

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, INDORE BENCH, INDORE**  
चन्द्रमोहन गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष  
**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./ I.T.A. No.713/Ind/2016
निर्धारण वर्ष /Assessment Year: 2009-10

<b>M/s. Platinum Horazine Pvt. Ltd.</b> <b>E-50, MIG Colony Indore</b>	<b>v.</b>	<b>ACIT 3(1) Indore</b>
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AAACP 4915 A		

अपीलार्थी की ओर से/Appellant by	<b>Shri Subhash Chand Jain C.A.</b>
प्रत्यर्थी की ओर से/Respondent by	<b>Shri Mohd. Javed, Sr. D.R.</b>

सुनवाई की तारीख/Date of hearing	<b>03-05-2017</b>
उद्घोषणा की तारीख/Date of pronouncement	<b>16-05-2017</b>

**आदेश /ORDER**  
**PER O.P. MEENA, ACCOUNTANT MEMBER.**

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income tax (Appeals)-II, Indore [hereinafter referred to as the CIT (A)] dated 31.12.2015. This appeal pertains to Assessment Year 2009-10. Which arose out of the penalty order passed

under section 271(1) (c) of Income Tax Act, 1961(herein after referred to as “the Act”) by the ACIT 1(2) Bhopal dtd. 27.06.2012 (hereinafter referred as the AO).

**2.** At the outset, the Registry pointed out that there is delay of 106 days in filing of appeal. The Ld. A.R. submitted that the order of the CIT(A) was served upon Shri Banwarilal Parsai, Accountant of the assessee company probably on 15.01.2016. Shri Banwarilal Parsai has kept the said order in the income-tax file of 2009-10 and same file misplaced during the month of January 2016 by virtue of shifting of office record at one place to another due to renovation work of the company was going on. After completion of renovation work, the file was traced out on 28<sup>th</sup> June 2016 and the director of the company contacted the counsel for preparing the appeal. Therefore, it was contended that the delay was caused due to negligence of the Accountant Shri Banwarilal Parsai . An affidavit to that effect is also filed from Shri Banwarilal as well as Shri Pramathu Choksey, director of the company. The Ld. A.R. also relied on in the case of Collector, Land Acquisition, v. Mst. Katiji & Of Rs.[1987] 167 ITR 471 (SC)/ [1987] 2SCC 107 , Auto Center v. State of Uttar

Pradesh [2005] 278 ITR 0291 (All) / 148 Taxman 0573 (All),  
Dr. V. V. Devsthale v. ITO [1995] 214 ITR 0315 (MP)/ [1996]  
84 Taxman 0143 (MP) in support of his claim that delay was  
not intentional and there was reasonable cause for the same.

**3.** The learned Sr. D.R., opposed the assessee's plea for  
condonation of delay.

**4.** We have heard the rival submissions of both the parties  
and perused the material available on record. As far as the  
issue of condonation of delay is concerned, it is settled law  
that the Court quasi-judicial bodies are empowered to  
condone the delay if the litigant satisfies the Court that there  
were sufficient reasons for the availing the remedy after the  
expiry of the limitation. Such a reasoning should be to the  
satisfaction of the Court. The expression sufficient cause or  
reason as provided in subsection (5) of section 253,  
subsection (3) of section 249 of the Income Tax Act 1961  
used in identical terms in the Limitation Act and the CPC.  
Such expression has also been used under section 4 of the  
Income Tax Act 1961 such as sections 273, 274 etc. The  
expression "sufficient cause" within the meaning of Section  
5 of Limitation Act as well as a similar other provisions and

the ambit of exercise of powers thereunder have been subject matter of consideration before the Honourable Apex Court on various occasions. In the case of the State of West Bengal vs. Administrator , Howrah Municipality, AIR 1972 SC 749, the Hon`ble the Supreme Court, while considering the scope of the expression sufficient cause for condonation of delay, has held that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to the party. In the case of N. Balakrishnan vs. M. Krishnamurthy AIR 1998SC3222, there was a delay of 883 days in filing of application in setting-aside the *ex-parte* decree for which application for condonation of delay was filed. The trial Court having found that sufficient cause was made out for condonation of delay condoned the delay. The Hon`ble Supreme Court while restoring the order of the trial Court has observed in paragraphs 8, 9 and 10 as under:

*“8. The appellant’s conduct does not on the whole warrant to castigate him as an irresponsible litigant. We are he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting*

*his advocate at short intervals to check up the progress of the litigation. But during these days when every body is fully occupied with his avocation of life, an omission to adopt such extra vigilance need not be used as a ground to depict him as litigant not aware of his responsibilities, and to visit him with the drastic consequences.*

*9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such a discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, and acceptability of the explanation is the only criterion. Sometimes delay of the shortest the range may be un-condonable due to want of acceptable explanation, whereas in certain other cases, delay of very long-range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the Superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was wholly on untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the Superior Court would be free to consider the cause shown for the delay afresh and in its own finding even untrammelled by the conclusion of the lower Court.*

*10..... \*\**

*The primary function of a Court to adjudicate the dispute between the parties and to advance substantial justice.*

*This time-limit fixed for the approaching the Court in different situation is not because on the expiry of such time a bad cause would transform in to a good cause.””*  
*N. Balakrishnan vs. Krishnamurthy (1998) 7 SC 124 (SC)* wherein it was observed that condonation of delay is matter of discretion of the court. Section 5 of Limitation Act says that discretion can be exercised only if the delay is within reasonable limit. Length of delay is no matter; acceptability of the explanation is the only criterion. .... There is no presumption that delay in approaching the court is always deliberate. The words “sufficient cause” under section 5 of the Limitation Act should receive a liberal construction to advance substantial justice.

The Hon`ble Supreme Court further observed that rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics but seek the remedy promptly. The Hon`ble Apex Court further observed that the refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that the delay in approaching the Court is always deliberate. The Hon`ble Supreme Court in SLP Civil No. 12980 of 1986, decided on 19<sup>th</sup> feb. 1987, in the case of Collector, Land Acquisition, v. Mst. Katiji & Ors.[1987] 167 ITR 471 (SC)/ [1987] / 2SCC 107 has laid down the following guidelines:

1. Ordinarily a litigant does not stand to benefit by lodging an appellate.

2. *Refusing to condone the delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties sale*
3. *“Everyday delay must be explained “” does not mean that a pedantic approach should be made, why not every hours delay, every seconds delay. The doctrine must applied an rationale common sense pragmatic manner.*
4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserve to be preferred, for the other side cannot claim to have vested right in injustice being done the cause of her nondeliberate delay.*
5. *There is no presumption that the lady occasions had deliberately, or on account of culpable negligence, or on account of malafides . A litigant does not extent to benefit by resorting to delay. In fact he runs a serious risk.*
6. *It must be grasped that the judiciary’s is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

5. In the light of above cited judgements, if we examined the facts of the present case, it is apparent that the assessee has been vigilant in its approach and has not neglected the Income tax proceedings. The Hon`ble Supreme Court in the case of N. Balakrishnan (supra) has observed that the length of the delay is immaterial. The acceptability of the explanation is the only criteria for condoning the delay. In a given case, a delay of the shortest period may be uncondonable due to unacceptable explanation, whereas in certain other cases, delay of a long period can be condoned, if the explanation is satisfactory. In every case of delay, there might be some omissions of negligence on the part of the assessee, and then such omissions/negligence has to be weighed in the light of existing circumstances of each case. It would be negligence of commission if it is a by product of a deliberate attempt with mala-fide intention for delay, the process of the litigation which could give some benefit to the litigant, then probably process of litigation which would view some benefit with the litigant then probably that delay would not deserved to be condoned. However, if no mala-fide can be attributed to the delay, that delay will be condonable.

Therefore, on the facts of the present case, we are of the considered opinion that the assessee has been able to demonstrate sufficient reasons in the shape of having misplaced the income-tax papers by his Accountant due inadvertent mistake on account of renovation of office was being carried on for filing an appeal before the Tribunal. Therefore, we deem it fit to condone the delay of 106 days and admit the appeal and allow the appeal proceeded with for adjudication.

**6.** Now we shall deal with regular grounds of appeal of the assessee which reads as us under:-

*1. That on the facts and in the circumstances of the case, the learned CIT(A)-II Indore has erred in confirming penalty of Rs. 6,49,630/- levied by the AO .*

*2. That on the facts and in the circumstances of the case, the learned CIT(A) Indore has erred in confirming penalty after wrongly applying to the judgement whose facts entire different from the appellant`s case.*

*3. That on the facts and in the circumstances of the case, the learned CIT(A) Indore has erred in confirming to the penalty which was levied due to agreed addition to income after offering loss on share of Rs. 21,02,353/- to purchase peace of mind or for other similar reason.*

*4. That on the facts and in the circumstances of the case and in law, the order of penalty is invalid and unlawful because making such order , the assessee has not been heard nor has been given a reasonable and meaningful opportunity of being heard as contemplated u/s. 274 (1). Hence, the order be cancelled.*

*5. That on the facts and in the circumstances of the case and in law, it be held that neither the assessee has concealed the particulars of its income nor furnished inaccurate particulars of such income and therefore, the levy of penalty is unjustified and unlawful and , therefore, be cancelled.*

*6. That on the facts and in the circumstances of the case and in law, the findings of the learned CIT(A) in his order are wholly wrong and injudicious and are opposed to facts and , therefore, , there is no justification in sustaining the levy of penalty holding that the assessee has concealed income.*

**7.** Since the assessee has taken as many as six grounds of appeal, however in substance , these relates to confirming of penalty of Rs. 6,49,630/- levied under section 271(1)(c) of the Act. Ergo, these are being considered and disposed-of together.

**8.** Succinctly, facts as culled out from the orders of lower authorities are that the assessee is a Private Limited

Company engaged in providing consultancy in the field of marketing, product range , management consultancy market survey and business procurement. The assessee has filed return of income on 30-09-2009 declaring total income of Rs. 68,47,260/-. During the course of assessment proceedings, it was noticed that the assessee has shown loss of Rs. 21,02,353/- on purchase and sale of shares effected through M/s. Mahasagar Securities Pvt. Ltd. An information received from Addl. DIT (Inv) Mumbai, in the case of M/s. Swift Intermedia Convergence Ltd.; that the said company M/s. Mahasagar Securities Pvt. Ltd was floated by Mr. Mukesh Choukse, CA, for arranging profit/loss, capital gains/loss etc. On being asked the transaction with M/s. Mahasagar Securities Pvt. Ltd., the assessee filed its reply vide letter dated 13.12.2011 stating that their transaction with M/s. Mahasagar Securities Pvt. Ltd are bonafide and as per SEBI, rules and they do not know anything about true nature of activities done by M/s. Mahasagar Securities Pvt. Ltd., and knowing about investigation done by the Income-tax Department. Therefore, the company do not want to involve in litigation. therefore, to buy peace of mind, they offered this

loss of Rs. 21,02,353/- for taxation purpose and assure to pay due taxes thereon with a request that no penalty under section 271(1)(c) or any other provision of Income Tax Act,1961 will be imposed in the matter. However, the AO found, that except the copy of Sauda Summary Report from NSE and options of Angle Capital Debt Market no details of purchase and sale of share done through M/s. Mahasagar Securities Pvt. Ltd was furnished. The copy of account with bills of purchase and sale of shares with M/s. Mahasagar Securities Pvt. Ltd was furnished, but who has signed the confirmation and no PAN was furnished. It was further noticed that Shri Mukesh Choukse CA, in his statement recorded during the course of search and seizure operation stated that .....***if a party wants to carry out to a big transaction to claim bogus profits they deposit the amount in cash or cheques in our account and they get their cheques cleared. We get an intimation from franchises agents regarding the amounts a bogus profits which party wants to generate.....***

9. In the light of above facts, the AO initiated penalty proceeding under section 271(1) (c) of which the assessee

company filed its reply. The AO noted that the explanation of the assessee that they were not aware of the facts about accommodation transaction done by M/s. Mahasagar Securities Pvt. Ltd cannot be bought for simple reason that the act of providing / taking accommodation entries involves creation/adjustment of several forged documents. This requires active involvement of the person taking accommodation entries. Therefore, this argument of the assessee was not found acceptable. Moreover, the assessee has failed to furnish any relevant supporting evidence during the assessment proceedings. Accordingly, the AO concluded that the assessee company did not disclose true and correct income in its return of income and it was due to scrutiny assessment in which it was found that the assessee has concealed the true income. Accordingly, the AO levied penalty of Rs. 6,49,630/- being 100% of tax sought to be evaded.

**10.** Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). The CIT (A) relying on the decision in the case of Mak Data P. Ltd. vs. CIT [2013] 358 ITR 593(SC) observed that penalty under section 271(1)(c) cannot be avoided simply for the reason that the amount has been surrendered to buy

peace of mind. According to Ld. CIT (A), the facts of the case are similar to the case of Mak Data P. Ltd. vs. CIT [2013] 358 ITR 593(SC). In this case also the assessee company has surrendered loss on account of share transaction only, which was found after search and seizure operation carried out in some other case. When detailed enquiries conducted by the Investigation Wing and the AO, the appellant came out with the proposal of settlement as the appellant was unable to prove the genuine of share transaction and to prove that income was not concealed income. Moreover, the surrender in this case is not voluntary. Had there been no investigation or enquiry under relevant provision of the Act; the appellant would not have come out with the surrender of the amount of loss under reference. Had there been bonafide on the part of the appellant, these amounts would have been included in the return of income for the relevant assessment year. Therefore, considering the direct decision of Hon`ble Supreme Court on the issue the Ld. CIT (A) had confirmed the levy of penalty under section 271(1) (c) of the Act.

**11.** Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee, submitted

that the company filed confirmed copy of account of M/s. Mahasagar Securities Pvt. Ltd with their PAN: AABCR 1593B during assessment proceedings (Refer Paper Book Page No - 108). The assessee had paid all payment through Account Payee Cheques. The assessee is also involved in share trading and done their business with M/s. Angles Broking Ltd. The intention of the assessee company was to trade in short term. The final payment due to M/s. Mahasagar Securities Pvt. Ltd delayed due to some dispute with them. However, the assessee is innocent about the transaction done by M/s. Mahasagar Securities Pvt. Ltd. Therefore, to buy peace of mind, the assessee surrendered the loss of Rs. 21,02,353/- on delivery based share transaction, though genuine, for taxation purposes, with a request for not levy any penalty under section 271(1)(c) of the Act. However, the AO levied penalty ignoring the submissions of the assessee. The learned counsel has placed reliance on number of case laws as per his written submissions, which are allowable on record. the learned counsel further claimed that decision of Mak Data (P.) Ltd. vs. CIT [2013] 358 ITR 593(SC) as relied by the Ld.

CIT (A) is not applicable to the facts of the case of the assessee.

**12.** On the other hand, the ld. D.R. vehemently supported the order of lower authorities and argued that the disclosure made by the assessee in the return was not voluntary. It was admitted after the deep investigation carried on by the Investigation Wing of Mumbai in the case of M/s. Mahasagar Securities Pvt. Ltd. The ld. D.R. further cited decision in the case of Ajit B. Zota vs. ACIT (2010) 40 SOT 543 (Mum) to contend that explanation 1 to section 271(1) (c) could be invoked where no bonafide explanation is given by the assessee for not disclosing the claim in original return of income.

**13.** We have considered the facts and perused the material on record and gone through the assessment order and find that the assessee has not filed any revised return of income disclosing the bogus loss on share transaction done through M/s. Mahasagar Securities Pvt. Ltd. The Department has come to know this transaction only after the Investigation Wing of Mumbai has carried out investigation in the case of M/s. Swift Intermedia Convergence Ltd. and its director Shri

Mukesh Choukse; CA, has categorically admitted that he has provided loss entries through sale and purchase of shares and transaction done through Mahasagar Securities Pvt. Ltd., which were not genuine. Thus, the transaction of buying bogus loss in shares by the assessee is very much amounts to furnishing of inaccurate particulars of income as well as concealing the particulars of income. We further find that the claim of loss was patently wrong and, it was made with conscious mind and with a deliberate attempt to evade due taxes by reducing tax liability. It was only when the transaction of buying such artificial loss generated by manipulating transaction was unearthed by the Income-tax Department. The assessee has come out with withdrawing such loss during the course of assessment proceedings. Therefore, the disclosure made during the course of assessment proceedings, cannot be, considered as voluntary. Nor it could be said that the claim of loss was bonafide one. Therefore, in view of these circumstances, the claim of the assessee cannot be said as bonafide more particularly when disclosure was not voluntary nor it was filed by revising the return of income. Therefore, we are of the considered view

that the assessee has concealed the income chargeable to tax for assessment year under consideration attracting the penalty u/s 271(1) (c) of the Act. Therefore, according to us, there was conscious and deliberate attempt on the part of the assessee to evade tax by claiming false and bogus loss in shares without a view to avoid payment of due taxes. Had there been no search and seizure operation in the case of M/s. Swift Intermedia Convergence and investigation in the case of M/s. Mahasagar Securities Pvt. Ltd, the Department could have lose the due revenue.

**14.** We find that Explanation-I to section 271(l) (c) of the Act provides that the penalty would be deemed to attract where in respect of a fact material to the computation of income either no explanation is offered, or explanation offered is found to be false. The assessee, although, has submitted an explanation claiming that they were ignorant about the transaction carried on by the M/s. Mahasagar Securities Pvt. Ltd. and they only carried on legitimate transaction through them, but this explanation is not found to be bonafide and it was found to be false as it was not in accordance with law and accordingly, its case is covered by Clause (A) of

Explanation 1 to section 271(1)(c) of the Act. Further, Clause (B) of Explanation 1 to section 271(1)(c) of the Act, provides that where the assessee is not able to substantiate its explanation and fails to prove that such explanation is bonafide and all the facts relating to the same have been disclosed, penalty is leviable. We find that the assessee did make disclosure of loss and offered it taxation during assessment proceeding, but that was not voluntary as it was outcome of investigation carried on by Investigation Wing of Revenue. Therefore, the assessee's explanation was not found to be acceptable by the AO, and thus it follows that the Assessee was unable to substantiate his explanation by providing various evidences and judicial opinions. The Ld. CIT (A) has placed reliance on the decision of Hon`ble Supreme Court in the case of Mak Data (P.) Ltd. vs. CIT (2013) 358 ITR 593 (SC) wherein the Hon`ble Supreme Court has held that *the Assessing Officer should not be carried away by the plea of the assessee such as "voluntary disclosure" "buy peace" "avoid litigation" "amicable settlement" to explain away it's conduct. The question is whether the assessee has offered any explanation for concealment of particulars of*

*income concealment or furnishing of inaccurate particulars of income.*

**15.** In view of the mandate of Hon`ble Supreme Court in above case, we are, therefore, of the considered opinion that the case of the assessee, is covered by Explanation 1 to section 271(1) (c) of the Act. Based on the facts of the case, we note that the Assessee had not made full and true with necessary facts in the return of income and therefore furnished inaccurate particulars of income and concealed the material facts necessary for the assessment. Therefore, we hold that the AO has rightly levied penalty under section 271(1) (c) of the Act and same has been rightly sustained by the Commissioner of Income-tax (Appeals). Accordingly, the action of the AO and Id. CIT (A) is upheld.

**16.** The controversy that penalty proceeding are quasi criminal in nature or not, has been brought to an end by the judgment of three member bench, of Hon`ble Supreme Court in the case of M/s. Dharmendra Textile Processors and others 166 Taxman 65 (SC), wherein Hon`ble Supreme Court has said that liability imposed under section 271(1) (c) is purely a civil liability and there is no requirement to establish “men-

s-rea” before levying penalty. We further note that the Hon`ble Allahabad High Court in the case of Raj Kumar Chaurasia v CIT (288 ITR 329(All) has held that the finding recorded in quantum of appeal are relevant for imposing penalty. Further reliance is placed on CIT v Chemiequipment Ltd (2004) 265 ITR 265 (Bom) wherein the Hon`ble High Court has held that where assessee having fully enhanced losses by not offering an amount to tax and by claiming wrong deduction under section 80HHC and offered these amounts to tax only in response to notice under section, penalty is liable. These decisions supports the case of the AO.

**17.** Further Reliance is placed on the decision of Hon`ble Supreme Court in the case of Mak Data (P.) Ltd. vs. CIT (2013) 358 ITR 593 (SC) wherein the Hon`ble Supreme Court has observed *that the Assessing Officer should not be carried away by the plea of the assessee such as “voluntary disclosure” “buy peace” “avoid litigation” “amicable settlement” to explain away it’s conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income concealment or furnishing of inaccurate particulars of income.* In this case the disclosure

of loss during the assessment, proceeding is not voluntary. Hence, the ratio of decision of Hon`ble Supreme Court is squarely applicable to the facts of the case.

**18.** We have considered the various decisions relied upon by the learned counsel for the assessee. In the case of Suresh Chand Mittal [2001] 251 ITR 9 (SC)/ 119 Taxman 429, a revised return was filed which was regularized by the Revenue, therefore, the explanation of the assessee was treated as bonafide whereas in the instant case the assessee has not filed any revised return and it was only during the course of assessment proceedings, he has admitted bogus loss. Therefore, the facts of the said case are distinguishable. Further, the decision of Mak Data P. Ltd. vs. CIT [2013] 358 ITR 593(SC) is later decision of the Hon`ble Supreme Court wherein it has been laid down that to the AO should not be carried away by the plea of the assessee such as “voluntary disclosure” “buy peace” “avoid litigation” “amicable settlement” to explain away it’s conduct. Further, the assessee has failed to furnish complete detail of shares along with bills and confirmed copy of account of M/s. Mahasagar Securities Pvt. Ltd. It was, also noticed that the assessee was

not dealing in share trade as its main business was in the field of marketing and management consultancy etc. The share were non-delivery based though it mentioned to be delivery based in disclosure. The decision in the case of Punjab Tyres [1986]162 ITR 517 (MP) of Hon`ble Madhya Pradesh High Court as relied by the assessee is also not applicable as in said case the Hon`ble High Court held that agreed addition cannot constitute evidence of concealment unless the assessee had consciously concealed the particulars of income. In the case of the assessee, there is no agreed addition as such and rather conscious indulgence in scrupulous transaction to with Shri Mukesh Choukse CA, director of M/s. Mahasagar Securities Pvt. Ltd. with a view to buy loss to reduce the tax liability. In statement recorded from Mukesh Choukse, CA, on 24.11.2006 in which it was clearly admitted by him that they have been providing bogus profits and losses to the parties who wants to buy loss, against the deposit of amounts taken cash and cheques in their accounts. The assessee has not taken delivery of shares it means that he has in connivance with M/s. Mahasagar Securities Pvt. Ltd., had purchased a huge loss to reduce

the profits. Similarly, other decisions as relied by the learned counsel were considered, and found as distinguishable on facts. The question whether in a particular case penalty under section 271(1) (c) of the Act is imposable or not is to be decided after taking into consideration all the facts and circumstances of each case. There cannot be any precedent on facts. Precedent can be only on the point of law. Every decision has to be understood in the light of the facts of that particular case. As rightly said by the Hon'ble Supreme Court in Willie (William) Slaney v. State of M. P. [AIR 1956 SC 116] [1955] [2 SCR 1140], that "**there is no such thing as a judicial precedent on facts that counsel and even judges, are sometimes, prone to argue and to act as if they were**". A decision is available as precedent only if it decides a question of law. In other words, the principles laid down for arriving at a decision alone will bind as a precedent. Therefore, it is not necessary to refer to all judgments relied upon by the learned counsel for the assessee made in the written submissions.

**19.** In the light of above facts, judicial pronouncements, we are satisfied that the conditions laid down in Explanation-1

to section 271 (1) (c) are satisfied. Thus, the assessee is deemed to have concealed the particulars of income and thereby has furnished inaccurate particulars of his income and concealed the income chargeable to tax. Therefore, we are of the considered opinion that Id. CIT (A) was right in confirming the levy of concealment penalty of Rs.6,49,630/- under section 271(1)(c) of the Act in respect of loss of shares amounting to Rs.21,02,353/-. In view of these facts and circumstances, ground no. 1 to 6 as taken by the assessee, as mentioned above are dismissed.

**20. In the result, the appeal of the assessee stands dismissed.**

**21.** The order pronounced in open court on 16-05-2017.

Sd/-

Sd/-

**( C.M. GARG )  
JUDICIAL MEMBER**

**( O. P. MEENA )  
ACCOUNTANT MEMBER**

दिनांक /Dated :16-05-2017 /OPM