold the action of lower-authorties.

6. We have heard the rival submissions of both sides and perused the material available on record. It is an undisputed fact that initially the Ld. AO made addition of 25% which the Ld. CIT(A) reduced to 12.50% and ultimately, the ITAT, Surat has reduced to 6% of the alleged bogus purchases. Thus, the addition has undergone a series of estimation at all levels. It is a settled proposition of law that penalty u/s 271(1)(c) of the Act is not exigible where the addition is made/sustained on adhoc/estimated

basis. We find that this very issue arising from identical facts relating to estimated additions on account of alleged bogus purchases, has already been examined in depth by two different Co-ordinate Benches of ITAT, Surat in the cases of ***Shri Ramprakash Vijayvergia (supra)*** and ***Santosh Singh Hukam Singh (supra)***. In those decisions, after duly considering the factual matrix as well as the binding precedents of Hon'ble Higher forums, the Co-ordinate Benches have held that penalty u/s 271(1)(c) is not leviable. The Revenue has not brought to our notice any distinguishing feature in the facts of the present case or any subsequent judicial pronouncement taking a contrary view. Therefore, judicial discipline and the principle of consistency require us to follow the aforesaid decisions, and we find no justifiable reason to deviate from the view already taken by Co-ordinate Benches. Respectfully following the same, we hold that the penalty imposed by the Ld. AO and sustained by the Ld. CIT(A) is unsustainable in law. Accordingly, we direct the Ld. AO to delete the penalty of Rs. 37,30,939/-.

7. **Resultantly, this appeal is allowed.**

Order pronounced in open court on 13/07/2026

Sd/-	Sd/-
(SUCHITRA KAMBLE) JUDICIAL MEMBER	(B.M. BIYANI) ACCOUNTANT MEMBER

Surat

दिनांक /Dated : 13/07/2026

*a.k.

Copies to:	(1)	The appellant
	(2)	The respondent
	(3)	CIT
	(4)	CIT(A)
	(5)	Departmental Representative
	(6)	Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Surat Bench, Surat