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

INCOME TAX APPEAL NO.5 OF 2022

The Principal Commissioner of Income Tax-1 Thane,
Ashar I.T.Park, `B' Wing, 6th Floor,
Wagle Industrial Estate, Thane (W)-400 604. Appellant

Versus

Sunny Ashok Lad,
Proprietor M/s.Sai Sidharth Construction,
602, Damodar Apartment, Behind Ashok Talkies,
Thane (W)-400 601. Respondent

Mr.Akhileshwar Sharma, Advocate for Appellant-Revenue.
None for Respondent

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

DATE: 3rd October 2025

ORAL JUDGMENT (Per - G.S.Kulkarni, J.) :-

1. This is an appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (`the Act' for short) assailing the orders passed by the Income Tax Appellate Tribunal, Bench at Mumbai (`Tribunal') dated 31st October 2019 whereby the Respondent-Assessee's appeal for the A.Y.2010-11 against the orders passed by the Commissioner of Income Tax (A) dated 3rd October 2017 has been allowed.

2. Briefly the facts are : The assessee is an individual having a proprietary business of civil construction in the name of M/s. Sai Siddhanath Construction. For the assessment year in question the return of income was filed on 12th October 2010 declaring the total income of Rs.87,53,450/- The Assessing Officer (`A.O.'

for short) issued notice under Section 148 of the Act dated 19th July 2013 and commenced re-assessment proceedings on the ground that data is provided by the Sales Tax Department about non genuine purchases from one entity during F.Y. 2009-2010 relevant to assessment year 2010-2011. The assessee responded to the said notice as reproduced below by contending that purchases were genuine and supported by evidence.

"……...Purchases in the financial year 2009-2010, relevant to assessment year 2010-2011 from suspicious dealers quantified by VAT department total amounting to Rs. 3,03,561/- details mentioned below

Sr. No.	*Name of Supplier*	*Amount*
1	*Arbuda Steel*	*109,715/-*
2	*Marco Enterprises*	*193,846/-*
	Total	*303,561*

Sales tax department was quantified as suspicious dealers. But I purchased material from above mentioned parties which are genuine purchases & payment also made by account payee cheque. We are attached herewith invoice copy, delivery Challan & bank statement showing payment details for your kind consideration.

I am government contractor since last 4 years a per the work order I have to finish the work within a stipulated time & procure the material as per the site requirement & some time problem of working capital to procure the goods on credit from unknown parties for various sites due to the availability of time it is very difficult to judge the genuineness of the party.

My firm is proprietary concern where is no department like corporate in which every activity handled by various departments like purchase, finance, project, HR & admin in proprietorship concern all decisions taken by my self with whatever expertise, so limitation of man power considering the cost factors this type of suspicious dealers misguide to us.

Considering the constitution of my business & availability of manpower & competition in business I agree to make addition in my return for peace of mind & avoid further proceedings. So I made addition in our return & recomputed the tax. So please consider my humble request to your honor not to initiate penalty proceedings for the same."

3. In response to the Section 148 notice, the assessee added the purchases made from the alleged havala parties by filing a revised return of income. It was assessee's case that filing of return declaring such income was on such understanding that no penal action under Section 271(1)(c) of the Act for concealment of income would be taken and that the assessee accepted to file the revised return in response to the notice under Section 148 of the Act to buy peace. Accordingly the assessment under the provisions of Section 148 read with Section 143 of the Act was accepted.

4. Assessee did not challenge the assessment order dated 23rd January 2015 passed by the A.O under Section 143(3) read with Section 147 of the Act. However, basis the said assessment order and the addition made, penalty proceedings were initiated against the assessee under Section 271(1)(c) read with Section 274 of the Act.

5. It was assessee's categorical case that all purchases were genuine purchases in respect of which material have been received by the assessee. It was also contended that the purchases were supported by tax invoices of the concerned party and payments were made through banking channels. The entire record was produced before the A.O. and no defect or deficiency therein has been pointed out. It was also the assessee's case that in respect of the alleged bogus purchases as per Sales Tax Department, the A.O had not shared complete information on the basis of which he held that the said purchases by the assessee were not genuine. It was also categorically contended that no opportunity to cross examine the source of adverse evidence was granted to the assessee in spite of specific request made

during penalty proceeding, and on such ground it was contended that the principles of equity, fair play and natural justice have been breached.

6. On such backdrop the A.O in the proceedings initiated under Section 271(1)(c) of the Act, levied penalty of Rs.93,801/- on the disallowance of purchases as recorded in order dated 30th July 2015, and ignoring all the contentions as urged on behalf of the assessee (as noted hereinabove).

7. The assessee being aggrieved by the orders passed by the A.O under Section 271(1)(c) of the Act approached the Commissioner of Appeals in an appeal. By order dated 3rd October 2017 the Commissioner of Appeals dismissed the assessee's appeal. Against such orders passed on the first appeal, the assessee approached the Income Tax Appellate Tribunal in appeal, wherein the assessee has succeeded in terms of what is held in the impugned order.

8. Mr.Sharma, learned counsel for Revenue would urge the only following substantial question of law, which reads thus :

> "c) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT is justified in nor considering that the penalty levied on the addition made on the basis of information received from the Sales Tax Department, Maharashtra with regard to bogus purchase made from the assessee from dealers without supply of actual goods?"

9. Learned counsel for Revenue would submit that this is a case where the assessee at the first instance concealed the income and after notice was issued under Section 148 of the Act for reopening the assessment, the assessee agreed to the addition. His submission is that this was not an acceptable trend. It is submitted that at the first instance the assessee filed a defective return by concealing income and thereafter once the assessment was reopened, the assessee agreed for the

addition of income on the basis of what is contended in the notice issued to the assessee under Section 148 of the Act. Mr. Sharma submits that it cannot be a case that initially the assessee files a false return and after a notice of reopening the assessment is issued to the assessee, on information obtained by the revenue from the Sales Tax department, the assessee changes his position and accepts an addition on such bogus purchases. It is also his submission that even if the A.O accepts the revised return, this would not absolve the assessee from the levy of penalty. It is therefore Mr. Sharma's submission that the approach of the Tribunal is not correct more particularly in making the observations made in paragraph 11 of the order. It is therefore his submission that the appeal deserves to be admitted.

10. The assessee is served. An affidavit of service is placed on record. The assessee, however, is not represented. Accordingly we have heard Mr.Sharma.

11. Having heard Mr. Sharma, learned counsel for Revenue and also having perused the record and more particularly the impugned order, we are not inclined to accept the submissions of Mr. Sharma for the reasons, we discuss hereunder.

12. At the outset we may note the relevant observations made by the Tribunal in not accepting the case of Revenue, which read thus :

> "11. Considered the rival submissions and material on record. We notice that assessing officer received certain information from sales tax department relating to accommodation entries provided by certain parties and he noticed that one of the party (Coral Trading Co.) issued purchase bills to the assessee and accordingly, the assessment was reopened. Since the assessee has submitted the bills and vouchers in support of his purchase transaction with the above party. However, assessee has submitted before us that assessee is voluntarily agreed for the addition before assessing officer in order to buy peace, accordingly, included the above additional income in its return of income and paid the taxes. However we notice from the penalty order that assessing officer acknowledged that assessee has purchased from

the provider of accommodation entry but he has satisfied himself that the assessee has concealed the income or furnished inaccurate particulars. Since assessing officer has levied the penalty in both limbs of the section 271(1)(c) of the act, now assessee is objecting to the above action of the assessing officer. In the similar facts, the Coordinate Bench in the Third member case has held as under:

> "27. In view of the foregoing discussion, I am satisfied that the penalty was wrongly imposed and confirmed in all the four appeals under consideration. I, ergo, agree with the ld.JM in striking down all the penalty orders. The question posed is, therefore, answered in affirmative to the effect that where the satisfaction of the AO while initiating penalty proceedings u/s.271(1)(c) of the Income Tax Act, 1961 is with regard to alleged concealment of income by the assessee, whereas the imposition of the penalty is for `concealment./furnishing inaccurate particulars of income', the levy of penalty is not sustainable."

12. Respectfully following the above decision, we are inclined to delete the penalty for the assessment yer 2009-10 for both the assessee i.e. Sandeep Bhimrao Lad & Sunny Ashok Lad.

13. With regard to other assessment years, we notice that assessing officer has made the addition without establishing or without making any investigation on bogus purchases. He made the addition merely because it is not established by assessee and observed that as the onus on assessee to prove the genuineness of the purchases It may be acceptable to make addition in the return of income but when it comes to penalty, he has to establish that the purchases were made in order to conceal the income. Further we notice that assessee has accepted the addition in order to buy peace. We observe that the AO has not established that the above purchases are not genuine, the addition was made merely because assessee accepted the same as so."

13. It is clear from the observations as made by the tribunal that the assessee had submitted bills and vouchers in support of the alleged doubtful transactions. It is also clear that the assessee voluntarily agreed before the Assessing Officer for an addition to buy peace and pay taxes. There is also a finding recorded that the Assessing Officer had made addition without establishing or without making any investigation on bogus purchases. It is thus observed that it may be

acceptable to make addition in the return of income but when it comes to penalty, the assessing officer was required to establish that the purchases were made in order to conceal the income. The findings of facts as recorded that the AO has not established the purchases in question were not genuine and the addition was made by the AO merely because the assesse accepted the same. We do not find that such approach of the tribunal in any manner can be held to be contary to law and/or not acceptable. Mr.Sharma has relied on a decision of the Supreme Court in the case of **MAK Data (P.) Ltd. Vs. Commissioner of Income Tax-II**[1], to support his contention that mere voluntary disclosure by the assessee would not prevent the Department from initiating the proceedings under Section 271(1)(c) of the Act. On a perusal of the said decision we find that, it was not a case where any notice under Section 148 of the Act was issued to the assessee by Revenue and in pursuance of which a return was filed. It was also not a case where the A.O intended to rely on materials obtained from Sales Tax Department, which were not furnished to the assessee, as sought to be relied on. Moreover, it was a case where search was conducted on the sister concern of the assessee, and it is in such a situation that the Supreme Court held, that it cannot be said that surrender of income was voluntary. The relevant observations of the Supreme Court read thus:

> "8. Assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognize those types of defences under the explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee

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> makes a voluntary disclosure of his concealed income, he had to be absolved from penalty.
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> 9. We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made byte AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently,it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the course of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961."

Thus, the facts are in complete variance to what has fallen for consideration in this case. We are accordingly not inclined to accept Mr.Sharma's contention that this judgment would support or in any manner assist the case of Revenue.

14. Considering the contentions as urged by Mr.Sharma and the findings as recorded by the Tribunal, we may refer to the decision of this Court in the case of **The Principal Commissioner of Income Tax-6 Vs. Colo Colour Pvt.Ltd.**[2] dated 16th September 2025. In such decision this Court considering the prior decision of the Division Bench of this Court to which one of us (G.S.Kulkarni, J.) was a member

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in the case of **Principal Commissioner of Income Tax-1 Vs. SVD Resins & Plastics Pvt.Ltd.**[3] wherein in similar circumstances, when the A.O had acted upon information received from the Sales Tax Department and without furnishing such information or granting an opportunity to the assessee to respond to such adverse material, which was also in the context of bogus purchases i.e. the A.O not having proved that the purchases were bogus, the Court held that such approach of the A.O was not permissible. The Court in the said decision was also confronted with a notice issued under Section 271(1)(c) on a penalty which was sought to be levied and the Tribunal coming to a similar conclusion that the penalty was not justified, The Tribunal has observed that although the A.O estimated the income from the bogus purchases @ 12.5%, the assessee admitted the additional income in respect of bogus purchases only to buy peace. The Court in such context observed that it was not a case of concealment of income or a case of inadequate particulars of income being furnished by the assessee. The relevant observations made by the Court also takes into consideration the position in law as discussed in **Pr.Commissioner of Income Tax-1 Vs. SVD Resins & Plastics Pvt.Ltd. (supra)** need to be quoted, which read thus :

> "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

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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.

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.**[4] 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 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

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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 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.

> 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.**"
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> [emphasis Supplied]

15. The Court also referred to the decision of a Division Bench of Gujarat High Court in Vijay Proteins Ltd. Vs. Commissioner of Income Tax[5]. Relevant observations in **The Principal Commissioner of Income Tax-6 Vs. Colo Colour Pvt.Ltd (supra)** are as follows :

> "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** 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** 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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> 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

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> 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.

16. In the present case also Mr.Sharma would not contend that such materials which were obtained from the Sales Tax Department were in fact furnished to the assessee and adequate opportunity was granted to the assessee to meet the case of Revenue/A.O. This is exactly what the Tribunal found to be an unacceptable and an incorrect approach of the A.O and the first Appellate Authority. In our opinion, that the basic principles of fairness and natural justice which would be required to be adhered to by the A.O to furnish any adverse material and grant sufficient opportunity to the assessee to meet the case of department, when it comes to levy of penalty, which by its nature are penal proceedings. The foundation to initiate a proceeding under Section 271(1)(c) of the Act in invoking a penal provision cannot be premised on such prejudice being suffered by the assessee. The approach of the Tribunal, in our opinion, is in accordance with law. The impugned order would not require any interference. The appeal does not give rise to any question of law. It is accordingly dismissed. No costs.

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