

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 8166/DEL/2019 (A.Y 2010-11)
I.T.A. No. 8167/DEL/2019 (A.Y 2011-12)
I.T.A. No. 8168/DEL/2019 (A.Y 2012-13)
I.T.A. No. 8169/DEL/2019 (A.Y 2013-14)
I.T.A. No. 8170/DEL/2019 (A.Y 2014-15)
I.T.A. No. 8171/DEL/2019 (A.Y 2015-16)
I.T.A. No. 8172/DEL/2019 (A.Y 2016-17)**

Ashish Mittal 5190, Lahori Gate, New Delhi AEMPM5831P (APPELLANT)	Vs	DCIT Central Circle-7 Room NO. 330, ARA Centre, E-2, Jhandewalan Extension New Delhi (RESPONDENT)
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**I.T.A. No. 8100/DEL/2019 (A.Y 2013-14)
I.T.A. No. 8101/DEL/2019 (A.Y 2014-15)
I.T.A. No. 8102/DEL/2019 (A.Y 2016-17)**

Sh. Akshay Gupta 5190, Lahori Gate, New Delhi ANFPG1208C (APPELLANT)	Vs	DCIT Central Circle-7 New Delhi (RESPONDENT)
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**I.T.A. No. 8161/DEL/2019 (A.Y 2013-14)
I.T.A. No. 8162/DEL/2019 (A.Y 2014-15)**

Kunal Gupta Kh. No. 239, Rajokari, Farm No. 4, Bougian Villia, Delhi AJJPG9381Q (APPELLANT)	Vs	DCIT Central Circle-7 Room NO. 330, ARA Centre, E-2, Jhandewalan Extension New Delhi (RESPONDENT)
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**I.T.A. No. 8163/DEL/2019 (A.Y 2013-14)
I.T.A. No. 8164/DEL/2019 (A.Y 2014-15)
I.T.A. No. 8165/DEL/2019 (A.Y 2016-17)**

Ayush Gupta 5190, Lahori Gate, Delhi ANFPG4151N (APPELLANT)	Vs	DCIT Central Circle-7 Room NO. 330, ARA Centre, E-2, Jhandewalan Extension New Delhi (RESPONDENT)
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(THROUGH VIDEO CONFERENCING)

Appellant by	Sh. Mayank Patwari, Adv
Respondent by	Sh. Satpal Gulati, CIT(DR)

Date of Hearing	09.03.2021
Date of Pronouncement	23.03.2021

ORDER

PER BENCH

These 15 appeals are filed by the assessee against the order dated 13/08/2019 & ITA No. 8172/Del/2019, 8102/Del/2019 & ITA No. 8165/Del/2019 dated 16/08/2019 passed by CIT(A)'s-24, New Delhi for assessment years 2010-11, 2011-12, 2012-13 2013-14, 2014-15, 2015-16 & 2016-17 respectively.

2. The grounds of appeal are as under:-

I.T.A. No. 8166/DEL/2019 (A.Y 2010-11)

1. The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs. 48,364/- u/s 271 (l)(c) of the Act on account of additional income of Rs. 1,56.520/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.

I.T.A. No. 8167/DEL/2019 (A.Y 2011-12)

1. *The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs. 5,50,527/- u/s 271 (l)(c) of the Act on account of additional income of Rs. 17,81,640/-/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.”*

I.T.A. No. 8168/DEL/2019 (A.Y 2012-13)

1. *The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs. 1,44,534/-/- u/s 271 (l)(c) of the Act on account of additional income of Rs. 4,67,746/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.”*

I.T.A. No. 8169/DEL/2019 (A.Y 2013-14)

1. *The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs. 2,63,817/-- u/s 271 (l)(c) of the Act on account of additional income of Rs. 8,53,776/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.”*

I.T.A. No. 8170/DEL/2019 (A.Y 2014-15)

1. *The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs. 12,55,492/--- u/s 271 (l)(c) of the Act on account of*

additional income of Rs. 36,93,709/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.”

I.T.A. No. 8171/DEL/2019 (A.Y 2015-16)

1. *The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs. 60,200/- u/s 271 (l)(c) of the Act on account of additional income of Rs. 1,94,820/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.”*

I.T.A. No. 8172/DEL/2019 (A.Y 2016-17)

1. *The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs. 12,851/- u/s 271AAB of the Act on account of additional income of Rs. 64255/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.”*

I.T.A. No. 8100/DEL/2019 (A.Y 2013-14)

The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs. 1,18,737/- u/s 271 (l)(c) of the Act on account of additional income of Rs. 3,84,261/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.

I.T.A. No. 8101/DEL/2019 (A.Y 2014-15)

The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs. 9,65,058/- u/s 271 (l)(c) of the Act on account of additional income of Rs. 31,73,165/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.

I.T.A. No. 8102/DEL/2019 (A.Y 2016-17)

The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs. 942,145/- u/s 271AAB of the Act on account of additional income of Rs. 2,10,723/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.

I.T.A. No. 8161/DEL/2019 (A.Y 2013-14)

The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs.1,551/- u/s 271 (1)(C) of the Act on account of additional income of Rs. 5,020/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.

I.T.A. No. 8162/DEL/2019 (A.Y 2014-15)

The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs 51,38,416/- u/s 271 (1)(c) of the Act on account of additional income of Rs. 1,51,17,432/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions

and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.

I.T.A. No. 8163/DEL/2019 (A.Y 2013-14)

The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs 1,18,737/- u/s 271 (1)(c) of the Act on account of additional income of Rs. 3,84,261/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.

I.T.A. No. 8164/DEL/2019 (A.Y 2014-15)

The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs 9,69,546/- u/s 271 (1)(c) of the Act on account of additional income of Rs. 31,73,165/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.

I.T.A. No. 8165/DEL/2019 (A.Y 2016-17)

The CIT(A) erred in law and on facts in confirming the levy of penalty of Rs 42,145/- u/s 271 AAB of the Act on account of additional income of Rs. 2,10,723/- offered by the assessee in his return of income filed u/s 153A while ignoring the facts, written submissions and evidences placed on record and rejecting the bonafide explanation of the assessee for non- imposition of the penalty. Thus, the penalty so levied should be cancelled.

3. Firstly, we are taking up facts of ITA No. 8166/Del/2019 for Assessment Year 2010-11 as the lead case. Search and seizure operation u/s 132 of the Act was carried out at the premises of Shri Ashish Mittal along with K R B L Group of cases on 30/03/2016. The Assessing Officer observed that incriminating documents were found and seized during the course of search at the residential premises of the assessee. Thereafter in assessment proceedings in response to notice u/s 153A of the assessee filed return showing income of Rs.9,59,650/- where as in the original return of income u/s 139 of the Act, the assessee had declared income of Rs. 8,03,130/-. The Assessing Officer observed that the assessee has admitted undisclosed income of Rs. 1,56,520/- which was disclosed after the search and incorporated the same in the return filed in response to notice u/s 153A of the Act. During the assessment proceedings, the assessee failed to substantiate the manner in which the additional income was derived which was offered in the return filed in response to notice u/s 153A of the Act and also failed to explain why this income was not disclosed in the original return filed u/s 139 of the Act. The assessee submitted that this income was out of his own sources. The Assessing Officer concluded that the assessee has concealed his income amounting to Rs.1,56,520/- as per the provisions of Section 271(1)(c) of the Act.

3.1. The assessment was completed u/s 153A/143(3) of the Act at Rs. 9,59,650/- on 31/1/22017. Penalty proceedings were initiated u/s 271(1)(c) for concealment of income. Notice u/s 271(1)(c) of the Act was issued to the assessee on 31/1/2017 without specifying the particular limb of Section 271 relating to penalty. Further show cause notice dated 4/6/2018 was issued to the assessee. In response to the said notices, the assessee filed reply on 1/5/2018 and 11/6/2018 with request to drop the penalty proceedings. The reply of the assessee was considered by the Assessing Officer and was found not tenable. The Assessing Officer was of the opinion that during the course of search proceedings certain loose papers were found and seized and the assessee has voluntarily surrendered the expenditure which was unexplained/unaccounted. Thus, these expenditure was part of concealed

income of the assessee which was disclosed only after the search and it demonstrates that it is concealment of income and unexplained expenditure. The penalty order imposing the penalty of Rs. 48,364/- was passed on 28/6/2018 thereby stating that the assessee concealed his income in respect of unaccounted income of Rs. 1,56,520/- which was surrendered by the assessee.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The appeal of the assessee was dismissed by the CIT(A).

5. The Ld. AR submitted that the penalty order has not given any specific provision as to upon which the penalty is imposed. The Ld. AR submitted that the Assessing Officer was not sure about whether it is a concealed income or furnishing of inaccurate particulars. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of CIT vs. SSA's Emerald Meadows (2016) 73 Taxman.com 248 (SC) and CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar). The Ld AR further submitted that the Hon'ble Delhi High Court in case of Pr. CIT Vs. M/s. Sahara India Life Insurance Company Ltd. (ITA No.475/2019 vide order dated 02.08.2019) held that notice issued by the Assessing Officer would be bad in law if it did not specify under which limb of Section 271(1)(c) of the Act penalty proceedings had been initiated. Therefore, the Ld. AR submitted that the penalty order itself becomes bad in law. The Ld. AR further submitted that surrendering unaccounted money as alleged by the Assessing Officer as well as by the CIT(A) does not attract the provisions of Section 271(1)(c) and, therefore, on merit as well the penalty order does not sustain.

6. The Ld. DR on the other hand while supporting the order of Ld.CIT(A) filed the following written submissions.

“The issue in aforesaid cases is of imposition of penalty on account

of income disclosed by the assessee in return of income filed under section 153A of the act after the search. The penalty orders for the years preceding the search year (i.e. AYs other than AY 2016-17) are passed under section 271(1) (c) of the act and penalty order for search year (AY 2016-17) has been passed under section 271AAB of the Act”

Penalty under Section 271(l)(c) of the act;-

2. *The AO while passing assessment order under section 153A of the act initiated penalty under section 271(1)(c) of the act. The AO has not made any addition in the assessment order and assessed the income of the assessee as offered by the assessee in his return of income filed in response to notice under section 153A of the act. It may be noted that the penalty has been initiated on the income as offered / surrendered by the assessee in return of income. The relevant para of the assessment order to initiate the penalty proceedings under section 271(l) (c) of the act in aforesaid cases is similarly worded. The extract of the same is taken and reproduced below from one of such orders.*

“5. During the course of assessment proceedings, the assessee filed his return u/s 153 A after enhancing the income of Rs. 3,84,261/- on account of unaccounted house renovation & repair expenses as per Annexure A-1 & A-3 of Party KR-4, As the above expenditures are part of concealed income of the assessee which was disclosed after the search, therefore, I am satisfied that the assessee has concealed his income in the return filed u/s 139 of the I.T. Act, 1961, within the meaning of sub-clause (c) of sub-section (1) of section 271 of the Income tax Act, 1961. For the reasons discussed above, penalty proceedings U/s 271 (1)(c) of the Act are being initiated separately.”

3. *The appellant has taken a plea that the penalty notice u/s 274 read with 271(1)(c) also did not tick the exact charge for levy of penalty.*

4. *Perusal of the above para of the assessment order categorically shows that the AO initiated the penalty proceedings considering the surrendered income as reported in return under section 153A of the act as concealment of income under section 271(1)(c). So, the limb to initiate the penalty proceedings is evident from perusal of the assessment order. Moreover, it is a case where the assessee truly knows the change of concealment of income as the income has been surrendered on his own as against any addition made by the AO.*

5. *The assessee has relied on the decision of Hon'ble High Court of Karnataka in the case of Manjunatha Cotton and Ginning Factory which is the basis for decision in the case of SSA Emerald decided by Hon'ble Supreme Court. It may be relevant to take note of the fact that the decision of Manjunatha Cotton is in respect of four different assessee out of which the following ground of appeal are in the respect of M/s. Veerabhadrappa Sangappa & Co. a partnership firm carrying on the business of Mining & Processing of iron ore and sale and export (ITA No.5020 of 2009).*

1. *Whether the notice issued under Section 271(1)(c) in the printed form without specifically mentioning whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars is valid and legal?*

2. *Whether the proceedings initiated by the Assessing Authority were legal and valid?*

6. *It is to point out that the facts in the case of M/s. Veerabhadrappa Sangappa & Co. are clearly distinguishable. In the Sangappa case, the*

Assessing Officer had made additions under Section 69 of the Act being undisclosed investment. The appellate authority set aside the same and the addition was sustained on a new ground that is under valuation of closing stock. Hon'ble Tribunal decided that since the Assessing Authority had initiated penalty proceedings based on the additions made under Section 69 of the Act, which was struck down by the Appellate Authority, the initiated penal proceedings, no longer exists. Further, the Tribunal decided that

"Before issuing the notice the inappropriate words and paragraphs were neither struck off nor deleted. The Assessing Authority was not sure as to whether she had proceeded on the basis that the assessee had either concealed its income or has furnished inaccurate details. The notice is not in compliance with the requirement of the particular section and therefore it is a vague notice, which is attributable to a patent non-application of mind on the part of the Assessing Authority."

7. As discussed above, in the instant case, the assessment order categorically mentioned the initiation of penalty on account of concealment of income. The addition made in this case has been upheld exactly by the appellate authority without any modification. In such a case, the facts of the case are entirely different.

8. The relevant extracts of the decision of Hon'ble Karnataka High Court are reproduced as under:

“As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation-1 or in Explanation-1(B). then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(l)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.”

60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(l)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of

facts-subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.

61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income is different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of Ashok Pai reported in 292 ITR 11 at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujrat High Court in the case of MANU ENGINEERING reported in 122 ITR 306 and the Delhi High Court in the case of VIRGO MARKETING reported in 171 Taxmn 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind..."

9. As highlighted above in the aforesaid cited decision at para 59 of the judgment of Hon'ble Karnataka High Court that if the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer

to the said order which contains the satisfaction of the authority which has passed the order. I find that Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory reported in (2013) 35 taxmann.com 250 (Kar.) held that existence of conditions stipulated in Section 271(l)(c) is a sine qua non for initiation of penalty proceedings under Section 271. However, it further adds that even if there is no specific finding regarding the existence of the conditions mentioned in Section 271(l)(c), at least the facts set out in Explanation 1(A) & (B) should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision. It further mentions that even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(l)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B). In view of the findings of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory, that, at least, a direction to initiate proceedings under Section 271(l)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B). Thus, it is prayed that the penalty order is sustainable in the eyes of the law on this account.

10. *In the present case, the notice issued in this case read with the assessment order makes the charge of penalty amply clear. It may be relevant to note that as per the penalty order, the AO has drawn a conclusion that the assessee has concealed income.*

11. *It may be relevant to add that Hon'ble Mumbai High Court in the*

case of Ventura Textiles Limited (ITA 958 OF 2017) categorically observed that notice means that the assessee has received actual knowledge/information of a fact. Therefore, the court held that if the assessee has received the required information through assessment order, then, the strike off of specific limb in the notice for penalty does not vitiate the penalty order. The relevant extracts of the decision are reproduced as under:-

25. This brings us to the basic question as to what is a notice or what do we mean by notice. Concise Oxford English Dictionary, Indian Edition, explains notice to mean the fact of observing or paying attention to something; advanced notification or warning; a displayed sheet or placard giving news or information. It means to become aware of. In other words, to put someone on notice would mean warn someone of something about/or likely to occur. Black's Law Dictionary, Eighth Edition, defines the expression 'notice' to mean having actual knowledge of a fact; has received information about it; has reason to know it; knows about the related fact. In CST Vs. Subhash & Company, (2003) 3 SCC 454, Supreme Court deliberated upon the concept of notice and observed that the term 'notice' has originated from the Latin word "notifia" which means "being known" or "a knowing". Thereafter, Supreme Court referred to the definition of the word 'notice' 14/19 assessee had furnished inaccurate particulars of income, penalty proceedings under Section 271(l)(c) were also initiated separately. Therefore, it was apparent that penalty proceedings were initiated for furnishing inaccurate particulars of word notice in various general and judicial dictionaries. Without adverting to the large

number of definitions, suffice it to say notice would mean information, warning or announcement of something impending; notice in its legal sense may be defined as information concerning a fact communicated to a party by an authorized person or actually derived by him from a proper source; the term "notice" in its full legal sense embraces a knowledge of circumstances that ought to induce suspicion or belief as well as direct information of that fact...

..... In the present case, it would be too technical and pedantic to take the view that because in the printed notice the inapplicable portion was not struck off, the order of penalty should be set aside even though in the assessment order it was clearly mentioned that penalty proceedings under Section 271(l)(c) of the Act had been initiated separately for furnishing inaccurate particulars of income. Therefore, this contention urged by the appellant / assessee does not appeal to us and on this ground we are not inclined to interfere with the imposition of penalty."

12. *It may be reiterated that the case in hand is of the income surrendered by the assessee and therefore, he knows the best about the nature of such income and therefore, the relevance of notice gets further diluted in such case where the concealed income is the income surrendered by the assessee.*

13. *As regards the argument of the appellant that the due income was offered voluntarily in the assessment, it would be relevant to discuss the principles laid down by Hon'ble Apex Court in the decision of Mak Data Pvt. Ltd. v. CIT CA No. 9772 o/ 2013 (SC) dated 30-10-2013 (reported in 358/TR, 593)*

because the cited case is directly on the issue of imposition of penalty in a case of voluntary disclosure. The principles so laid down by Hon'ble SC are summarized as under:-

“1. The Assessing Officer shall not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income.

2. Explanation 1 to Section 271(l)(c) raises presumption of concealment, when a difference is noticed by the AO, between the reported and the assessed income. The burden is then on the assessee to explain, by cogent and reliable evidence as to how the addition does not amount to concealment of income. When the initial onus placed by the explanation, has been discharged by the assessee, the onus shifts to the Revenue to show that the amount in question constituted the concealed income of the assessee.

3. It is trite law that the voluntary disclosure does not release the assessee from the mischief of penal proceedings.

4. The surrender of income in this case was not voluntary because the offer of surrender was made after the detection made by the Assessing Officer, it cannot therefore be said that the surrender of income was voluntary. 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 course of the assessment proceedings.”

14. In view of the above principles, it is very much evident that the voluntary disclosure of income does not release the assessee from the mischief of penal proceedings.

15. It has been held in the case of CIT v. Dr. R.C. Gupta & Co. (1980)

122 ITR 567 (Raj) that once the assessee admits that certain amount represents his income, no further evidence would be necessary to show that it was the amount which represented his income or that it represented his concealed income. Further, it has been held in the case of Western Automobiles (India) v. CIT (1978) 112 ITR 1048 (Bom) that where the assessee has agreed to the inclusion of certain amounts which were discovered from accounts, levy of penalty was held justified.

Why decisions quoted by the assessee are not applicable to the facts of the case?

16. The assessee relied on the decision of SC in the case of RAJ KUMAR GULAB BADGUJAR where Bombay High court decision was upheld. In the aforesaid cited case, search action under section 132 was not taken in the case of the assessee. So, the notice under section 153C of the act was issued. The court took note of the fact that Explanation 5A below Section 271 of the Act would apply only in case of searched person. In the present case, the search action has taken place in the case of the assessee and therefore, proceedings under section 153A of the act were initiated. There is no dispute in this regard. So, the cited case is not applicable to the facts of the case. The court held that—"we find no error in the Tribunal holding that the penalty could not have been imposed. There was no question of the Assessee not declaring the income of the particulars of the income so as to invite penalty under Section 271C of the Act. The three returns had been filed even before issuance of notice under Section 153C of the Act and in other two cases as accepted by the Assessing Officer the Assessee had no taxable income. When there was no addition to the declared income in any of the years, penalty was correctly deleted by the Tribunal. Explanation 5A below Section 271 of the Act would apply only in case of searched person." [PR COMMISSIONER OF INCOME-TAX (CENTRAL)]

*NAGPUR VERSUS RAJKUMAR GULAB BADGUJAR] [2019] 9 ITCD Online
(23) UGH COURT]*

17. *The assessee has relied on the decision of Hon'ble Delhi High Court in the case of Neeraj Jindal (09/02/2017). However, this decision is distinguishable as the search action in the cited case took place on 11.01.2007. Therefore, explanation 5 to section 271(1) © of the act was operative. However, in the present case, the search action took place on 30.03.2016. So, explanation 5A to section 271(1)© of the act was operative which specifically provides for penalty for the income declared in the return of income filed in response to notice under section 153A of the act. Explanation 5A categorically mentions that if the assessee claims any income based on any entry in any Document, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search is deemed to be a case of concealment of income. The assessee argued that explanation 5A is not applicable in his case because the notings in the seized document are in respect of expenditure and not in the nature of income. It is prayed that this argument is without merit because unexplained expenditure would be assessed as income in the hands of the assessee which basically means that the assessee invested his unaccounted income to meet such unexplained expenses. It is the case of two sides of same coin. Moreover, the assessee on his own surrendered the income on account of entries of house renovation expenses as recorded in seized record Thus, the explanation 5A is squarely applicable in the facts of the present case.*

18. *The assessee has relied on case laws which are not applicable to the facts of the case as the same are not search cases and explanation 5A was not operative in such cited cases.*

Penalty under Section 271AAB;-

19. *Penalty under section 271AAB is applicable to the search year where undisclosed income has been found during the course of search. It is not a case where the assessee admitted undisclosed income in a statement recorded under section 132(4) of the act. The income offered in return of income does fall under the definition of undisclosed income as defined in Section 271AAB of the act. The issue of strike off of limb of concealment of income or furnishing of inaccurate particulars of income has no relevance in this case as it is a case of undisclosed income which covers both scenario of concealment and furnishing of inaccurate particulars of income. Thus, the AO has rightly imposed the penalty in this case under section 271AAB of the act. The relevant extracts of the assessment order are reproduced as under:-*

“5. During the course of assessment proceedings, the assessee filed his return u/s 153A after enhancing the income of Rs. 64.255/- on account of unaccounted house renovation/ repair expenses as per Annexure A-1 to A-3 of Party KR-1. As the above expenditures are part of concealed income of the assessee which was disclosed after the search, therefore, I am satisfied that the assessee has concealed his income in the return filed u/s 139 of the I.T. Act, 1961, within the meaning of section 271AAB of the Income tax Act, 1961. For the reasons discussed above, penalty proceedings U/s 271 AAB of the Act are being initiated separately.”

20. *In the present case, the notice issued in this case read with the assessment order makes the charge of penalty amply clear. It may be relevant to note that as per the penalty order, the AO has drawn a conclusion that the assessee has concealed income.*

21. *It may be relevant to add that Hon'ble Mumbai High Court in the*

case of Ventura Textiles Limited (ITA 958 of 2017) categorically observed that notice means that the assessee has received actual knowledge/information of a fact. Therefore, the court held that if the assessee has received the required information through assessment order, then, the strike off of specific limb in the notice for penalty does not vitiate the penalty order.

22. It may be reiterated that the case in hand is of the income surrendered by the assessee and therefore, he knows the best about the nature of such income and therefore, the relevance of notice gets further diluted in such case where the concealed income is the income surrendered by the assessee.”

7. We have heard the rival arguments made by both the parties and perused the material available on record. It is pertinent to note that Section 271 has specifically given the procedure upon which rather to say provisions upon which the penalty is attracted in a particular case. Firstly, the Assessing Officer has to give the satisfaction that the person has failed to comply with the notice under Sub Section 2 of Section 115WD or under Sub Section 2 of Section 115WE or under Sub Section 1 of Section 142 or Sub Section 2 of Section 143 or fails to comply with a direction issued under Sub Section 2 A of Section 142 or has concealed the particulars of his income or furnished inaccurate particulars of such income. Thus, the Assessing Officer has to first give his satisfaction in the assessment order itself about the concealment of particulars of income or furnishing of inaccurate particulars of such income in the assessment order while initiating the penalty

proceedings u/s 271(1)(c). In the present case, from the perusal of the assessment order, it is seen that the Assessing Officer has simply stated that “I am satisfied that the assessee has concealed his income in the return filed u/s 139 of the Income Tax Act, 1961”, thereby stating that the income was disclosed after the search and, therefore, expenditures are part of concealed income of the assessee. In-fact, the assessee filed his return u/s 153(A) after enhancing the income on account of house renovation/repair expenses and the expenditure, therefore, in our opinion, cannot be stated as concealment of income. Therefore, the satisfaction in the instant case in our opinion is inadequate. Further, for invoking Clause (c) of Section 271(1)(c) of the Act, while issuing the notice, the Assessing Officer has to categorically state upon under which limb the penalty is initiated, since the assessee has to give reply to the notice issued u/s 271(1)(c) read with Section 274 in respect of concealment of particulars of income separately and that of furnishing of inaccurate particulars of income separately. In the present case, though the initiation in the assessment order was on concealment of particulars of income, the first primary stage of satisfaction was not given by the Assessing Officer. The initiation of penalty has been simply stated on concealment of income but which was not properly revealed in notice issued to the assessee. The Department cannot over look the technicalities and the procedure given under the Income Tax Statute which is a mandate to be followed by the tax authorities. The Revenue authorities cannot vaguely issue notices which are very much the basis of proceedings initiated under Income Tax statute.

7.1. The Hon'ble Supreme Court in SSA's Emerald (Supra) & Sahara India Life Insurance Co. Ltd. (Supra) has reiterated this fact. Now, coming to the actual penalty order, the same is though stated upon concealment of

particulars of income has not given the specification as to how the income was concealed when the expenditures which was incurred was not accounted in original return but revealed in the return filed u/s 153A. In-fact, Para 3 of penalty order has made the specification of furnishing of inaccurate particulars of income. Thus, the Assessing Officer though finally imposed the penalty on concealment of particulars of income was not sure whether it is for furnishing of inaccurate particulars or concealment of income. The assessee has suo moto /voluntarily surrendered the amount before the Assessing Officer and paid the taxes thereupon. Thus, on the merit also the assessee has proved that the penalty does not survive.

8. The Ld. DR has relied upon the decision of SSA's Emerald thereby making the difference of opinion that there are four different assessee's and in case of M/s Veerabhadrappa Sangappa & Company the facts are distinguishable. But the overall principle given by the Hon'ble Apex Court remains in legal parlance that the penalty has to be imposed on a clear specific manner which is given under the Income Tax Statute while invoking Section 271(1)(c) & that cannot be over looked. The Ld. DR relied upon the decision of Hon'ble Bombay High Court in case of Ventura Textile Ltd. which states that the assessee once received notice, the striking of specific limb does not vitiate the penalty order. But after going through the said decision of the Hon'ble Bombay High Court the Hon'ble High Court also reiterated that the initiation of penalty has to be specific though the technicality might not matter in the initial stages but in the penalty order it should be in consonance with the final decision of the Revenue Authorities. Thus, in-fact, the decision of the Hon'ble Bombay High Court also supports the case of the assessee. The technicalities along with the merits of each case has to be over

looked into while deciding the penalty matters and in this particular case, the Assessing Officer while imposing the penalty, though finally observed that it is a concealed particulars of income, at the same time he has not given adequate reasoning as to how the concealment has occurred. Besides that, the furnishing of inaccurate particulars has also been taken into account but the same was not specified with the proper reasoning by the Assessing Officer while passing the penalty order and hence penalty does not sustain as the assessee has surrendered the amount related to expenditure of income & the same cannot be held as concealment of particulars of income. Thus, appeal being ITA No. 8166/Del/2019 for Assessment Year 2010-11 is allowed.

9. Facts of ITA No. 8167/Del/2019 for Assessment Year 2011-12 are identical and hence we are following the earlier order for Assessment Year 2010-11. Thus, ITA No. 8167/Del/2019 for Assessment Year 20-11-12 is allowed.

10. Facts of ITA No. 8168 Del/2019 Assessment Year 2012-13 are identical and hence we are following the earlier order for Assessment Year 2010-11. Thus, ITA No. 8168/Del/2019 Assessment Year 2012-13 is allowed.

11. Facts of ITA No. 8169/Del/2019 for Assessment Year 2013-14 are identical and hence we are following the earlier order for Assessment Year 2010-11. Thus, ITA No. 8169/Del/2019 for Assessment Year 2013-14 is allowed.

12. Facts of ITA No. 8170/ Del/2019 for Assessment Year 2014-15 are identical and hence we are following the earlier order for Assessment Year

2010-11. Thus, ITA No. 8170/Del/2019 for Assessment Year 2014-15 is allowed.

13. Facts of ITA No. 8171/ Del/2019 for Assessment Year 2015-16 are identical and hence we are following the earlier order for Assessment Year 2010-11. Thus, ITA No. 8171/Del/2019 for Assessment Year 2015-16 is allowed.

14. Facts of ITA No. 8100/Del/2019 for Assessment Year 2013-14 in case of Akshay Gupta are identical and hence we are following the earlier order for Assessment Year 2010-11. Thus, ITA No. 8100/Del/2019 for Assessment Year 2013-14 is allowed.

15. Facts of ITA No. 8101/Del/2019 for Assessment Year 2014-15 in case of Akshay Gupta are identical and hence we are following the earlier order for Assessment Year 2010-11, Thus, ITA No. 8101/Del/2019 for Assessment Year 2014-15 is allowed.

16. Facts of 8161/Del/2019 For Assessment Year 2013-14 in case of Kunal Gupta are identical and hence we are following the earlier order for Assessment Year 2010-11. Thus, ITA No. 8161/Del/2019 for Assessment Year 2013-14 is allowed.

17. Facts of 8162/Del/2019 for Assessment Year 2014-15 in case of Kunal Gupta) are identical and hence we are following the earlier order for Assessment Year 2010-11. Thus, ITA No. 8162/Del/2019 for Assessment

Year 2014-15 is allowed.

18. Facts of ITA No. 8163/Del/2019 Assessment Year 2013-14 in case of Ayush Gupta are identical and hence we are following the earlier order for Assessment Year 2010-11. Thus, ITA No. 8163/Del/2019 for Assessment Year 2013-14 is allowed.

19. ITA No. 8164/Del/2019 for Assessment Year 2014-15 in case of Ayush Gupta are identical and hence we are following the earlier order for Assessment Year 2010-11. Thus, ITA No. 8164/Del/2019 for Assessment Year 2014-15 is allowed.

20. Now, we are taking up facts of ITA No. 8172/Del/2019 for Assessment Year 2016-17. A search and seizure operation u/s 132 of the Act was conducted at the business and residential premises of Shri Ashish Mittal along with K R B L Group of case as contemplated in the earlier parts hereinabove in case of Ashish Mittal for Assessment Year 2010-11. The Assessing Officer concluded that the assessee has earned undisclosed income amounting to Rs. 64,255/- as per the provisions of Section 271AAB of the Act. The assessment was completed u/s 143(3) of the Act at Rs.27,41,170/- on 31/12/2017. Accordingly notice u/s 271AAB was also issued to the assessee on 18/06/2018. In response to the said notice, the assessee filed detailed submissions. The Assessing Officer was of the opinion that in this case, though the assessee has admitted the undisclosed income and paid taxes thereon after the search, however, he has not satisfactorily explained the reasons for his default. Accordingly, the case of the assessee

falls within the ambit of Clause (b) of Section 271AAB of the Act on account of surrender made after the search amounting to Rs.64,255/- and so penalty is attracted. The Assessing Officer further observed that the case of the assessee clearly falls within the purview of undisclosed income as per the provisions of Section 271AAB (b) which is mentioned in the assessment order while recording satisfaction as well as the same is also specifically mentioned in the penalty notice. The Assessing Officer imposed penalty u/s 271AAB on the undisclosed income of Rs. 64,255/- as the assessee disclosed the said amount after the search proceedings thereby holding that as the assessee did not explain the manner of earning such income during the search proceedings u/s 132 of the Act penalty at the rate of 20% of undisclosed income to the tune of Rs. 12,851/- was levied on the assessee on 27/06/2018.

21. Being aggrieved by the penalty order, the assessee filed appeal before the CIT (A). The CIT (A) dismissed the appeal of the assessee.

22. The Ld. AR submitted that the Assessing Officer has not contemplated the proper penalty notice as per the provisions of Section 271AAB. The Assessing Officer was not correct in imposing the penalty u/s 271AAB as the assessee has surrendered the income and also paid taxes accordingly. Thus, the Ld. AR submitted that the penalty may be deleted. The Ld. AR further reiterated the arguments made in ITA No. 8166/Del/2019 for Assessment Year 2010-11.

23. The Ld. DR relied upon the assessment order, penalty order and the

order of the CIT(A) as well as the submissions reproduced hereinabove.

24. We have heard both the parties and perused the material available on record. The insertion of this Section is from Finance Act, 2012 w.e.f 1/7/2012. The Section 271AAB shall be invoked in case where search has been initiated u/s 132 on or after 1st Day of July, 2012. In the present case, the search took place on 30/03/2016. This penalty can be imposed in addition to tax if any payable by him. The Assessing Officer specifically at the time of penalty proceedings contemplated Clause B of Section 271AAB of the Act. But the limb of Clause B specifically mentions that if such assessee in the course of search in a statement under Sub Clause 4 of Section 132 does not admit the undisclosed income. However, in the present case, the assessee has very much admitted the undisclosed income and surrendered the undisclosed income. The assessee also paid the tax thereon. Besides this, the notice upon which the assessee is bound to give reply is vague and not as per provisions of the Income Tax Statute. The Revenue Authorities have not properly adjudicated/ invoked in true spirit of the penalty Provisions to impose penalty on the assessee. Thus, on the technicality as well as on merit, the penalty does not survive. Hence, appeal filed by the assessee is allowed. Thus, ITA No. 8172/Del/2019 for Assessment Year 2016-17 is allowed.

25. Facts of ITA No. 8165/Del/2019 for Assessment Year 2016-17 filed by Ayush Gupta are the identical to that of ITA No. 8172/Del/2019 for Assessment Year 2016-17. Hence, the penalty is deleted and appeal is allowed.

26. Facts of ITA No. 8102/Del/2019 for Assessment Year 2016-17 filed by Akshay Gupta is also on the identical terms and facts. Hence, the penalty is deleted and appeal is allowed.

27. In result, all the appeals filed by the respective assessee's are allowed.

Order pronounced in the Open Court on this 23rd Day of MARCH, 2021

Sd/-

**(R. K. PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 23/03/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

