IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 48 OF 2022

The Principal Commissioner of Income Tax-6 … Appellant
Vs.
Colo Colour Pvt. Ltd. … Respondent

Mr. Suresh Kumar for the appellant.
Ms. Dinkle H. Hariya for the respondent.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

RESERVED ON: 12 SEPTEMBER, 2025
PRONOUNCED ON : 16 SEPTEMBER, 2025

Judgment (Per G. S. Kulkarni, J.) :-

1. This appeal of the Revenue filed under Section 260A of the Income Tax Act, 1961 (for short, "**the Act**") challenges an order dated 31 July 2020 passed by the Income Tax Appellate Tribunal, Bench at Mumbai (for short "**the Tribunal**"), rejecting the petitioner's appeal filed against the order passed by the learned Commissioner of Income Tax (Appeals) dated 28 June 2018 deleting the penalty levied under Section 271(1)(c) of the Act, by the Assessing Officer. The Assessment Year in question is 2011-12.

2. The Revenue has raised the following questions of law:-

> "**A.** Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in upholding the order of Ld. CIT(A) in deleting the penalty of Rs. 2,75,000/- levied by the Assessing Officer under Section 271(1)(c) of the Act without appreciating that the Assessee had failed to prove the genuineness of the impugned purchases from hawala dealers and hence had concealed its income by way of bogus



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purchases?

B. The Appellant submits that the impugned order dated 31.07.2020 passed by the Income Tax Appellate Tribunal 'C' Bench, Mumbai, is bad-in-law and is liable to be quashed and/or set aside on the following amongst other grounds, which are urged without prejudice to one another."

3. Briefly the facts are :- The assessee was engaged in the business of operating a photo studio and trading in photographic material. It had filed return of income for A.Y. 2011-12 dated 29 September 2011 declaring a total income of Rs.4,32,530/-. Subsequently, the case was re-opened by issuing a notice under Section 148 of the Act on 23 March 2016. The re-assessment was completed under Section 143(3) read with Section 147 of the Act by an order dated 29 August 2016. The total income of the assessee was determined at Rs.12,32,570/- after making an addition of Rs.7,40,776/- on account of bogus purchases and addition of Rs.59,262/- towards unexplained commission expenditure on bogus purchases.

4. In passing the assessment order, the Assessing Officer has categorically recorded in paragraph 4.4 of the Assessment Order that the assessee in the course of the assessment proceedings, had furnished the following documents on the alleged purchase involved in re-assessment:

(a) Purchase Bills/invoices of the alleged bogus purchases.
(b) Purchase Orders, Delivery Challans.
(c) A statement showing details like, bill no. & date, Delivery Challan No. & date, amount of bill, amount paid by cheque, cheque number & clearance date.
(d) Copy of the bank account statement reflecting the amounts cleared through cheques.
(e) A detailed write-up explaining reasons on the show cause given as to why the purchases made by it from the



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aforesaid hawala parties should not be treated as 'bogus purchases'.

(f) Stock records for the relevant period."

5. In such assessment proceedings, the assessee had clearly taken a position by its letter dated 02 March 2017 that the assessee had agreed for the addition just to buy peace of mind and to avoid protracted litigation. The assessee accordingly agreed for the addition stating that it did not mean that the assessee had concealed income or furnished inaccurate particulars of income. It was also contended that there was no conclusive material that the assessee had concealed particulars of income or furnished inaccurate particulars of income and supported its case on several judicial decisions.

6. Accordingly, the Assessing Officer 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/- borne out by the bills which were alleged to be bogus, which computed at Rs.7,40,776/-. Accordingly, the Assessing Officer made an addition of Rs.7,40,776/- to the total income. The Assessing Officer also observed that the assessee must have incurred expenditure towards commission, outside the books of account for obtaining the bogus purchase bill at the rate of 1% of the value of such bogus bills and on such count made an addition of Rs 59,262/- towards unexplained expenditure. The Assessing Officer made the following observations in paragraph 4.10 of the Assessment Order:-

"4.10. On the perusal of two pronged argument put forth by the assessee and on due consideration of the facts & circumstances of the case, it appears that the purchase itself cannot be doubted, but on the basis of enquiries conducted by Sales Tax Department and investigation done by



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> the undersigned, there is an element of suspicion that the book results arrived at by including these purchases do not represent true profit derived by the assessee from its business. As such, the books of account of the assessee to the extent of these purchases cannot be relied upon and deserve to be rejected u/s.145(3) of the I.T.Act. In the instant case, all the facts and circumstances outlined above leads to the conclusion that although the purchases made by the assessee from the aforesaid parties is not in doubt but at the same time it is difficult to accept the purchase price shown on the invoices/bills issued by the parties in question. It can still be fictitious invoices in the name of the aforesaid parties appeared to have been really received because without receiving such material the corresponding sales would not have been possible. Thus the receipt of material in question is not in really received because without receiving such material the corresponding sales doubt having regard to the quantitative details furnished by the assessee, But, the profit offered on these purchases can certainly be unreliable and is required to be estimated. Although argument of the assessee cannot be accepted in totality, however, it is an elementary rule of accountancy as well as of taxation laws that profit from business cannot be ascertained without deducting cost of of purchase from sales, otherwise it would amount to levy of income-tax on gross receipts or on sales."

7. The department has accepted and not challenged the findings in the aforesaid assessment order before any higher forum. While completing the re-assessment, penalty proceedings under Section 271(1)(c) were initiated, opining that the assessee had furnished inaccurate particulars of income and/or had indulged in concealment of income chargeable to tax. The Assessing Officer finalized the penalty proceedings by an order being passed under Section 271(1)(c) of the Act dated 20 March 2017, levying a penalty of Rs.2,75,000/-, being 100% of the tax sought to be evaded in respect of the additions made towards bogus purchases and commission on such bogus purchases.

8. The assessee being aggrieved by the penalty order filed an appeal before the Commissioner of Income Tax (Appeals), Mumbai, *inter alia* contending that in the facts of the case there was no warrant for levy of penalty of Rs.2,75,000/-



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when the addition of 12.5 % plus 1% on the alleged bogus purchases was made on an ad hoc estimation. It was contended that considering the settled principles of law, the penalty could not have been levied on such Ad-hoc addition/disallowance. The assessee has contended to have provided adequate details and furnished the necessary documents, in support of the claim of genuineness of the transactions, hence, there was no case of concealment of particulars or furnishing of inaccurate particulars of income.

9. The CIT(A) considering the rival contentions by an order dated 28 June, 2018 held that levy of penalty under section 271(1)(c) was not justified on the merits of the case and accordingly directed the Assessing Officer to delete the penalty of Rs2,75,000/- levied under Section 271(1)(c) of the Act. In arriving at such conclusion, the CIT(A) recorded a finding that during the course of the assessment proceedings, the assessee had submitted documents before the Assessing Officer, namely, the ledger account of the alleged bogus parties, copies of tax invoices of the alleged bogus parties, copy of bank statements reflecting payments made through Account Payee Crossed Cheques and extract of Stock Statement reflecting receipt of purchases made from the alleged bogus parties and corresponding dispatch of goods. The CIT(A), considering the principles of law on the issues involved, observed that the basis on which the Assessing Officer made the addition in the assessment order on the alleged bogus purchases was the inference drawn by the Assessing Officer that the assessee had made purchases from the grey market without bills and obtained the bills from Hawala Suppliers



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at a higher price. It was observed that in reaching to this conclusion, a factual inference was made by the Assessing Officer merely on the basis of the surrounding circumstances and there was no positive evidence to show that the appellant did not make the purchases from those who had issued the bills and in fact had made the purchases from the grey market. It was further observed that the Assessing Officer had recorded that the concerned hawala operators had made a statement on oath before the sales tax authorities, however, the contents of the said statements were not brought on record to show that all the sale bills issued by the said parties were bogus including the sale bills issued to the assessee. The CIT(A) further observed that in such circumstances, the Assessing Officer, nonetheless proceeded to make the addition on account of bogus purchases estimating the same at 12.5% of the alleged bogus purchase bills when there was no evidence regarding the actual benefit derived by the appellant by obtaining bogus bills. The CIT(A) further observed that also an addition of Rs 59,262/- was made towards unexplained commission expenditure on bogus purchase bills which was not based on any positive evidence and was purely an estimate made by the Assessing Officer with regard to the incurring of such expenditure as well as the quantum of such expenditure and, accordingly, on such reasoning, the appeal filed by the assessee was allowed by setting aside of the penalty order.

**10.** The Assessing Officer (ACIT) being aggrieved by the said orders dated 28 June 2018 passed by the CIT (Appeals) approached the Tribunal in an appeal, which has been dismissed by the impugned order. In dismissing the department's



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appeal, the Tribunal has observed that this was a case where penalty was levied on an ad hoc estimation as made by the Assessing Officer restricting the profit elements in the purchases of 12.5%. The Tribunal referring to the position of law in **Shri Deepak Gogri v. income Tax Officer**[1].

11. As also the decision of the Delhi High Court in **CIT vs. Aero Traders Pvt. Ltd.**[2] taking a similar view as taken by the Tribunal, held that the estimated rate of profit, applied on the turnover of the assessee, did not amount to concealment or furnishing of inaccurate particulars. It was observed that the Assessing Officer in the present case had estimated the gross profit on the alleged non genuine purchases without there being any conclusive proof of concealment of income or furnishing of inaccurate particulars of such income. Accordingly, the Tribunal held that the no infirmity was observed in the order passed by the CIT (Appeals) in setting aside the penalty orders passed under Section 271(1)(c) of the Act. The Tribunal accordingly dismissed the Revenue's Appeal.

Submissions

12. Mr. Suresh Kumar, learned counsel for the Revenue, has made elaborate submissions assailing the impugned order and supporting the view taken by the Assessing Officer in passing the penalty order under Section 271(1)(c). It is his submission that this is a clear case as observed by the Assessing Officer, wherein on the part of the assessee, there was an element of suppression in the books on

1 ITA No.1396/MUM/2017 dated 23 November 2017

2 322 ITR 316



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the nature of the purchases and the bills and/or invoices submitted to that effect by the assessee which came to the knowledge of the Assessing Officer, on the basis of enquiry which is conducted with the Sales Tax Department and the investigation of the Assessing Officer, to the effect. Hence, the alleged purchases as claimed by the assessee did not represent the true profit derived by the assessee from its business. It is his submission that the books of accounts of the assessee to the extent of such purchases, were hence rightly disbelieved by the Assessing Officer and rejected under Section 145(3) of the Act. It is his submission that the view taken by the Assessing Officer is hence the correct view, when it is held by the Assessing Officer that it was difficult to accept the purchase price shown on the invoices / bills issued by the bogus parties. It is hence submitted that it was open for Assessing Officer to presume that the materials in question, shown as purchases, through such fictitious invoices in the name of the said parties, appeared to have been received by the assessee, without receiving such materials, resultantly, the corresponding sales, could not have ever taken place. It is hence submitted that the additions have not been made on an *ad hoc* basis. Insofar as the assessee furnishing inaccurate particulars or concealment of income was concerned, Mr. Suresh Kumar submits that the assessee had clearly failed to prove the purchases from such parties, hence, the additions as made were appropriate. It was contended that both the CIT(A) and the Tribunal have failed to appreciate that the Assessing Officer hence was correct in his observations, that an addition being made in such circumstances was sufficient reason for levying penalty, as it must be held that the assessee's case fell within the ambit of deemed concealment



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and furnishing of inaccurate particulars of income as envisaged under Section 271(1)(c) in the absence of any explanation.

**13.** On the other hand, learned counsel for the assessee has supported the impugned orders passed by the Tribunal. It is her primary contention that it is a settled position in law that penalty cannot be levied when an ad hoc estimation is made. It is her submission that in the facts of the present case, clearly an ad hoc estimation was made by the Assessing Officer restricting the profit element in the purchases at 12.5%. Her contention is that this is again a case where merely on the basis of information derived from the Sales Tax Officer, the purchase bills/invoices which were alleged to be issued by Hawala Parties were disbelieved. Learned counsel for the assessee has drawn our attention to the several documents which were placed before the Assessing Officer, in the Assessing Officer coming to a conclusion, that on the basis of such materials, an estimate was required to be made, to conclude that the benefit on account of difference in the purchase price amounted to 12.5% and accordingly on such basis computed the same at Rs.740776/- making an addition of such amount to the total income. She submits that thus the basis for the addition made in the assessment order towards bogus purchases was merely on the inference drawn by the Assessing Officer, that the assessee had made the real purchases from the grey market without bills and/or had obtained bills from alleged Hawala Suppliers at a higher price and without there being any supporting material, when *infact* there was tangible material before the Assessing Officer. Accordingly, it is submitted that certainly this was



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not a case where the provisions of Section 271(1)(c) for levy of penalty were attracted, to hold that the petitioner had in any manner furnished inaccurate particulars or there was any concealment of income and more particularly when a penalty was sought to be levied only on an *ad hoc* estimation was made by the Assessing Officer in making the additions. In support of her contentions, she has placed reliance on the decision of the Division Bench of this Court in **Principal Commissioner of Income Tax-29, Mumbai Vs. G. M. Finance & Trading Company[3], Commissioner of Income-tax Vs. Krishi Tyre Retreading & Rubber Industries[4] & Vijay Proteins Ltd. Vs. Commissioner of Income-tax[5].**

## 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,

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**3** Income Tax Appeal No.1627 of 2016 decision dated 4 March 2019

**4** [2014] 44 taxmann.com 9 (Rajasthan)

**5** [2015] 58 taxmann.com 44 (Gujarat)



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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



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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.



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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.



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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.**[6] 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**

**6** (2025) 474 ITR 151



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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



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> **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.
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> *****
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> 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**[7] is quite apt. In such decision the Division Bench while referring to the decision in **Commissioner of Income Tax vs. Krishi Tyre Retreading and Rubber Industries**[8] 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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**7** [2015]58 taxmann.com 44 (Gujarat)

**8** [2014]44 taxmann.com 9 (Rajasthan)



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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.



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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.

(AARTI SATHE , J.) (G. S. KULKARNI , J.)



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