

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

आयकर अपील सं. / ITA Nos.1522 to 1526/PUN/2017  
निर्धारण वर्ष / Assessment Years : 2004-05 to 2008-09

Manisha Construction Co.,  
F-9, Bhosale Shinde Arcade,  
J.M. Road,  
Deccan Gymkhana,  
Pune – 411004

.... अपीलार्थी/Appellant

PAN: AAOFM9416A

Vs.

The Commissioner of Income Tax (Central),  
Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Nikhil Pathak  
प्रत्यर्थी की ओर से / Respondent by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख / <b>Date of Hearing : 01.05.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 30.07.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

This bunch of appeals filed by the assessee are against consolidated order of CIT-(Central), Pune, dated 27.03.2017 relating to assessment years 2004-05 to 2008-09 passed under section 263 of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to the same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. All the present appeals which are filed against the order of Commissioner under section 263 of the Act were filed after delay of 12 days. The assessee has filed an application for condonation of delay in filing the appeals late before the Tribunal. The assessee points out that by an error, the order of revision was received at Ratnagiri and was not passed on to the partners at Pune office. On an enquiry, the same was passed on and hence, the delay in filing the appeals late. We find merit in the petition of assessee and condone the delay in filing the appeals late before the Tribunal.

4. The issue raised in all the appeals is against exercise of jurisdiction by the Commissioner under section 263 of the Act, under which he has held that the order passed by the Assessing Officer under section 271(1)(c) of the Act dropping penalty proceedings was erroneous and prejudicial to the interest of Revenue. The facts and issues in all the appeals are identical. However, in order to adjudicate the issues, we make reference to the facts in ITA No.1522/PUN/2017 relating to assessment year 2004-05.

5. The assessee in ITA No.1522/PUN/2017, relating to assessment year 2004-05, has raised the following grounds of appeal:-

- 1] *The learned CIT erred in revising the order passed by the learned A.O. u/s 271(1)(c) dropping the penalty proceedings on the ground that it was erroneous and prejudicial to the interest of the revenue.*
- 2] *The learned CIT erred in setting aside the order passed by the learned A.O. u/s 271(1)(c) dated 10.03.2015 and further erred in directing the A.O. to pass necessary order in accordance with explanation 5A to Section 271(1)(c).*
- 3] *The learned CIT failed to appreciate that the order passed by the learned A.O. u/s 271(1)(c) dropping the penalty proceedings was neither erroneous nor prejudicial to the-interest of the revenue, and*

*therefore, the revision order passed by the learned CIT u/s 263 is bad in law and the directions given by the learned CIT are not justified.*

- 4] *The learned CIT erred in not appreciating that the penalty proceedings were initiated without proper application of mind on the part of the learned A.O. and hence, there was no question of levy of any penalty u/s 271(1)(c) and therefore, the learned A.O. had rightly dropped the penalty proceedings.*
- 5] *The learned CIT erred in holding that the learned A.O. had dropped the penalty proceedings without application of mind.*
- 5.1] *The learned CIT failed to appreciate that the learned A.O. had dropped the penalty proceedings after due consideration of the relevant facts.*

6. Briefly, in the facts of the case, search and seizure action under section 132 of the Act was carried out at the premises of assessee on 23.09.2009. The assessment under section 153A r.w.s. 143 3) of the Act was completed on 29.12.2011. For the year under consideration, the assessee had declared additional undisclosed income of ₹ 62,84,701/- on account of bogus sub-contract expenses in the return filed under section 153A of the Act which was assessed as such in the assessment order dated 29.12.2011. In respect of additional income declared of ₹ 62,84,701/-, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act on the above income which was specifically mentioned in para 7.2 of the assessment order. The Assessing Officer had also initiated penalty under section 271(1)(c) of the Act on disallowance under section 40a(ia) of the Act which disallowance was deleted by the CIT(A). The assessee did not file any appeal in respect of additional income. The successor Assessing Officer, later on, dropped the penalty proceedings under section 271(1)(c) of the Act vide his Order dated 10.03.2015, considering certain Court/ITAT decision relied upon by the assessee in its letter dated 05.03.2015.

7. The Commissioner was of the view that the action of Assessing Officer in dropping penalty proceedings, *prima facie*, appeared to be not in order. He was of the view that the years under consideration were covered by Explanation 5A to section 271(1)(c) of the Act. Since the assessee had declared additional income under section 132(4) of the Act, it was a clear case wherein the provisions of Explanation 5A to section 271(1)(c) of the Act were to be applied. As per show cause notice, the Commissioner observes that the Assessing Officer while dropping penalty proceedings had mentioned certain decisions. The Commissioner after going through the facts and the issues decided by each of the decisions, noted that in all cases except one related to disallowance / rejection of assessee's claim under the normal provisions of the Act, which did not pertain to detection of undisclosed income during search, as in the case of assessee. One case pertains to search but to a period prior to insertion of Explanation 5A to section 271(1)(c) of the Act. The Commissioner was of the view that the order passed by the Assessing Officer dropping penalty proceedings was erroneous and prejudicial to the interest of Revenue. Therefore show cause notice was issued to the assessee. The assessee filed reply which is incorporated by the Commissioner at pages 8 to 15 of the order of revision. The assessee took a stand that no revision under section 263 of the Act could be initiated when two views were possible and the Assessing Officer had taken one of the views. The Commissioner held as under:-

*"11. Section 263 enables the Commissioner to correct any Order passed by an Officer subordinate to him where such Order is prejudicial to the interests of the Revenue. The issue before the Courts regarding justification of jurisdiction u/s.263 with regard to cases where penalty proceedings were not initiated has been held to be beyond the purview of the revision by several Courts and Tribunals as also cited by the assessee. However, in the present case, the Assessing Officer has dropped the penalty u/s.271(1)(c) wherein the view taken is contrary to law and in such a situation, the assumption of revisional jurisdiction is justified. An attempt to assume jurisdiction by requiring the*

*Assessing Officer to pass a fresh reasoned order in place of his order dropping the penalty proceedings was found invalid by the Tribunal. But the High Court required the Assessing Officer to pass a fresh reasoned order. On appeal, the Hon'ble Apex Court in Toyota Motors Corporation Ltd. Vs. CIT (2008) 304 ITR 52 (SC) declined to interfere as it was only remand order. Further, in the case of Shabbir T Chan Vs. ACIT (2010) 4 ITR (Trib) 297 (Hyd) where the AO had initiated penalty proceedings but dropped the same leaving a Note in the order-sheet which did not give reasons for dropping the proceedings, the Tribunal upheld the revisional proceedings to be justified in such a case. It held that the Order of the Assessing Officer was erroneous and prejudicial because it was not a speaking order. The Assessing Officer, in the present case, has applied his mind on a completely wrong set of facts and law as is clearly evident from records."*

8. With regard to the contention of assessee that where two views are possible, then the Commissioner cannot exercise revision, was held to be not a correct argument as the said plea could be only in respect of question of fact. However, when it was question of law, then non-following of settled law makes the order passed by the Assessing Officer to be erroneous. He was of the view that the word 'shall' used in Explanation 5A to section 271(1)(c) of the Act makes the provision squarely applicable to assessee's case and the action of Assessing Officer in dropping penalty proceedings was not in accordance with mandatory provisions of law and the proceedings were dropped in sheer ignorance or disregard to the provisions of the Act and hence, no contrary view to be taken. The Commissioner also referred to various judicial pronouncements to comment on the powers of revision of Commissioner under section 263 of the Act and observed that the same was not confined to assessments but all proceedings of the Assessing Officer which were prejudicial to the interest of Revenue. Another point which was raised by the assessee was that the additional income declared in the statement under section 132(4) of the Act was duly shown in the revised return filed and since there was no addition to returned income, there was no question of any

concealment of income. The said plea of assessee was also rejected by the Commissioner on the ground that only due to search, the additional income was detected and declared finally by the assessee. The Commissioner held that there was non-application of mind by the Assessing Officer, who dropped the penalty proceedings and held the order dropping penalty proceedings under section 271(1)(c) of the Act to be both erroneous and prejudicial to the interest of Revenue. The Commissioner thus, set aside the said order of Assessing Officer with direction to pass necessary orders in accordance with Explanation 5A to section 271(1)(c) of the Act.

9. The assessee is in appeal against the order of Commissioner.

10. The learned Authorized Representative for the assessee referred to the assessment order passed under section 153A r.w.s. 143(3) of the Act and pointed out that additional income declared by the assessee was accepted as such except disallowance under section 40a(ia) of the Act, which addition was deleted by the CIT(A). He then, referred to paras 7 and 8 of the assessment order, wherein the Assessing Officer vide para 7.1 details the additional income offered for different years. Vide para 7.2, the Assessing Officer refers to undisclosed income declared in the return of income consequent to search action under section 132 of the Act. He further observes *Hence, penalty proceedings u/s 271(1)(c) of the IT Act are initiated separately for concealment and furnishing inaccurate particulars of income.* He then, referred to the order of Assessing Officer in dropping penalty proceedings which is dated 10.03.2015, wherein the Assessing Officer observed *The penal proceedings*

*initiated under section 271(1)(c) of the Income Tax Act, for the Assessment Year 2004-05 are hereby dropped.* The learned Authorized Representative for the assessee pointed out that the said penalty proceedings were dropped by the Assessing Officer after considering the reply of assessee in the respective years. He here stressed that the Assessing Officer having initiated penalty proceedings on both the limbs i.e. for concealment of income and furnishing of inaccurate particulars of income had dropped penalty proceedings as the same were not sustainable. In this regard, he pointed out that the Pune Bench of Tribunal in series of cases with lead order in Kanhaiyalal D. Jain Vs. ACIT in ITA Nos.1201 to 1205/PN/2014, relating to assessment years 2003-04 to 2007-08, dated 30.11.2016 had held that where penalty proceedings were initiated for both the limbs, then satisfaction recorded by the Assessing Officer in such circumstances was not correct and the Assessing Officer having failed to come to a finding as to which limb of section 271(1)(c) of the Act was not fulfilled, then no penalty could be levied under section 271(1)(c) of the Act. He further referred to the decision of the Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery in Income Tax Appeal No.1154 of 2014 with other Income Tax Appeals Nos.953 of 2014, 1097 of 2014 and 1226 of 2014, judgment dated 05.01.2017, which has also laid down the said proposition. The learned Authorized Representative for the assessee pointed out that as on date what has to be seen is whether the proceedings initiated were correct or not. In case the proceedings were not correctly initiated and dropped by the Assessing Officer, then such an order cannot be challenged under section 263 of the Act. He stressed that where initiation of proceedings were invalid and the Assessing Officer dropped the same, such an order of Assessing Officer cannot be held to

be erroneous and hence, no question of exercise of jurisdiction under section 263 of the Act. He pointed out that in case where the original assessment order was invalid in law, then 263 order holding it to be erroneous is invalid. In this regard, he placed reliance on the decision of the Mumbai Bench of Tribunal in M/s. Westlife Development Ltd. Vs. Pr.CIT in ITA No.688/Mum/2016, relating to assessment year 2011-12, order dated 24.06.2016 and Allahabad Bench of Tribunal in Hari Mohan Das Tandon (HUF) Vs. Pr. CIT (2018) 91 taxmann.com 199 (Allahabad – Trib.). Before parting, the learned Authorized Representative for the assessee also pointed out that the perusal of assessment order for each of the years would reflect that penalty proceedings in case of additional income were initiated for both the limbs. However, in case of the addition made under section 40a(ia) of the Act, which addition was deleted by the CIT(A) and the Tribunal, the Assessing Officer had invoked only one limb of section 271(1)(c) of the Act. The said initiation of penalty proceedings being against law was correctly dropped by the Assessing Officer and such an order cannot be revised under section 263 of the Act.

11. The learned Departmental Representative for the Revenue on the other hand, pointed out that the Pune Bench of Tribunal in Mrs.Sarita Kaur Manjeet Singh Chopra Vs. ITO in ITA No.1562/PN/2013, relating to assessment year 2009-10, order dated 30.10.2015 had upheld the levy of penalty by applying Explanation 5A to section 271(1)(c) of the Act. He further pointed out that the question which arises is whether dropping of penalty was erroneous and prejudicial to the interest of Revenue. He stressed that the Assessing Officer could initiate penalty on both the limbs and the order dropping penalty by two



lines was an erroneous order. He relied on the provisions of section 271(1B) of the Act. He stressed that the Assessing Officer had initiated on both the limbs but dropped penalty without application of mind. In this regard, he placed reliance on the ratio laid down by the Hon'ble High Court of Patna in R.A. Himmatsinghka and Co. Vs. CIT (2012) 340 ITR 253 (Patna) and the Hon'ble High Court of Allahabad in CIT Vs. Braj Bhusan Cold Storage (2005) 275 ITR 360 (Allahabad). He pointed out that where there was non-application of mind by the Assessing Officer, then the Commissioner can exercise the jurisdiction under section 263 of the Act.

12. The learned Authorized Representative for the assessee in rejoinder pointed out that there was no challenge to the basic exercise of jurisdiction of Commissioner to initiate proceedings under section 263 of the Act, but the question which arises is whether initiation of penalty proceedings in this case were itself bad in law and order dropping penalty in such circumstances, cannot be held to be erroneous.

13. We have heard the rival contentions and perused the record. The issue which arises before us is the exercise of jurisdiction under section 263 of the Act. The Commissioner is empowered to revise the orders passed by the Assessing Officer where the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. The Commissioner can exercise his revisionary powers only if both the conditions of section 263 of the Act are fulfilled. The order which is in question should be erroneous and also prejudicial to the interest of Revenue.

14. Coming to the facts of present case, we have to see whether the order passed by the Assessing Officer dropping penalty proceedings under section 271(1)(c) of the Act was erroneous and hence, prejudicial to the interest of Revenue or not. Consequent to search action under section 132 of the Act on the premises of assessee, wherein during recording of statement under section 132(4) of the Act, the assessee had declared additional income on account of various factors in all the years under appeal, which was honoured by the assessee by declaring the additional income in the return of income filed in response to notice under section 153A of the Act. The said additional income was accepted as such by the Assessing Officer in the order passed under section 153A r.w.s. 143(3) of the Act. Vide para 7.2 in assessment year 2004-05, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act on the additional income. The said penalty proceedings were initiated on both the limbs of said section i.e. for concealment of income and furnishing of inaccurate particulars of income. Another addition was also made in the hands of assessee in assessment year 2004-05 on account of disallowance under section 40a(ia) of the Act. Vide para 10.4, the Assessing Officer made the addition and invoked penalty proceedings for concealment on one of the limbs of section 271(1)(c) of the Act i.e. furnishing inaccurate particulars of income. The addition made under section 40a(ia) of the Act was deleted by the CIT(A) and the Tribunal and hence, no penalty was levied on that count. The Assessing Officer thereafter, dropped penalty proceedings initiated under section 271(1)(c) of the Act vide order dated 10.03.2015. The Commissioner was of the view that such an order dropping penalty proceedings under section 271(1)(c) of the Act is both erroneous and prejudicial to the

interest of Revenue. The assessee is in appeal against the order of Commissioner passed under section 263 of the Act.

15. Before going into the powers of Commissioner to be exercised under section 263 of the Act, we would like to refer to the jurisdictional issue of levy of penalty under section 271(1)(c) of the Act. Undoubtedly, in the case of search where additional income is offered, the provisions of Explanation 5A to section 271(1)(c) of the Act are attracted; but in order to levy penalty for concealment, the Assessing Officer has to come to a finding as to whether the assessee has concealed its income or furnished inaccurate particulars of income. The requirement of section 271(1)(c) of the Act is for the Assessing Officer to be satisfied as to which limb of said section has not been fulfilled and record satisfaction in this regard and show cause the assessee to meet the case of Revenue.

16. The Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery in Income Tax Appeal No.1154 of 2014 with other Income Tax Appeals Nos.953 of 2014, 1097 of 2014 and 1226 of 2014, judgment dated 05.01.2017 after referring to the decision of the Hon'ble Supreme Court in Ashok Pai Vs. CIT (2007) 292 ITR 11 (SC) and the decision of the Hon'ble High Court of Karnataka in CIT & Anr. Vs. M/s. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar) has held that satisfaction of the Assessing Officer has to be with regard to one of two breaches mentioned under section 271(1)(c) of the Act, for initiation of penalty proceedings, would not warrant / permit penalty being imposed for other breaches. Penalty under section 271(1)(c) of the Act

can be levied only in respect of either of two limbs i.e. either for concealment of income or furnishing inaccurate particulars of income. The Assessing Officer after making additions in the hands of assessee has to record satisfaction in this regard as to which limb of section 271(1)(c) of the Act has not been satisfied by the assessee and accordingly, give him show cause notice by recording satisfaction of violating either of the limbs.

17. The Pune Bench of Tribunal in *Kanhaiyalal D. Jain Vs. ACIT (supra)* had also after referring to several case laws including the ratio laid down by the Hon'ble High Court of Karnataka in *CIT & Anr Vs M/s. Manjunatha Cotton and Ginning Factory (supra)* had held as under:-

*"22. Now, coming to the facts of the case before us, wherein search and seizure operations were carried out on Chhoriya group of concerns on 22.08.2008 and declaration of Rs.11.44 crores was made in the hands of whole group for various years. Consequent to the notices issued under section 153A of the Act for various years, different entities filed the return of income for the respective years and cumulatively for Rs.13.99 crores as additional income. The income was declared on account of on-money on sale of plots, which was detected from the documents seized during the course of search. Admittedly, Explanation 5A to section 271(1)(c) of the Act is attracted in such cases. However, the case of assessee before us is that the Assessing Officer while completing the assessment proceedings had to be satisfied that the assessee had either concealed the income or furnished inaccurate particulars of income and is liable to levy of penalty under section 271(1)(c) r.w.s. Explanation 5A of the Act. The notice is to be issued to the assessee under section 274 of the Act. Before issuing such notice, satisfaction has to come out from the proceedings going on before the Assessing Officer. The perusal of assessment order passed in the present case reflects that the Assessing Officer while initiating proceedings has recorded satisfaction as to the assessee has furnished inaccurate particulars of income and has also concealed the income. The only source of addition in the hands of assessee is additional income offered by the assessee pursuant to search operations. In such circumstances, it is categorically a case of concealment. However, the Assessing Officer refers to both the limbs of section 271(1)(c) of the Act and the satisfaction recorded in this case suffers from infirmity. Further, even in the notice issued under section 274 of the Act, irrelevant part has not been struck off. While completing penalty proceedings also, the Assessing Officer makes reference to both the limbs i.e. concealment of income and furnishing of inaccurate particulars of income and in the final, levies penalty for concealment of income.*

23. However, the question which is raised before us by way of additional ground of appeal is root of start of the proceedings i.e. recording of satisfaction and the issue of notice, which has been challenged by the assessee to be invalid. Applying the ratio laid down by the Hon'ble Karnataka High Court in CIT & Anr. Vs. Manjunath Cotton and Ginning Factory (supra) and CIT Vs. SSA'S Emerald Meadows (supra) and in view of SLP being dismissed, we find merit in the plea of assessee that the satisfaction recorded in the present case to initiate penalty proceedings both for concealment of income and furnishing of particulars of income against additional income offered by the assessee is incorrect. Further, where the assessee is not aware of exact charge against him, the ambiguity in the notice issued under section 274 r.w.s. 271(1)(c) of the Act by not striking of portion which is not applicable, prejudice the right of reasonable opportunity to the assessee, as he was not made aware of exact charge he had to face. It is a clear-cut case of concealment since the assessee had offered additional income pursuant to search carried out at its premises. It is not the case of furnishing of inaccurate particulars of income and hence, the Assessing Officer should have recorded the satisfaction accordingly and issued the notice accordingly.

24. We find no merit on the partial reliance placed upon by the learned Departmental Representative for the Revenue on the decision of Jurisdictional High Court in CIT Vs. Smt. Kaushalya (supra). The Hon'ble High Court has clearly laid down the proposition that the Assessing Officer has to make the assessee fully aware of exact charge of the Department against him. As pointed out, in present case, in the assessment order itself while recording satisfaction for initiating proceedings under section 271(1)(c) of the Act, exact charge of the Department against the assessee is not clear. The Assessing Officer records the satisfaction for initiating penalty proceedings on both the counts i.e. concealment of income and furnishing of inaccurate particulars of income. The Hon'ble Bombay High Court had also upheld the quashing of penalty proceedings for assessment year 1967-68 to be justified on account of vagueness and ambiguity in the notice issued. But the Hon'ble High Court further held that where the assessee was fully aware of exact charge of the Department against him, then technical non-striking of certain terms in the notice would not invalidate the proceedings. Where there is default in the first stage of making the assessee aware of exact charge of the Department, then initiation of penalty proceedings are vitiated and the same are to be quashed. The issue of notice under section 274 of the Act on such vagueness and ambiguity makes such notice invalid and proceedings thereafter are to be quashed.

25. The Hon'ble Supreme Court in T. Ashok Pai Vs. CIT (supra) had held as under:-

“23. Section 271(1)(c) remains a penal statute. The rule of strict construction shall apply thereto. The ingredients for imposing penalty remain the same. The purpose of the Legislature that it is meant to be a deterrent to tax evasion is evidenced by the increase in the quantum of penalty, from 20 per cent under the 1922 Act to 300 per cent in 1985.

24. “Concealment of income” and “furnishing of inaccurate particulars” carry different connotations. Concealment refers to a deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of suppression very or suggestion falsi.”

26. *Where concealment of income and furnishing of inaccurate particulars of income are two different connotations, then as per provisions of the Act, the satisfaction has to be recorded by the Assessing Officer before initiating penalty proceedings as to under which limb the case of assessee falls. In the present set of facts, the satisfaction as recorded by the Assessing Officer which is evident from the assessment order itself does not establish the case of Revenue against the assessee that it is liable for levy of penalty for concealment under which limb i.e. for concealment of income or for furnishing of inaccurate particulars of income. The notice issued under section 274 of the Act by the Assessing Officer also does not show cause the assessee as to make him aware of exact charge levied against him. In the absence of same, it causes prejudice to the right of reasonable opportunity to be allowed to the assessee before levy of penalty under section 271(1)(c) of the Act. Consequently, penalty notice issued in the present case suffers from infirmities i.e. lack of satisfaction and lack of notice being issued in making the assessee aware of exact charge against him, hence the same is quashed. The penalty proceedings completed pursuant to such notice are vitiated and the same are held to be invalid."*

18. It may be pointed out that the case in *Kanhaiyalal D. Jain Vs. ACIT* (supra) was also with regard to search case, wherein Explanation 5A to section 271(1)(c) of the Act was attracted. There is no dispute about the same. The dispute before the Tribunal was that where the Assessing Officer while completing assessment proceedings had not recorded satisfaction as to which limb of section 271(1)(c) of the Act read with Explanation 5A, was not fulfilled by the assessee and where the Assessing Officer had initiated proceedings by recording satisfaction of the assessee having furnished inaccurate particulars of income and also concealing the income, then satisfaction so recorded was held to suffer from infirmity. The relevant findings of the Tribunal are in paras 22 to 26, which are reproduced hereinabove. The Tribunal in the said case itself held that penalty proceedings initiated lacked from satisfaction and had quashed the penalty proceedings in the said case of search on the assessee. In such circumstances, where the question of law has been decided by the Hon'ble Bombay High Court and on similar facts, the issue has been decided by the

Pune Bench of Tribunal, then the order of Assessing Officer in recording satisfaction of violating both the limbs of section 271(1)(c) of the Act suffers from infirmity. The Assessing Officer on reply of assessee had dropped penalty proceedings and such an order of dropping penalty proceedings cannot be said to be erroneous.

19. Now, coming to the exercise of jurisdiction by the Commissioner under section 263 of the Act. In case where the assessment order, which is the basis of initiating penalty proceedings for concealment is null and void, then the Commissioner cannot exercise his jurisdiction under section 263 of the Act in respect of such null and void assessment order. The Commissioner in the present case has though exercised his jurisdiction in respect of the order dropping penalty proceedings under section 271(1)(c) of the Act. However, where the Assessing Officer had not initiated the penalty proceedings within framework of law then, the Assessing Officer having dropped penalty proceedings by passing an order, then such an order dropping penalty proceedings cannot be said to be erroneous. Accordingly, we hold so. The learned Departmental Representative for the Revenue has placed reliance on different decisions vis-à-vis non-application of mind by the Assessing Officer and consequent order passed by the Commissioner revising such an order of non-application of mind by the Assessing Officer. In the present set of facts, the order dropping penalty proceedings, which were not validly initiated cannot be said to be erroneous order i.e. passed without application of mind by the Assessing Officer and in the absence of the same, the Commissioner is precluded from exercising his jurisdiction under section 263 of the Act.

Accordingly, we hold so and we reverse the order of revision passed by the Commissioner under section 263 of the Act. The grounds of appeal raised by the assessee are thus, allowed.

20. The facts and issues in ITA Nos.1523/PUN/2017 to 1526/PUN/2017 are identical to the facts and issues in ITA No.1522/PUN/2017 and our decision in ITA No.1522/PUN/2017 shall apply *mutatis mutandis* to ITA Nos.1523/PUN/2017 to 1526/PUN/2017.

21. In the result, all the appeals of assessee are allowed.

Order pronounced on this 30<sup>th</sup> day of July, 2018.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 30<sup>th</sup> July, 2018.  
GCVSR

**आदेश की प्रतिलिपि अद्योषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
4. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune